

**(d) Permanent exemption for certain mixtures containing natural gas or petroleum**

After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(2) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of such powerplant consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

**(e) Permanent exemption for emergency purposes**

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

**(f) Permanent exemption for powerplants necessary to maintain reliability of service**

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent impairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) of this section in the time required to prevent such impairment of service.

(Pub. L. 95-620, title II, §212, Nov. 9, 1978, 92 Stat. 3300; Pub. L. 100-42, §1(c)(6), May 21, 1987, 101 Stat. 312.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(3), was in the original "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

## AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100-42, §1(c)(6)(A)-(C), substituted "from" for "or installation from one or more of" in introductory provisions, substituted "the fuel that would be used" for "using imported petroleum" and struck out "or installation" after "power-

plant" wherever appearing in subpar. (A), and struck out "or installation" after "powerplant" in subpars. (B) and (D).

Subsec. (a)(2). Pub. L. 100-42, §1(c)(1)(D), struck out "

"(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

"(B) in the case of a new electric powerplant."

after "paragraph (1) shall".

Subsec. (a)(3). Pub. L. 100-42, §1(c)(6)(E), struck out par. (3) which read as follows: "Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) of this section may not be granted an exemption under this subsection."

Subsec. (b). Pub. L. 100-42, §1(c)(6)(A), (B), (F), in introductory provisions substituted "from" for "or installation from one or more of", in par. (1) struck out "or installation" after "powerplant", and in par. (2) struck out "in the case of a powerplant," after "(2)".

Subsec. (d). Pub. L. 100-42, §1(c)(6)(A), (B), (G), struck out "(1)" before "After consideration of", substituted "from" for "installation from one or more of" in introductory provisions, redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, struck out "or installation" after "powerplant" wherever appearing in such pars., and struck out former par. (2) which read as follows: "In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent."

Subsec. (e). Pub. L. 100-42, §1(c)(6)(B), struck out "or installation" after "powerplant" wherever appearing.

Subsec. (g). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (g) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for peakload powerplants.

Subsec. (h). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (h) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of petroleum for intermediate load powerplants.

Subsec. (i). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (i) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations based upon product or process requirements.

Subsec. (j). Pub. L. 100-42, §1(c)(6)(H), struck out subsec. (j) which related to issuance, by order of Secretary of Energy, of permanent exemptions for use of natural gas or petroleum for installations necessary to meet scheduled equipment outages.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

**§ 8323. General requirements for exemptions****(a) Use of mixtures or fluidized bed combustion not feasible**

Except in the case of an exemption under section 8322(d) of this title, the Secretary may grant a permanent exemption for a powerplant under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 8322(d) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

**(b) State approval required for powerplant**

If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 8311 of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

**(c) No alternative power supply in the case of a powerplant**

(1) Except in the case of an exemption under section 8322(c) of this title, the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95-620, title II, §213, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100-42, §1(c)(7), May 21, 1987, 101 Stat. 312.)

## AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42, §1(c)(7)(A), (B), in introductory provisions struck out “or (g)” after “8322(d)” and “or installation” after “powerplant”.

Subsec. (b). Pub. L. 100-42, §1(c)(7)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

“(1) to the extent it applies to the prohibition under section 8311(2) of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

“(2) to the extent it applies to the prohibition under section 8311(1) of this title against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals required by such State regulatory authority which relate to construction or operation have been obtained.”

Subsec. (c)(1). Pub. L. 100-42, §1(c)(7)(A), in introductory provisions struck out “or (g)” after “section 8322(c)”.

## EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

**§ 8324. Terms and conditions; compliance plans****(a) Terms and conditions generally**

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are

practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

**(b) Compliance plans**

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or<sup>1</sup> such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95-620, title II, §214, Nov. 9, 1978, 92 Stat. 3304; Pub. L. 100-42, §1(c)(8), May 21, 1987, 101 Stat. 312.)

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1)(A), was in the original “this Act”, meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

## AMENDMENTS

1987—Subsec. (a). Pub. L. 100-42 struck out “or installation” after “powerplant”.

## EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

## SUBCHAPTER III—EXISTING FACILITIES

## PART A—PROHIBITIONS

**§ 8341. Existing electric powerplants****(a) Certification by powerplants of coal capability**

At any time, the owner or operator of an existing electric powerplant may certify to the Secretary, for purposes of subsection (b) of this section—

(1) whether or not such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) whether or not such powerplant could have the technical capability to use coal or another alternate fuel as a primary energy source without having—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

<sup>1</sup> So in original. Probably should be “for”.