PART 500—DEFINITIONS

Sec. 500.1 Purpose and scope.
500.2 General definitions.
500.3 Electric regions—electric region groupings for reliability measurements under the Powerplant and Industrial Fuel Use Act of 1978.


SOURCE: 46 FR 59884, Dec. 7, 1981, unless otherwise noted.


§ 500.1 Purpose and scope.

Unless otherwise expressly provided or the context clearly indicates otherwise, this section defines the terms used in these regulations. The use of the male gender is to include female; the use of singular to include plural.

§ 500.2 General definitions.

For purposes of this part and parts 501-507 term(s):


Action means a prohibition by rule or order, in accordance with sections 301(b) and (c) of FUA; any order granting or denying an exemption in accordance with sections 211, 212, 311 and 312 of FUA; a modification or rescission of any such order, or rule; an interpretation; a notice of violation; a remedial order; an interpretive ruling; or a rulemaking undertaken by DOE.

Affiliate, when used in relation to person, means another person who controls, is controlled by, or is under common control, with such person.

Aggrieved, for purposes of administrative proceedings, describes and means a person (with an interest sought to be protected under FUA) who is adversely affected by an action proposed or undertaken by DOE.

Air pollution control agency means any of the following:

(1) A single State agency designated as the official State air pollution control agency;
(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;
(3) A city, county, or other local government health authority or, in the case of any city, county, or other local unit of government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or
(4) An agency or two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

Alternate fuel means electricity or any fuel, other than natural gas or petroleum. The term includes, but is not limited to:

(1) Coal;
(2) Solar energy;
(3) Petroleum coke; shale oil; uranium; biomass, tar sands, oil-impregnated diatomaceous earth; municipal, industrial, or agricultural wastes; wood; and renewable and geothermal energy sources (For purposes of this paragraph (3), the term industrial does not include refineries);
(4) Liquid, solid or gaseous waste by-products of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity. (For purposes of this paragraph (4), the term waste by-product is defined as an unavoidable by-product of the industrial or refinery operation.) A waste by-product of a refinery or industrial operation is commercially unmarketable if it meets the criteria listed in the definition of "commercial unmarketability," set forth below;
(5) Any fuel derived from an alternate fuel; and
(6) Waste gases from industrial operations. (For purposes of this subsection, the term industrial does not include refineries.)
Applicable environmental requirements includes:

(1) Any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State Court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels, natural gas, or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(2) Any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act of 1976, or the National Environmental Policy Act of 1969.

Base load powerplant means a powerplant, the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant’s design capacity multiplied by 3,500 hours.

Boiler means a closed vessel in which water is heated electrically or by the combustion of a fuel to produce steam of one percent or more quality.

Btu means British thermal unit.

Capability to use alternate fuel, for the purposes of Title II prohibitions relating to construction of new powerplants, means the powerplant to be constructed:

(1) Has sufficient inherent design characteristics to permit the addition of pollution control equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation. In addition, the owner or operator of a baseload powerplant need not have adequate on-site space for either a coal gasifier or any facilities for handling coal or related fuels.

Certification means a document, signed by an official of the owner or operator, notarized, and submitted to OFE, which declares that a new powerplant will have the “capability to use alternate fuel” (as defined herein).

Certifying powerplant means an existing powerplant whose owner or operator seeks to obtain a prohibition order against the use of natural gas or petroleum either totally or in a mixture with coal or an alternate fuel by filing a certification as to both the technical capability and financial feasibility of conversion to coal or another alternate fuel pursuant to section 301 of FUA, as amended.


Coal means anthracite, bituminous and sub-bituminous coal, lignite, and any fuel derivative thereof.

Cogeneration facility means an electric powerplant that produces:

(1) Electric power; and

(2) Any other form of useful energy (such as steam, gas or heat) that is, or will be used, for industrial, commercial, or space heating purposes. In addition, for purposes of this definition, electricity generated by the cogeneration facility must constitute more than five (5) percent and less than ninety (90) percent of the useful energy output of the facility.

Note—Any cogeneration facility selling or exchanging less than fifty percent (50%) of the facility’s generated electricity is considered an industrial cogenerator and is exempt from the fuel use prohibitions of FUA.

Combined cycle unit means an electric power generating unit that consists of a combination of one or more combustion turbine units and one or more steam turbine units with a substantial portion of the required energy input of the steam turbine unit(s) provided by the exhaust gas from the combustion turbine unit(s).

Substantial amounts of supplemental firing for a steam turbine or waste heat
boiler to improve thermal efficiency will not affect a unit's classification as a combined cycle unit.

Combustion turbine means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel.

Commercial unmarketability as used in the definitions of “alternate fuel,” “natural gas” and “petroleum” shall be determined as follows:

1. A waste by-product of industrial or refinery operations is commercially unmarketable by reason of:
   i. Quality, where the cost of processing (limited to upgrading the waste by-product to commercial quality), storing, and distributing the waste by-product would not be covered by reasonably expected revenues from its sale;
   ii. Quantity, where the cost of aggregating the waste by-product into commercial quantities through storing and distributing the waste by-product would not be covered by reasonably expected revenues from its sale.

2. A fuel will not be classified as “natural gas” when it is commercially unmarketable by reason of:
   i. Quality, where the cost of producing, upgrading to commercial quality, storing, and distributing the fuel would not be covered by reasonably expected revenues from its sale; or
   ii. Quantity, where the quantities of the fuel are so small that the revenues to be reasonably expected from its sale would not cover the cost of its production, distribution or storage.

3. Costs associated with upgrading, storing, distributing, and aggregating a by-product or other fuel (to determine if such fuel is natural gas) may properly include a reasonable rate of return on any capital investment required to overcome the problems posed by the quality or quantity of a fuel because the return on investment is a normal aspect of any investment decision. A firm may account for this reasonable rate of return by using its customary discount rate for an investment of similar risk.

4. As part of any consideration of the rate of return on investment, the cost of replacing the Btu’s lost if the by-product or other fuel were upgraded and sold instead of used as a fuel may be taken into consideration. The actual expense that would result from burning a replacement fuel in lieu of the by-product or other fuel in question may therefore be considered. The costs associated with using a replacement fuel are indirect costs that result from upgrading and selling the fuel, instead of burning it. These indirect costs as well as the direct costs associated with the upgrading, storing, distributing, and aggregating of by-products or other fuel may be considered in any assessment of commercial unmarketability.

Conference means an informal meeting incident to any proceeding, between DOE and any interested person.

Construction means substantial physical activity at the unit site and includes more than clearance of a site or installation of foundation pilings.

Costs means total costs, both operating and capital, incurred over the estimated remaining useful life of an electric powerplant, discounted to the present, pursuant to rules established in parts 503 and 504 of these regulations.


Design capability defined in section 103(a)(7) of FUA, shall be determined as follows:

1. Boiler and associated generator turbines. The design fuel heat input rate of a steam-electric generating unit (Btu/hr) shall be the product of the generator's nameplate rating, measured in kilowatts, and 3412 (Btu/kWh), divided by the overall boiler-turbine-generator unit design efficiency (decimal); or if the generator's nameplate does not have a rating measured in kilowatts, the product of the generator's kilovolt-amperes nameplate rating, and the power factor nameplate rating; and 3412 (Btu/kWh), divided by the boiler turbine-generator unit's design efficiency (decimal). (The number 3412 converts kilowatt-hours (absolute) into Btu's (mean).)

2. Combustion turbine and associated generator. The design fuel heat input rate of a combustion turbine (Btu/hr) shall be the product of its nameplate rating, measured in kilowatts, and 3412
1 The election provisions are published at 46 FR 48118 (October 1, 1981) and will not be codified in the Code of Federal Regulations.
section 103(a)(7)(C) of FUA, the Secretary has determined that it is appropriate to exclude from this definition any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour.

Electric Region is as defined in §500.3 of this part.

Electric utility means any person, including any affiliate, or Federal agency, which sells electric power.

Emission offset means emission reductions as defined by EPA’s regulations set forth at 40 CFR part 51, appendix S.

EPA means the United States Environmental Protection Agency.


Existing powerplant means any powerplant other than a new powerplant.

Federal Water Pollution Control Act means the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended.

FERC means the Federal Energy Regulatory Commission.

Firm means a parent company and the consolidated or unconsolidated entities (if any) that it directly or indirectly controls.

Fluidized bed combustion means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, that is held in a fluid-like state by the means of air or other gases being passed through such materials.

FTC means the Federal Trade Commission.


Fuel Use Act means FUA.

Fuel use order means a directive issued by OFE pursuant to §501.167 of these regulations.

Gas turbine means “combustion turbine”.

High-priority user, for purposes of subsection 312(j) of FUA, means any residential user of natural gas, or any commercial user whose consumption of natural gas on peak day is less than 50 MCF.

Internal combustion engine means a heat engine in which the combustion that generates the heat takes place inside the engine proper.

Interpretation means a written statement issued by the DOE General Counsel or his delegate, in response to a written request, that applies the regulations, rulings, and other precedents previously issued by the DOE to the particular facts of a prospective or completed act or transaction.

Mcf means 1,000 cubic feet of natural gas.

Mixture, when used in relation to fuels used in a unit, means a mixture of petroleum or natural gas and an alternate fuel, or a combination of such fuels, used simultaneously or alternately in such unit.

Natural gas means any fuel consisting in whole or in part of natural gas, including components of natural gas such as methane and ethane; liquid petroleum gas; synthetic gas derived from petroleum or natural gas liquids; or any mixture of natural gas and synthetic gas. Natural gas does not include:

(1) Gaseous waste by-products or waste gas specifically designated as an alternate fuel in §500.2 of these regulations;

(2) Natural gas which is commercially unmarketable, as defined in these rules;

(3) Natural gas produced by the user from a well, the maximum efficient production rate of which is less than 250 million Btu's per day. For purposes of paragraph (3) of this definition:

(i) Produced by the user means:

(A) All gas produced by the well, when such gas is delivered for use in the user’s facility through a gas delivery, gathering, or transportation system which could not deliver such gas to any other user; or

(B) Only that amount which represents the user’s net working (mineral) interest in the gas produced from such well, where such gas is delivered for use in the user’s facility through a gas delivery, gathering, or transportation system which could deliver such gas to any other user.

(ii) Maximum efficient production rate (MEPR) means that rate at which production of natural gas may be sustained without damage to the reservoir or the rate which may be sustained without damage to the ultimate recovery of oil or gas through the well.
(4) Occluded methane in coal seams within the meaning of section 107(c)(3) of the Natural Gas Policy Act of 1978 (NGPA);

(5) The following gas from wells spudded prior to January 1, 1990:

(i) Gas produced from geopressurized brine, within the meaning of section 107(c)(2) of the NGPA;

(ii) Gas produced from Devonian shale, within the meaning of section 107(c)(4) of the NGPA;

(iii) Gas produced from tight sands, as designated by the FERC in accordance with section 107(c)(5) of the NGPA; and

(iv) Other gases designated by FERC as “high-cost natural gas” in accordance with section 107(c)(5) of the NGPA.

(6)(i) Synthetic gas derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60°F; and

(ii) Commingled natural gas and synthetic gas derived from coal consumed as part of the necessary process of a major fuel burning installation used in the iron and steel industry, so long as the average annual Btu heat content of the commingled stream as consumed within a major fuel burning installation does not exceed 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60°F;

(7) Mixtures of natural gas and synthetic gas derived from alternate fuels for which the person proposing to use the gas certifies to OFE that:

(i) He owns, or is entitled to receive at the point of manufacture, synthetic gas derived from alternate fuel;

(ii) He delivers, or arranges for the delivery of such synthetic gas to a pipeline which by transport or displacement is capable of delivering such synthetic gas, mixed with natural gas, to facilities owned by the user;

(iii) The total annual Btu content of the synthetic gas delivered to a pipeline is equal to or greater than the total annual Btu content of the natural gas delivered to the facilities owned by the user, plus the approximate total annual Btu content of any natural gas consumed or lost in transportation; and

(iv) All necessary permits, licenses, or approvals from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved, except that for purposes of the prohibition under section 201(2) of FUA against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph, to be certified and documented; and

(8) A mixture of natural gas and an alternate fuel when such mixture is deliberately created for purposes of (i) Complying with a prohibition order issued pursuant to section 301(c) of the Act, or (ii) Qualifying for a fuel mixtures exemption under the Act, provided such exemption is granted.

NEPA means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. New electric powerplant means any electric powerplant: (1) That was not classified as existing under part 515 of this subchapter; (2) That was reconstructed, as defined in these rules under the definition of “reconstruction”; or (3) For which construction was begun after November 9, 1978.


Nonboiler means any powerplant which is not a boiler and consists of either a combustion turbine unit or combined cycle unit.

Notice of violation means a written statement issued to a person by DOE that states one or more alleged violations of the provisions of these regulations, any order issued pursuant thereto, or the Act.


OFE means the Office of Fossil Energy of OFE.

Offset means “emission offset”.

Order means a final disposition, other than the issuance of a rule, issued by DOE pursuant to these regulations or the Act.

Person means any:
(1) Individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company;
(2) Any State; or
(3) Any Federal, State, or local agency or instrumentality (including any municipality) thereof.

Petroleum means crude oil and products derived from crude oil, other than:
(1) Petroleum products specifically designated as alternate fuels pursuant to these regulations;
(2) Synthetic gas derived from crude oil;
(3) Liquid petroleum gas;
(4) Petroleum coke or waste gases from industrial operations; and
(5) A liquid, solid, or gaseous waste by-product of refinery operations which is commercially unmarketable under the definition of "commercial unmarketability" in these rules.

NOTE: For the purposes of this subparagraph, waste by-products do not include components (such as butane and propane) that can be extracted from the waste by-product by reasonable further processing of the waste by-product at the refinery, nor do they include final products that use the waste by-product as a blend stock at the refinery.

Petition means a formal request for any action including an exemption submitted to DOE under these regulations.

Powerplant means "electric powerplant."

Product or process requirements means that product or process for which the use of an alternate fuel is not technically feasible due to the necessity to maintain satisfactory control of product quality and for which the substitution of steam is not technically feasible due to process requirements.

Primary energy source means the fuel or fuels used by any existing or new electric powerplant except:
(1) Minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses. OFE has determined that, unless need for a greater amount is demonstrated, twenty-five (25) percent of the total annual Btu heat input of a unit shall be automatically excluded under this paragraph.
(2) Minimum amounts of fuel required to alleviate or prevent:
(i) Unanticipated equipment outages as defined in §501.191 of these regulations; and
(ii) Emergencies directly affecting the public health, safety, or welfare that would result from electric power outages as defined in §501.191 of these regulations.

NOTE: (1) Any fuel excluded under the provisions of paragraph (1) of this definition is in addition to any fuel authorized to be used in any order granting a fuel mixtures exemption under parts 503 and 504 of these rules. The exclusion of fuel under paragraph (1), together with the authority for such additive treatment, shall apply to any jurisdictional facility, regardless of whether or not it has received an order granting an exemption as of the date these rules are promulgated.

(2) If an auxiliary unit to an electric powerplant consumes fuel only for the auxiliary functions of unit ignition, startup, testing, flame stabilization, and other control uses, its use of minimum amounts of natural gas or petroleum is not prohibited by FUA. The measurement of such minimum amounts of fuel is discussed in Associated Electric Cooperative, et al., Interpretation 1980-42 [45 FR 82,572, Dec. 15, 1980].

Prohibition order means:
(1) An order issued pursuant to section 301(b) of the Act that prohibits a powerplant from burning natural gas or petroleum as its primary energy source; or
(2) An order issued pursuant to section 301(c) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant as its primary energy source.

Rated capacity for the purpose of determining reduction in the rated capacity of an existing powerplant, means design capacity, or, at the election of the facility owner or operator, the actual maximum sustained energy output per unit of time that could be produced, measured in power output, expressed in kilowatts, per unit of time.

Reconstruction means the following:
(1) An order issued pursuant to section 301(c) of the Act that prohibits excessive use of natural gas or petroleum in mixtures burned by a powerplant as its primary energy source.

Rated capacity for the purpose of determining reduction in the rated capacity of an existing powerplant, means design capacity, or, at the election of the facility owner or operator, the actual maximum sustained energy output per unit of time that could be produced, measured in power output, expressed in kilowatts, per unit of time.

Reconstruction means the following:
(1) Except as provided in paragraph (2) of this definition, reconstruction shall be found to have taken place whenever the capital expenditures for refurbishment or modification of an electric powerplant on a cumulative basis for the current calendar year and
preceding calendar year, are equal to or greater than fifty (50) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels.

(2) Notwithstanding paragraph (1) of this definition, reconstruction shall not be found to have taken place whenever:

(i) The capital expenditures for refurbishment or modification of an electric powerplant, on a cumulative basis for the current calendar year and preceding calendar year, are not greater than eighty (80) percent of the capital costs of an equivalent replacement unit of the same capacity, capable of burning the same fuels and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces;

(ii) The unit being refurbished or modified was destroyed, in whole or substantial part, in a plant accident and the unit, as refurbished or modified, will not have a greater fuel consumption capability than the unit it replaces; or

(iii) Refurbishment or modification of the unit is undertaken primarily for the purpose of increasing fuel burning efficiency of the unit, and will not result in:

(A) Increased remaining useful plant life, or

(B) Increased total annual fuel consumption.


SIP means State Implementation Plan pursuant to section 10 of the Clean Air Act.

Site limitation means a specific physical limitation associated with a particular site that relates to the use of an alternate fuel as a primary energy source for the powerplant such as:

(1) Inaccessibility to alternate fuels;

(2) Lack of transportation facilities for alternate fuels;

(3) Lack of adequate land for facilities for the handling, use and storage of alternate fuels;

(4) Lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of land for pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(5) Lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.


State regulatory authority means any State agency that acts as ratemaking or power supply authority with respect to the sale of electricity by any State regulated electric utility.

Synthetic fuel means any fuel derived from an alternate fuel and does not include any fuels derived from petroleum or natural gas.

Wetlands areas means, for purposes of section 103(a)(12) of the Act, those geographical areas designated as wetlands areas by State or local environmental regulatory authorities, or in the absence of any such geographic designation, those areas that are inundated by surface or ground water with frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetation or aquatic life that requires saturated, seasonally saturated, or tidally saturated soil conditions for growth or reproduction.


§ 500.3 Electric regions—electric region groupings for reliability measurements under the Powerplant and Industrial Fuel Use Act of 1978.

(a) The following is a list of electric regions for use with regard to the Act. The regions are identified by FERC Power Supply Areas (PSA’s) as authorized by section 202(a) of the Federal Power Act except where noted. They will be reviewed annually by ERA.
Each grouping meets one or more of the following criteria:

1. Existing centrally dispatched pools and hourly power brokers;
2. Systems with joint planning and construction agreements;
3. Systems with coordination agreements in the areas of:
   i. Generation reserve and system reliability criteria;
   ii. Capacity and energy exchange policies;
   iii. Maintenance scheduling; and
   iv. Emergency procedures for dealing with capacity or fuel shortages;
4. Systems within the same National Electric Reliability Council (NERC) region with historical coordination policies.

(b) The PSA’s referred to in the definition of electric regions in paragraph (a) of this section were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the 1970 National Power Survey, Vol. 1, Pg. 1-3-16. In cases where a petitioner finds an ambiguity in a regional assignment, he shall consult with DOE for an official determination.

Electric Region Groupings and FERC PSA’s:
3. New England Planning Pool (NEPOOL)—1, 2.
7. Florida Coordination Group (FGC)—24.
8. Middle South Utilities—23.
11. Tennessee Valley Authority (TVA)—20.
16. Indiana Group—Indiana Utilities except AEP.
17. Illinois—Missouri Group (ILLMO)—15, 40.
20. Mid-Continent Area Power Pool (MAAP)—16, 17, 26, 27, 28.
22. Oklahoma Group—33, 36.
24. Rocky Mountain Power Pool (RMPP)—31, 32.
27. Southern California—Nevada—47, 48.
29. Alaska (non-interconnected systems to be considered separately)—49.
30. Idaho—Utah Group—41.
§ 501.1

501.1 Purpose and scope.

Part 501 establishes the procedures to be used in proceedings before DOE under parts 500-508 of this chapter except as otherwise provided.

§ 501.2 Prepetition conference.

(a) Owners and operators of powerplants may request a prepetition conference with OFE for the purpose of discussing the applicability of 10 CFR parts 503 and 504 to their situations and the scope of any exemption or other petition that OFE would accept as adequate for filing purposes.

(b) The owner or operator who requests a prepetition conference may personally represent himself or may designate a representative to appear on his behalf. A prepetition conference or a request for a prepetition conference does not commence a proceeding before OFE.

§ 501.3 Purpose and scope.

10 CFR Ch. II (1-1-99 Edition)

501.164 Decision to initiate enforcement proceedings.
501.165 Commencement of enforcement proceedings.
501.166 Hearings and conferences.
501.167 Fuel use order.

Subpart F—Exemptions and Certifications

501.60 Purpose and scope.
501.61 Certification contents.
501.62 Petition contents.
501.63 Notice of the commencement of an administrative proceeding on an exemption petition.
501.64 Publication of notice of availability of tentative staff analysis.
501.65 Publication of notice of availability of draft EIS.
501.66 OFE evaluation of the record, decision and order.
501.67 Petition redesignations.
501.68 Decision and order.
501.69 Judicial review.

Subpart G—Requests for Modification or Rescission of a Rule or Order

501.100 Purpose and scope.
501.101 Proceedings to modify or rescind a rule or order.
501.102 OFE evaluation of the record, decision and order for modification or rescission of a rule or order.
501.103 OFE decision.

Subpart H—Requests for Stay

501.120 Purpose and scope.
501.121 Filing and notice of petitions for stays.
501.122 Contents.
501.123 Evaluation of the record.
501.124 Decision and order.

Subpart I—Requests for Interpretation

501.130 Purpose and scope.
501.131 Filing a request for interpretation.
501.132 Contents of a request for interpretation.
501.133 DOE evaluation.
501.134 Issuance and effect of interpretations.

Subpart J—Rulings

501.140 Purpose and scope.
501.141 Criteria for issuance.
501.142 Modification or rescission.
501.143 Comments.

Subpart K—Enforcement

501.160 Purpose and scope.
501.161 Filing a complaint.
501.162 Contents of a complaint.
501.163 OFE evaluation.


SOURCE: 46 FR 59889, Dec. 7, 1991, unless otherwise noted.

Editorial Note: Nomenclature changes to this part appear at 54 FR 52891, Dec. 22, 1989.
§ 501.7 General filing requirements.

Except as indicated otherwise, all documents required or permitted to be filed with OFE or DOE in connection with a proceeding under parts 503 and 504 shall be filed in accordance with the following provisions:

(a) Filing of documents. (1) Documents including, but not limited to, applications, requests, complaints, petitions (including petitions for exemption), and other documents submitted in connection therewith, filed with OFE are considered to be filed upon receipt.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, an application for modification or rescission in accordance with subpart G of this part, a reply to a notice of violation, a response to a denial of a claim of confidentiality, or a comment submitted in connection with any proceeding transmitted by registered or certified mail and addressed to the appropriate...
§ 501.7  

office is considered to be filed upon mailing.

(3) Timeliness. Documents are to be filed with the appropriate DOE or OFE office listed in §501.11. Documents that are to be considered filed upon receipt under paragraph (a)(1) of this section and that are received after regular business hours are deemed filed on the next regular business day. Regular business hours are 8 a.m. to 4:30 p.m.

(4) Computation of time. In computing any period of time prescribed or allowed by FUA, these regulations or by an order, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a Federal legal holiday.

(5) Additional time after service by mail. Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time and the order, notice, interpretation or other document is served by mail, three (3) days shall be added to the prescribed period.

(6) Extension of time. When a document is required to be filed within a prescribed time, an extension of time to file may be granted upon good cause shown.

(7) Signing. All applications, petitions, requests, comments, and other documents that are required to be signed, shall be signed by the person filing the document or a duly authorized representative. Any application, petition, request, complaint, or other document filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an OFE form otherwise requires.

(8) Labeling. An application, petition, or other request for action by DOE or OFE should be clearly labeled according to the nature of the action involved, e.g., “Petition for Temporary Exemption,” “Petition for Extension (or Renewal) of Temporary Exemption,” both on the document and on the outside of the envelope in which the document is transmitted.

(9) Obligation to supply information. A person who files an application, petition, complaint, or other request for action is under a continuing obligation during the proceeding to provide DOE or OFE with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other application, petition, complaint, or request for action that is subsequently filed by that person with any DOE office or OFE office.

(10) The same or related matters. In filing a petition or other document requesting OFE action, the person must state whether, to the best of his knowledge, the same or a related issue, act or transaction has been or presently is being considered or investigated by a DOE office, other Federal agency, department or instrumentality, or a State or municipal agency.

(11) Request for confidential treatment. (i) If any person filing a document with DOE or OFE claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552); is information referred to in 18 U.S.C. 1905; or is otherwise exempt by law from public disclosure, and if such person requests DOE or OFE not to disclose such information, such person shall make a filing in accordance with paragraph (b)(2) of this section. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If a document is not so filed, OFE may assume that there is no objection to public disclosure of the document in its entirety, unless the person subsequently files a claim of confidentiality.
prior to public disclosure of the document.

(ii) DOE or OFE retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by DOE or OFE to deny such claim, in whole or in part, and an opportunity to respond or take other appropriate action to avoid release shall be given to a person claiming confidentiality of information no less than seven (7) days prior to its public disclosure.

(iii) The above provisions in paragraphs (a)(1) (i) and (ii) of this section do not apply to information submitted on OFE forms that contain their own instructions concerning the treatment of confidential information.

(12) Separate applications, petitions or requests. Each application, petition, or request for DOE or OFE action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act, or transaction, or are submitted in connection with the same proceeding.

(b) Number of documents to be filed. (1) A petitioner must file an executed original and fourteen (14) copies of all exemption requests submitted to DOE. For certification requests, an original and three (3) copies shall be submitted.

(2) Where the petitioner requests confidential treatment of some or all of the information submitted, an original and eleven (11) copies of the confidential document and three (3) copies of the document with confidential material deleted must be filed.


§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition or granting an exemption (or permit) under FUA, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions or parts of this chapter, except for general procedures which are unique to part 515 of this chapter, the provisions of this part will control respect to procedure.

§ 501.11 Address for filing documents.

Send all petitions, self-certifications and written communications to the following address: Office of Fossil Energy, Office of Fuels Programs, Coal and Electricity Division, Mail Code FE-52, 1000 Independence Avenue, SW., Washington, DC 20585.

[54 FR 52891, Dec. 22, 1989]

§ 501.12 Public files.

DOE will make available at the Freedom of Information reading room, room 1E190, 1000 Independence Avenue SW., Washington, DC for public inspection and copying any information required by statute and any information that OFE determines should be made available to the public.

[54 FR 52891, Dec. 22, 1989]

§ 501.13 Appeal.

There is no administrative appeal of any final administrative action to which this part applies.

§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition, order that imposes a prohibition, or a petition for an exemption or permit, shall be transmitted for comments, if any, to the Administrator and the appropriate Regional Administrator of the Environmental Protection Agency (EPA). The
18
10 CFR Ch. II (1–1–99 Edition)

§ 501.30

Administrator of EPA shall be given the same opportunity to comment and question as is given other interested persons.

[54 FR 52891, Dec. 22, 1989]

Subpart B [Reserved]

Subpart C—Written Comments, Public Hearings and Conferences During Administrative Proceedings

§ 501.30 Purpose and scope.

This subpart establishes the procedures for requests for and the conduct of public hearings; for submission of written comments; and for requests for and conduct of conferences pursuant to an administrative proceeding before OFE. Hearings shall be convened at the request of any interested person, in accordance with section 701(d) of FUA, and shall be held at a time and place to be decided by the Presiding Officer.

§ 501.31 Written comments.


(b) Existing facilities. Except as may be provided elsewhere in these regulations, OFE shall provide a period of at least 45 days for submission of written comments concerning a proposed prohibition rule or order or a petition for a permit. In the case of a proposed prohibition rule or order issued to an existing electing powerplant, OFE shall also provide for a period of at least 45 days for submission of written comments concerning a Tentative Staff Analysis. This period shall commence on the day after publication of the Notice of Availability of the Tentative Staff Analysis in the Federal Register. In the case of prohibition order proceedings for certifying powerplants under section 301 of FUA, as amended, OFE shall provide a period of at least 45 days, beginning the day after the Notice of Acceptance of certification is published, for submission of written comments concerning the certification and OFE’s proposed prohibition order, and requests for public hearings. Prohibition order proceedings under section 301, as amended by OBRA, will have only one period of 45 days, since no Tentative Staff Analysis will be prepared. The comment period may be extended by OFE in accordance with §501.7. See §501.52(b) of this part for further information with respect to the comment period. Written comments shall be filed in accordance with §501.7.


§ 501.32 Conferences (other than prepetition conferences).

(a) At any time following commencement of a proceeding before OFE, an interested person may request a conference with the staff of OFE to discuss a petition, permit or any other issue pending before OFE. The request for a conference should generally be in writing and should indicate the subjects to be covered and should describe the requester’s interest in the proceeding. Conferences held after the commencement of an administrative proceeding before OFE shall be convened at the discretion of OFE or the Presiding Officer.

(b) When OFE convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. Documentary evidence may be submitted at the conference and such evidence, to the extent that it is not deemed to be confidential, will be included in the administrative record. OFE will not normally have a transcript of the conference prepared but may do so at its discretion.
Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal report or findings by OFE unless OFE in its discretion determines that the preparation of a report or findings would be advisable. OFE will, however, place in the public file a record of any conference.

§ 501.33 Request for a public hearing.

(a) New facilities. In the case of a petition for an exemption under title II of FUA, any interested person may submit a written request that OFE convene a public hearing in accordance with section 701 of FUA no later than forty-five (45) days after publication of either the Notice of Acceptance of a petition, or in the case of a certification exemption, the publication of the Notice of Acceptance of Certification. This time period may be extended at the discretion of OFE.

(b) Existing powerplants. In the case of a petition for an exemption from a prohibition imposed by a final rule or order issued by OFE to an electing powerplant under former sections of title III of FUA or a petition for a permit under § 504.1, any interested person may submit a written request that OFE convene a public hearing in accordance with section 701 of FUA within 45 days after the notice of the filing of a petition is published in the FEDERAL REGISTER. In the case of a proposed prohibition rule or order issued to a certifying powerplant, the 45 day period in which to request a public hearing shall commence upon publication of the Notice of Availability of the Tentative Staff Analysis. In the case of a proposed prohibition order to be issued to certifying powerplants under former section 301, the 45 day period in which to request a public hearing shall commence upon publication of the Notice of Acceptance of Certification. This time limit may be extended at the discretion of OFE.

(c) Contents of request. A request for a public hearing must be in writing and must include a description of the requesting party's interest in the proceeding and a statement of the issues involved. The request should, to the extent possible, identify any witnesses that are to be called, summarize the anticipated testimony to be given at the hearing, and outline questions that are to be posed.

§ 501.34 Public hearing.

(a) A public hearing under this subsection is for the purpose of insuring that all issues are fully and properly developed, but is not a formal adjudicatory hearing subject to the provisions of 5 U.S.C. 554 and 556.

(b) Opportunity to be heard at a public hearing.

(1) Any interested person, may request, and OFE will provide, an opportunity to present oral or written data, views and arguments at a public hearing on any proposed prohibition rule or order, or on any petition for an exemption or permit. An interested person may file a request to be listed as a party to a hearing on the service list prepared by the Presiding Officer pursuant to § 501.34(d) of this part.

(2) Participants at the public hearing will have an opportunity to present oral or written data, views and arguments.

(3) A request for a public hearing may be withdrawn by the requestor at any time. If other persons have requested to participate as parties in the public hearing, OFE may cancel the hearing only if all parties agree to cancellation. OFE will give notice, whenever possible, in the FEDERAL REGISTER of the cancellation of any hearings for which there has been prior notice.

(c) Presiding Officer. OFE will appoint a Presiding Officer to conduct the public hearing.

(d) Powers of the Presiding Officer. The Presiding Officer is responsible for orderly conduct of the hearing and for certification of the record of the public hearing. The Presiding Officer will not prepare any recommended findings.
conclusions, or any other recommendations for disposition of a particular case, except those of a procedural nature. The Presiding Officer has, but is not limited to the following powers:

1. Administer oaths, affirmations and protective orders;
2. Issue administrative subpoenas and rule on motions to modify or withdraw subpoenas that he has issued;
3. Rule on questions as to relevance and materiality of evidence;
4. Regulate the course of the public hearing;
5. Hold conferences for the simplification of issues by consent of the parties;
6. Require submission of evidence in writing where appropriate;
7. Establish service lists;
8. Dispose of procedural requests and similar matters; and
9. Take other actions authorized by these rules.

The Presiding Officer may also limit the number of witnesses to be presented by any party and may impose reasonable time limits for testimony. The Presiding Officer shall establish and maintain a service list that contains the names and addresses of all parties to the OFE proceeding. At the time the Presiding Officer certifies the record, he will provide the staff of OFE with an index of the issues addressed in the record.

(e) Notice. OFE will convene a public hearing only after publishing a notice in the Federal Register that states the time, place and nature of the public hearing.

(f) Opportunity to question at the public hearing. At any public hearing requested pursuant to paragraph (b) of this section, with respect to disputed issues of material fact, OFE will provide any interested person an opportunity to question:

1. Other interested persons who make oral presentations;
2. Employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of the petition for an exemption or permit; and
3. Experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation.

(g) OFE encourages persons who wish to question Government witnesses to submit their questions at least ten (10) days in advance of the hearing.

(h) The Presiding Officer will allow questions by any interested person to be asked of those making presentations or submitting information, data, analyses or views at the hearing. The Presiding Officer may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of issues pending in the administrative proceeding for which the hearing is being conducted.

(i) The Presiding Officer or OFE may exercise discretion to control a hearing by denying, temporarily or permanently, the privilege of participating in a particular OFE hearing if OFE finds, for example, that a person:

1. Has knowingly made false or misleading statements, either orally or in writing;
2. Has knowingly filed false affidavits or other writings;
3. Lacks the specific authority to represent the person seeking an OFE action; or
4. Has disrupted or is disrupting a hearing.

(j) Evidence. (1) The Presiding Officer is responsible for orderly submission of information, data, materials, views or other evidence into the record of the public hearing. The Presiding Officer may exclude any evidence that is irrelevant, immaterial or unduly repetitious. Judicial rules of evidence do not apply.

2. Documentary material must be of a size consistent with ease of handling, transportation and filing, and a reasonable number of copies should be made available at the public hearing for the use of interested persons. An original and fourteen (14) copies shall be furnished to the Presiding Officer and one copy to each party listed on the service list. Large exhibits that are used during the hearing must be provided on no larger than 11½"x14" legal size paper if they are to be submitted into the hearing record.
(k) Hearing record. OFE will have a verbatim transcript made of the public hearing. The hearing record shall remain open for a period of fourteen (14) days following the public hearing, unless extended by OFE, during which time the participants at the hearing may submit additional written statements which will be made part of the administrative record and will be served by the Presiding Officer upon those parties listed on the service list. OFE may also request additional information, data or analysis following the hearing in order to resolve disputed issues in the record. If OFE receives or obtains any relevant information or evidence that is placed in the record after the close of the public hearing or comment period, it will so notify all participants, and allow an additional fourteen (14) days for submission of evidence in rebuttal. In addition, OFE may, in its discretion, re-open the hearing at the request of a party or participant, to permit further rebuttal of evidence or statements submitted to OFE and made part of the hearing record after the close of the hearing. The transcript, together with any written comments submitted in the course of the proceeding, will be made part of the record available for public inspection and copying at the OFE Public Information Office, as provided in §501.12.

§ 501.35 Public file.

(a) Contents. The public file shall consist of the rule, order, or petition, with supporting data and supplemental information, and all data and information submitted by interested persons. Materials which are claimed by any party to be exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552) shall be excised from the public file provided OFE has made a determination that the material is confidential in accordance with §501.7(a)(11) of this part.

(b) Availability. The public file shall be available for inspection at room 1E 190, 1000 Independence Avenue SW., Washington, DC. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

§ 501.51 Prohibitions by order—electing powerplants.

(a) OFE may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an electing powerplant, if:

(1) That facility has not been identified as a member of a category subject to a final rule at the time of the issuance of such order; and

(2) The requirements of § 504.6 have been met.

(b) Notice of order and public participation.

(1) OFE may hold a conference with the proposed order recipient prior to issuing the proposed order.

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, OFE shall publish a proposed order in the FEDERAL REGISTER together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) OFE shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that OFE is required to make under section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hearing, whichever occurs later. A request by the proposed order recipient for an extension of the three-month period may be granted at OFE’s discretion.

(4) Subsequent to the end of the comment period, OFE will issue a notice of whether OFE intends to proceed with the prohibition order proceeding.

(5) An owner or operator of a facility that may be subject to an order may demonstrate prior to issuance of a final prohibition order that the facility would qualify for an exemption if the prohibition had been established by rule. OFE will not delay the issuance of a final prohibition order or stay the effective date of such an order for the purpose of determining whether a proposed order recipient qualifies for a particular exemption unless the demonstration or qualification is submitted prior to or during the second three-month comment period, commencing after issuance of a notice of intention to proceed, or unless materials submitted after the period (i) could not have been submitted during the period through the exercise of due diligence, (ii) address material changes in fact or law occurring after the close of the period, or (iii) consist of amplification or rebuttal occasioned by the subsequent course of the proceeding. A request by the proposed order recipient for an extension of this time period may be granted at OFE’s discretion.

(6) Subsequent to the end of the second three (3) month period, OFE will, if it intends to issue a final prohibition order, prepare and issue a Notice of Availability of a Tentative Staff Analysis. Interested persons wishing a hearing must request a hearing within forty-five (45) days after issuance of the Notice of Availability of the Tentative Staff Analysis. During this forty-five (45) days period, interested persons may also submit written comments on the Tentative Staff Analysis.

(7) If a hearing has been requested, OFE shall provide interested persons with an opportunity to present oral data, views and arguments at a public hearing held in accordance with subpart C of this part. The hearing will consider the findings which OFE must make in order to issue a final prohibition order and any exemption for which the proposed order recipient submitted
§ 501.52 Prohibitions by order—certifying powerplants.

(a) OFE may prohibit by order the use of petroleum or natural gas as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with maintaining reasonable fuel efficiency in an existing powerplant if the owner or operator of the powerplant certifies, and OFE concurs in such certification in accordance with the requirements of §§ 504.5, 504.6 and 504.8.

(b) Notice of order and participation. (1) OFE may hold a conference with the
§ 501.52  10 CFR Ch. II (1–1–99 Edition)

proposed order recipient, at the recipient’s election, prior to issuing the proposed order. The conference may resolve any questions regarding the certification required by section 301 of the Act, as amended, and §§ 504.5, 504.6, and 504.8, and OFE’s review and concurrence therein.

(2) Pursuant to section 701(b) of FUA, prior to the issuance of a final order to a certifying powerplant owner or operator, OFE must publish in the Federal Register, a proposed prohibition order stating the reasons for such order. OFE will review all of the information submitted by a proposed order recipient within 60 days after receipt by OFE. If the certification is complete, OFE will, within 30 days after the end of the 60 day review period, publish in the Federal Register a Notice of Acceptance of certification together with a proposed prohibition order stating therein the reasons for such order. This commences the prohibition order proceeding. If OFE does not believe it is able to concur in the certification, OFE shall notify the proposed order recipient and shall publish a Notice of Proposed Non-Concurrence in the Federal Register within 30 days after the end of the 60 day review period. If OFE finds that the certification with compliance schedule is incomplete, OFE will notify the proposed prohibition order recipient as to the deficiencies, and provide an additional period of 30 days for the certification to be amended and resubmitted. If a complete certification is not submitted within this period, the proceeding shall be terminated in accordance with § 501.52(b)(5). OFE will notify the proposed order recipient and any other interested parties to the proceeding and publish a notice in the Federal Register. OFE, on its own motion, may extend any period of time by publishing a notice to that effect in the Federal Register.

The publication of the Notice of Acceptance or Notice of Proposed Non-Concurrence commences a period of 45 days during which interested persons may submit written comments or request a public hearing. During this period, the recipient of the proposed order and any other interested person may submit any evidence that they have available relating to the proposed order, the certification or the concurrence that OFE must make. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows the commencement of the proceeding or prior to the close of the record of any public hearing, whichever occurs later. A request for an extension of the 45 day period may be granted at OFE’s discretion. In the case of a Notice of Acceptance, as set forth in § 504.9, no final prohibition order can be issued until any necessary environmental review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C 4321 et seq. (NEPA) has been completed. Upon completion of the NEPA review and unless OFE determines on the basis of the record of the proceeding that the certification fails to meet the requirements of §§ 504.5, 504.6, and 504.8, OFE shall publish a final prohibition order, together with the information required by paragraph (c) of this section. In the case of a Notice of Proposed Non-Concurrence, at the end of the 45 day comment period, OFE will notify the proposed order recipient and parties to the proceeding and publish a final Notice of Non-Concurrence in the Federal Register, if OFE determines it cannot concur in the certification based upon additional information submitted during the proceeding. If, at the end of the 45 day period, OFE believes it can concur in the certification, OFE will notify the proposed order recipient and parties to the proceeding and publish a Notice of Acceptance followed by a new 45 day comment period.

(4) If a hearing has been requested, OFE shall provide interested persons with an opportunity to present oral data, views and arguments at a public hearing held in accordance with subpart C of this part. The hearing may consider, among other matters, the sufficiency of the certification of the owner or operator of the powerplant required by section 301 of FUA, as amended, and §§ 504.5, 504.6, and 504.8 of these regulations.

(5) OFE may terminate a prohibition order proceeding at any time prior to the date upon which a final prohibition order is issued whenever OFE believes,
from any information contained in the record of the proceeding, that the certification does not meet the requirements of section 301 of the Act, as amended, or §§504.5, 504.6, and 504.8 of these regulations. If OFE terminates the proceeding or publishes a final Notice of Non-Concurrence, or the proposed order recipient fails to submit a complete certification, OFE will notify the proposed order recipient and other parties to the proceeding and publish a notice in the Federal Register. In such event, the proposed order recipient may submit a new certification under any provision of section 301 of the Act, as amended, at a later date. Specifically, a Notice of Non-Concurrence under either section 301(b) or 301(c) shall not affect a proposed order recipient’s ability to make a certification under the other subsection.

(c) Record and decision to issue a final order. (1) OFE will base its determination to issue an order on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) OFE shall include in the final order a written statement of the basis upon which the final order is issued, and its concurrence in the required certification. A copy of the final order and a summary of the basis therefor will be published in the Federal Register. While the prohibition order is final for purposes of judicial review under section 702 of FUA, the prohibitions contained in the final order shall not become effective for purposes of amendment under section 301(d) of FUA, as amended, and §501.52(d) of these regulations until the effective date of the prohibitions stated in the order, or, where the order is subject to one or more conditions subsequent listed in the prohibition order compliance schedule, until all its conditions are met.

(d) Amendment to certifications under §§504.5 and 504.6. The proposed prohibition order recipient may amend its compliance schedule under §504.5(d), or its certification under section 301 of FUA, as amended, and §§504.5, 504.6 and 504.8 of these regulations in order to take into account changes in relevant facts and circumstances at any time prior to the effective date of the prohibitions contained in the final prohibition order.

(e) Rescission of prohibition orders. The rescission or modification of final prohibition orders issued to existing electric powerplants will be governed by the procedure in §501.101 of these regulations.

(Amended by the Office of Management and Budget under control number 1903-0077)


[47 FR 17042, Apr. 21, 1982]

§§501.53—501.56 [Reserved]

Subpart F—Exemptions and Certifications

§501.60 Purpose and scope.

(a) (1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant not in compliance with the prohibitions contained in section 201(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

(4) If the petitioner owns, operates or controls a new or existing powerplant or MFB, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under section 211 or section 311 of FUA.
§ 501.61 Certification contents.

(a) A self-certification filed under section 201(d) of FUA should include the following information:

(1) Owner’s name and address.
(2) Operator’s name and address.
(3) Plant location and address.
(4) Plant configuration (combined cycle, simple cycle, topping cycle, etc.)
(5) Design capacity in megawatts (MW).
(6) Fuel(s) to be used by the new facility.
(7) Name of utility purchasing electricity from the proposed facility and percent of total output to be sold.
(8) Date unit is expected to be placed in service.
(9) Certification by an officer of the company or his designated representative certifying that the proposed facility:
   (i) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and
   (ii) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

(b) A self-certification filed pursuant to §501.61(a) shall be effective to establish compliance with the requirement of section 201(a) of FUA as of the date filed.

(c) OFE will publish a notice in the Federal Register within fifteen days reciting that the certification has been filed. Publication of this notice does not serve to commence a public comment period.

(d) OFE will notify the owner or operator within 60 days if supporting documentation is needed to verify the certification.

§ 501.62 Petition contents.

(a) A petition for exemption should include the following information:

(1) The name of the petitioner;
(2) The name and location of the unit for which an exemption is being requested;
(3) The specific exemption(s) being requested; and
(4) The name, address, and telephone number of the person who can supply further information.

(b) Table of contents. Include only those sections contained in the petition.

(c) Introduction. Include the following:

(1) Description of the facility under consideration;
(2) Description of the unit and fuel the petitioner proposes to burn in that unit, including the purpose of and need for the unit; and
(3) Description of the operational requirements for the unit, including size (capacity, input and output in millions of Btu’s per hour), output in terms of product or service to be supplied, fuel capability, and operating mode, including capacity factor, utilization factor, and fluctuations in the load.

(d) General requirements. The evidence required under part 503 subpart B for each exemption(s) for which the petitioner is applying:

(1) No alternate power supply (§503.8);
(2) Use of mixtures (§503.9);
(3) Alternative site (§503.11);
(4) Compliance Plan (§503.12);
(5) Environmental impact analysis (§503.13);
(6) Fuels search (§503.14);

(e) Specific evidence. Evidence required for each exemption, segregated by exemption (part 503 subparts C and D).

(f) References. (1) Specify the reports, documents, experts, and other sources consulted in compiling the petition. Cite these sources in accordance with acceptable documentation standards,
and indicate the part of the petition to which they apply. If the source is unusual or little known, briefly describe its contents.

(2) Identify at the end of each section of the petition any information or any statement based, in whole or in part, on information or principles which, to petitioner’s knowledge, represent significant innovations to or departures from generally accepted facts or principles.

(g) Appendices. Include in the appendices material which the petitioner believes substantiates any analyses fundamental to the petition, materials prepared in connection with it, and any other documents, studies, or analyses which are believed to be relevant to the decision to be made. Also, include in the appendices copies of any forms submitted as part of the petition.

(h) List of preparers. List the names with the qualifications and professional credentials of the principal contributors to the preparation of the petition. Indicate the sections or subject matters for which each principal contributor was responsible.

(i) Incorporation by reference. Pertinent information may be incorporated into the petition by reference when this can be done without impeding agency and public review. Referenced materials must be specifically identified and their contents briefly described in the petition. To incorporate by reference, the material must be submitted with the petition, or if previously submitted, the office to which it was submitted must be identified in the petition. The petitioner cannot incorporate by reference material based on proprietary data not available to OFE for review.


§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a)(1) When a petition is accepted, OFE will publish in the FEDERAL REGISTER a Notice of Acceptance, or, in the case of a certification exemption, a Notice of Acceptance and Availability of Certification, signifying that an exemption proceeding has commenced. The notice will include a summary of the exemption petition, and publication will commence a public comment period of no less than forty-five (45) days during which interested parties may file written comments concerning the petition. In the case of a certification exemption, interested persons may request a public hearing during this period, pursuant to §501.33.

(2) OFE will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to EPA, as provided in §501.14(a).

(b) In processing an exemption petition, OFE shall comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality’s implementing regulations, and the DOE guidelines implementing those regulations (45 FR 20694, Mar. 28, 1980). Compliance with NEPA may involve the preparation of (1) an environmental impact statement (EIS) evaluating the grant or denial of an exemption petition, (2) an environmental assessment (EA), or (3) a memorandum to the file finding that the grant of the requested petition would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is required, OFE will publish in the FEDERAL REGISTER a Notice of Intent (NOI) to prepare an EIS as soon as practicable after commencement of the proceeding. A public meeting may be held pursuant to 40
§ 501.64 Publication of notice of availability of tentative staff analysis.

OFE will publish in the Federal Register a Notice of the Availability of Tentative Staff Analysis for the non-certification temporary public interest exemption, for noncertification environmental exemptions, and for a cogeneration exemption based on the public interest. OFE will provide a public comment period of at least fourteen (14) days from the date of publication during which interested persons may make written comments and request a public hearing.

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the Federal Register and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

§ 501.66 OFE evaluation of the record, decision and order.

(a) The administrative record in a proceeding under this part will consist of the proposed prohibition order and/or petition and related documents, all relevant evidence presented at the public hearing, all written comments, and any other information in the possession of OFE and made a part of the public record of the proceeding. OFE will base its determination to issue a rule or order on consideration of the whole record, or those parts thereof cited by a party and supported by reliable, probative, and substantial evidence.

(b) OFE may investigate and corroborate any statement in any petition, document, or public comments submitted to it. OFE also may use any relevant facts it possesses in its evaluation and may request submissions from third persons relevant to the petition or other documents. OFE also may request additional information, data, or analyses following a public hearing, if any, if this information is necessary to resolve disputed issues in the record. Any relevant information received by OFE following the hearing that is not declared to be confidential under §501.7(a)(11) shall be made part of the public record with opportunity provided for rebuttal.

(c) OFE will notify all participants if, after the close of any public hearing or comment period, it receives or obtains any relevant information or evidence. Participants may respond to such information or evidence in writing within fourteen (14) days of such notification. If OFE finds that the additional information or evidence relates to material issues of disputed fact and may significantly influence the outcome of the proceeding, OFE shall reopen the hearing on the issue or issues to which the additional information or evidence relates.

§ 501.67 Petition redesignations.

OFE, with the petitioner’s approval, will redesignate an exemption petition if the petitioner qualifies for an exemption other than the one originally requested, even though he may not qualify for the specific exemption originally requested, or be entitled to the full exemption period provided by requested exemption. OFE shall give public notice of any redesignation of an exemption petition, and where a public hearing has been requested notice shall be given at least thirty (30) days prior to such hearing.

§ 501.68 Decision and order.

(a)(1) OFE shall issue an order either granting or denying the petition for an exemption or permit within six (6) months after the end of the period for public comment and hearing applicable to any petition.

(2) OFE may extend the six (6) month period for decision to a date certain by publishing notice in the Federal Register, and stating the reasons for such extension.

(3) OFE will publish a final EIS at least thirty (30) days prior to take
issuance of the final order in all cases where an EIS is required.

(b)(1) OFE shall serve a copy of the order granting or denying a petition for exemption to the petitioner and all persons on the service list in cases involving a public hearing.

(2) OFE shall publish any order granting or denying a petition under this subpart in the Federal Register together with a statement of the reasons for the grant or denial.

(c)(1) Any order granting or denying a petition for exemption shall be based upon consideration of the whole record or those parts thereof cited by a party and supported by, and in accordance with, reliable, probative and substantive evidence.

(2) The denial of a petition for exemption shall be without prejudice to the petitioner’s right to submit an amended petition. OFE may, however, reject the amended petition if it is not materially different from the denied petition.

(d) OFE may design any terms and conditions included in any temporary exemption issued or extended under section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of the provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.


§ 501.101 Proceedings to modify or rescind a rule or order.

(a) In response to a request duly filed by an interested person, OFE may commence a proceeding to modify or rescind a rule or order. If OFE determines that a request to modify or rescind a rule or order does not warrant commencement of a proceeding, it will deny the request and issue a brief statement of the reason(s) for the denial.

(b) A request for modification or rescission of a rule or order must comply with the requirements of § 501.7 and must be filed at the address set forth in § 501.11.

(c) Notice of the request for modification or rescission of an order must be given by the requester to each party to the original proceeding and to the party or parties to the original proceeding who may be affected by the requested modification or rescission.


§ 501.102 OFE evaluation of the record, decision and order for modification or rescission of a rule or order.

(a) OFE will consider the entire administrative record in its evaluation of the decision and order for modification or rescission of a rule or order. OFE may investigate and corroborate any statement in the petition or related documents and may utilize in its evaluation any relevant facts obtained by its investigations. OFE may solicit or accept submissions from third persons relevant to any request under this subpart and all interested persons will be afforded an opportunity to respond to these submissions. OFE may, in its discretion and on its own initiative, convene a conference, if it considers that a conference will advance its evaluation of the request.

(b) Criteria. Except where modification or rescission of a rule or order is initiated by OFE, OFE’s decision to rescind or modify a rule or order will be based on a determination that there are significantly changed circumstances with respect to the applicability of a particular prohibition or exemption to the requester. OFE believes that there may be “significantly changed circumstances”, if:

(1) Significant material facts are subsequently discovered which were not known and could not have been known to the petitioner or to OFE at the time of the original proceeding;

(2) A law, regulation, interpretation, ruling, order or decision on appeal that was in effect at the time of the proceeding upon which the rule or order is based and which, if it had been made known to OFE, would have been relevant to the proceeding and would have substantially altered the outcome is subsequently discovered; or

(3) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order was based, which change

(g) A decision by OFE to commence a proceeding under this subpart does not entitle the requester to a public hearing on the request for modification or rescission. A public hearing may be held, however, if, in its discretion, OFE considers that a public hearing will advance its evaluation of the request.

§ 501.102 OFE evaluation of the record, decision and order for modification or rescission of a rule or order.
§ 501.103 OFE decision.

(a) OFE shall issue an appropriate rule or order after considering the request for modification or rescission of a rule or order and other relevant information received during the proceeding.

(b) OFE will either grant or deny the request for modification or rescission and will briefly state the pertinent facts and legal basis for the decision.

(c) OFE will serve the rule or order granting or denying the request for modification or rescission upon the requester, or, if the action was initiated by OFE, upon the owner or operator of the affected powerplant or installation. OFE will publish a notice of the issuance of a rule or order modifying or rescinding a rule or order in the Federal Register.

Subpart H—Requests for Stay

§ 501.120 Purpose and scope.

(a) This subpart sets forth the procedures for the request and issuance of a stay of a rule or order or other requirement issued or imposed by OFE or these regulations but does not apply to the mandatory stays provided for in sections 202(b) and 301(a) of FUA. The application for a stay under this subpart will only be considered incidental to a proceeding on a request for modification or rescission of a final prohibition rule or order.

(b) The petitioner must comply with all final and effective OFE orders, regulations, rulings, and generally applicable requirements unless a petition for a stay is granted or is applicable under FUA.

§ 501.121 Filing and notice of petitions for stays.

(a)(1) The petition for a stay must be in writing and comply with the general filing requirements stated in §501.7, in addition to any other requirements set forth in this subpart, and must be filed at the address provided in §501.11.

(2) A claim for confidential treatment of any information contained in the petition for stay and supporting documents must be in accordance with §501.7(a)(11), and filed at the address provided in §501.11.

(b) OFE will publish notice of receipt of a petition for a stay under this subpart in the Federal Register.

§ 501.122 Contents.

(a) A petition for a stay shall contain a full and complete statement of all facts believed to be pertinent to the act or transaction for which a stay is sought. The facts shall include, but not be limited to, the criteria listed below in §501.123(b).

(b) The petitioner may request a conference regarding the application. If the request is not made at the time the application is filed, it must be made as soon thereafter as possible. The request and OFE’s determination regarding it will be made in accordance with subpart C of this part.

§ 501.123 Evaluation of the record.

(a) The record in a proceeding on a petition for stay shall consist of the petition and any related documents, evidence submitted at any public proceedings and any other information in the possession of OFE and made part of the record. OFE may investigate and corroborate any statement in the petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by its investigations. OFE may solicit or accept submissions from third persons relevant to the petition for stay or other document and any interested person will be afforded an opportunity to respond to these submissions. OFE, on its initiative, may convene a conference, if, in its discretion, it considers that the conference will advance its evaluation of the petition.

(b) Criteria. (1) OFE may grant a stay incident to a proceeding on a petition for modification of a rule or order if the petitioner shows:

(i) Irreparable injury will result if the stay is denied;

(ii) There is a strong likelihood of success on the merits;

(iii) The denial of a stay will result in a more immediate hardship or inequity
to the petitioner than to other persons affected by the proceeding; and
(iv) It would be desirable for reasons of public policy to grant the stay.

§ 501.124 Decision and order.
(a) OFE will issue an order granting or denying the petition for a stay upon consideration of the request and other relevant information received or obtained during the proceeding.
(b) OFE will include in the order a brief written statement setting forth the relevant facts and the basis of the decision, including any appropriate terms and conditions of the stay.

Subpart I—Requests for Interpretation

§ 501.130 Purpose and scope.
This subpart establishes procedures for filing a formal request for and the issuance of an interpretation of a rule, order or other action by DOE. Any response, whether oral or written, to a general inquiry, or to other than a formal written request for interpretation filed with DOE, is not an interpretation and merely provides general information that may not be relied upon in any proceeding to determine compliance with the applicable requirements of FUA.

§ 501.131 Filing a request for interpretation.
A proceeding to request an interpretation is commenced by the filing of a “Request for Interpretation (FUA).” The request must be in writing and must also comply with the general filing requirements stated in §501.7. Any claims for confidential treatment for any information contained in the request or other related documents must be made pursuant to §501.7(a)(12). A request for interpretation should be filed with the Assistant General Counsel for Interpretations and Rulings at the address provided in §501.11.

§ 501.132 Contents of a request for interpretation.
(a) A request for an interpretation must contain a complete statement of all the facts believed to be relevant to the circumstances, acts or transactions that are the subject of the request. The facts must include the names and addresses of all potentially affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in any documents submitted with the request. Copies of relevant contracts, agreements, leases, instruments, and other documents relating to the request must be submitted if DOE believes they are necessary for determination of any issue pending in the proceeding under this subpart. When the request pertains to only one step in a larger integrated transaction, the requesting party must also submit the facts, circumstances, and other relevant information pertaining to the entire transaction.
(b) The requesting party must include in the request a discussion of all relevant legal authorities, rulings, regulations, interpretations and decisions on appeal relied upon to support the particular interpretation sought.
(c) DOE may refuse to issue an interpretation if it determines that there is insufficient information upon which to base an interpretation.

§ 501.133 DOE evaluation.
(1) The record shall consist of the request for an interpretation and any supporting documents, all relevant evidence presented at any public proceedings, written comments and any information in the possession of DOE that has been made part of the record.
(2) DOE may investigate and corroborate any statement in a request or related documents and may utilize in its evaluation any relevant facts obtained by the investigation. DOE may solicit or accept submissions from third persons relevant to the request for interpretation, or any other document submitted under this subpart, and the person requesting the interpretation will be afforded an opportunity to respond to these submissions.
(3) The General Counsel or his delegate will issue an interpretation on the basis of the information provided in the request, unless that information is supplemented by other information brought to the attention of DOE during the proceeding. DOE’s interpretation will, therefore, depend on the accuracy
of the factual statements, and the requesting party may rely upon it only to the extent that the facts of the actual situation correspond to those upon which the interpretation is based.

(b) Criteria. (1) DOE will base its FUA interpretations on the DEOA and FUA, as applicable, and the regulations and published rulings of DOE as applied to the specific factual situation presented.

(2) DOE will take into consideration previously issued interpretations dealing with the same or a related issue.

§ 501.134 Issuance and effect of interpretations.

(a) DOE may issue an interpretation after consideration of the request for interpretation and other relevant information received or obtained during the proceeding.

(b) The interpretation will contain a written statement of the information upon which it is based and a legal analysis of and conclusions regarding the application of rulings, regulations and other precedent to the situation presented in the request.

(c) Only those persons to whom an interpretation is specifically addressed, and other persons upon whom the DOE serves the interpretation and who are directly involved in the same transaction or act, are entitled to rely upon it. No person entitled to rely upon an interpretation shall be subject to civil or criminal penalties stated in title VII of FUA for any act taken in reliance upon the interpretation, notwithstanding that the interpretation shall thereafter be declared by judicial or other competent authority to be invalid.

(d) DOE may at any time rescind or modify an interpretation on its own initiative. Rescission or modification shall be made by notifying persons entitled to rely on the interpretation that it is rescinded or modified. This notification will include a statement of the reasons for the rescission or modification and, in the case of a modification, a restatement of the interpretation as modified.

(e) An interpretation is modified by a subsequent amendment to the regulations or ruling to the extent that it is inconsistent with the amended regulation or ruling.

(f) Any person who believes he is directly affected by an interpretation issued by DOE, and who believes that he will be aggrieved by its implementation, may submit a petition for reconsideration of that interpretation to the General Counsel. DOE will acknowledge receipt of all requests for reconsideration; however, this acknowledgment in no way binds DOE to commence any proceeding on the request. If within sixty (60) days of DOE’s acknowledgment of the receipt of a request for reconsideration, DOE has not issued either a notice of intent to commence a proceeding to reconsider the interpretation or a modification, revision or rescission of the original interpretation, the request for reconsideration will be deemed denied. DOE may, in its discretion, issue a formal denial of a request for reconsideration if:

(1) The request has not been filed in a timely manner, and good cause therefor has not been shown;

(2) The person requesting reconsideration is not aggrieved or otherwise injured substantially by the interpretation; or

(3) The request is defective because it fails to state and to present facts and legal argument that the interpretation was erroneous in fact or in law, or that it was arbitrary or capricious.

Subpart J—Rulings

§ 501.140 Purpose and scope.

DOE may issue rulings in accordance with the provisions of this subpart. DOE will publish each ruling in the Federal Register and in 10 CFR part 518. A person is entitled to rely upon a ruling to the extent provided in this subpart.

§ 501.141 Criteria for issuance.

(a) The General Counsel may issue a ruling whenever:

(1) There has been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations; or

(2) It is determined that a ruling will be of assistance to the public in applying the regulations to a specific situation.
§ 501.142 Modification or rescission.

(a) A ruling may be modified or rescinded by—

(1) Publication of the modification or rescission by DOE in the Federal Register and in 10 CFR part 518 or

(2) Adoption of a rule that supersedes or modifies a prior ruling.

(b) A person shall not be subject to the sanctions or penalties stated in these regulations for actions taken in reliance upon a ruling, notwithstanding that the ruling is subsequently declared to be invalid or no longer applicable. A person affected by a ruling may not rely upon it for more than 30 days after it has been rendered invalid pursuant to issuance of a superseding rule by OFE, or after it has been rescinded or modified by DOE.

§ 501.143 Comments.

Any interested person may file a written comment on or objection to a published ruling at any time with the Assistant General Counsel for Interpretations and Rulings at the address provided in § 501.11.

Subpart K—Enforcement

§ 501.160 Purpose and scope.

This subpart provides the procedures by which OFE may initiate enforcement proceedings on its own behalf and by which complaints concerning a violation of the Act or any rule or order thereunder may be filed.

§ 501.161 Filing a complaint.

(a) A complaint under this subpart must be submitted in writing over the signature of the person making the complaint in accordance with the general filing requirements stated in § 501.17. OFE will accept oral complaints that otherwise satisfy the requirements of this subpart, but OFE may request written verification.

(b) A complaint shall be filed at the address provided in § 501.11.

§ 501.162 Contents of a complaint.

A complaint must contain a complete statement of all relevant facts pertaining to the act or transaction that is the subject of the complaint. It must also include the names and addresses of all persons involved (if reasonably ascertainable), a description of the events that led to the complaint, and a statement describing the statutory provision, regulation, ruling, order, rule, or interpretation that allegedly has been violated.

§ 501.163 OFE evaluation.

(a) The record shall consist of the complaint and any supporting documents and all other relevant information developed in the course of any investigations or proceedings related to that complaint. OFE may investigate and corroborate any statement in the complaint or related documents submitted, and may utilize in its evaluation any relevant facts obtained by such investigation or from any other source of information. OFE may solicit or accept submissions from third persons relevant to the complaint or other related documents.

(b) Confidentiality of information. OFE will treat as confidential information received in any investigation of a complaint, including the identity of the complainant and the identity of any other persons who provide information to the extent such information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. OFE reserves the right to make disclosures that would be in the public interest.

§ 501.164 Decision to initiate enforcement proceedings.

After investigation of a specific complaint or based on any relevant information received or obtained during an investigation, OFE may issue a notice of violation, determine that no violation has occurred, or take such other actions as it deems appropriate. Prior to issuance of a notice of violation, and before commencement of an enforcement proceeding, OFE may transmit a draft of the notice of violation to the potentially affected person in order to promote an informal resolution of the violation.

§ 501.165 Commencement of enforcement proceedings.

(a) Whenever, on the basis of any information available, OFE determines that a person is in violation about
to be in violation of any provision of these regulations, OFE may issue a notice of violation stating, in writing and with reasonable specificity, the nature of the violation. An enforcement proceeding commences with the issuance of a notice of violation.

(b) Contents of the notice of violation. OFE will set forth in the notice of violation the nature of the violation, the relevant facts that OFE believes establish the violation and the legal basis for the conclusions reached therein. OFE may also include with the notice of violation a copy of a proposed order. The notice of violation will also state whether or not OFE proposes to assess civil penalties.

(1) If OFE proposes to assess a civil penalty, a notice of violation will be issued to the violator with an opportunity for a hearing before an Administrative Law Judge, as set forth in §501.166(a)(1) of this part, before any final determination on the violation and penalty are made by OFE. The recipient of the notice will also be informed of his right to elect to have the procedures of paragraph (a)(2) of this section apply, in lieu of the hearing, with respect to a final determination on the assessment of any civil penalty.

(2) If OFE does not propose to assess a civil penalty, the violator will be provided the opportunity for a conference, as set forth in §501.166(b), before a final determination on the violation is made by OFE. OFE may, in its discretion, also provide the violator an opportunity for a hearing pursuant to §501.166(a)(1).

(c) Service. OFE will serve the notice of violation in accordance with provisions set forth in §501.6.

(d) Rescission. If, after issuance of a notice of violation and any related investigation, OFE finds no basis for the belief that a violation has occurred, is continuing to occur, or is about to occur, OFE may rescind the notice of violation by giving written notice to that effect to the recipient.

§ 501.166 Hearings and conferences.

(a) When a civil penalty is proposed. (1) Hearing alternative in civil penalty assessment proceedings. Unless the recipient of a notice of violation elects in writing to have the provisions of paragraph (a)(2) of this section apply, OFE will commence a proceeding to assess a penalty and, prior to a final determination on the violation and assessment of a penalty, provide an opportunity for a hearing pursuant to 5 U.S.C. 554 before an Administrative Law Judge.

(2) Election alternative in civil penalty assessment proceedings. The recipient of a notice of violation in which a civil penalty assessment has been proposed may elect, in writing, within thirty (30) days of receipt of the notice, to waive the administrative proceedings described in paragraph (a)(1) of this section. OFE will make a determination on the proposed civil penalty assessment and issue a final order to that effect within forty-five (45) days after receiving notice of the exercise of this election.

(b) When a civil penalty is not proposed—opportunity to request a conference. If a person has received a notice of violation in which a civil penalty has not been proposed, he may, within thirty (30) days after receipt of the notice, request a conference with OFE to discuss the notice. In order to request a conference he must comply with the instructions set forth in the notice.

§ 501.167 Fuel use order.

(a) General. OFE will issue a Fuel Use Order if, after considering all the information received during the proceeding, OFE determines that a person has committed, is committing, or is about to commit a violation of FUA or of an order or rule thereunder.

(b) Contents. Any Fuel Use Order issued under this section shall set forth the relevant facts and legal basis for the order and where appropriate, the final penalty assessment and the basis therefor. When an administrative hearing is requested under §501.166(a) of this part, the Fuel Use Order will include the recommended findings and conclusions of the Administrative Law Judge (ALJ) and the basis for the penalty assessment. OFE will make a final determination as to any penalty assessment or other appropriate remedy based upon the recommended findings and conclusions of the ALJ and other information in the record of the enforcement proceeding. The order will
chapter ii (1-1-99 edition) 10 cfr ch. ii

§ 501.180 investigations.

(a) General. Pursuant to section 711 of FUA, the DEOA, and in accordance with the provisions of 10 CFR 205.201, OFE may initiate and conduct investigations relating to the scope, nature, and extent of compliance by any person with the rules, regulations, and orders issued by OFE under the authority of the Act, or any order or decree of court relating thereto, or any other agency action. When the circumstances warrant, OFE may issue subpoenas as provided in subpart D of this part. OFE may also conduct investigative conferences in conjunction with any investigation.

(b) Any duly authorized representative of OFE has the authority to conduct an investigation and to take such action as he deems necessary and appropriate to the conduct of the investigation.

(c) Notification. If any person is required to furnish information or documentary evidence pursuant to a subpoena or special report order, OFE will, upon written request, inform that person as to the general purposes of the investigation.

(d) Confidentiality. OFE shall not disclose any information received during an investigation under this section, including the identities of the person investigated and any other person who provides information, to the extent it is exempt from public disclosure pursuant to 5 U.S.C. 552 and 10 CFR part 1004.

§ 501.181 sanctions.

(a) General. (1) A violation of any provision of the Act (other than section 402 of FUA), or any rule or order thereunder shall be subject to the penalties and sanctions provided in subtitle C of title VII of FUA.

(2) Each day that any provision of the Act (other than section 402), or any rule or order thereunder is violated constitutes a separate violation within the meaning of the provisions of this section relating to civil penalties.

(b) Criminal penalties. Any person who willfully violates any provision of the Act (other than section 402), or any rule or order thereunder will be subject to a fine of not more than $50,000, or to imprisonment for not more than 1 year, or both, for each violation.

(c) Civil penalties. (1) Any person who violates any provisions of the Act (other than section 402) or any rule or order thereunder will be subject to the following civil penalty, which may not exceed $27,500 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to $3.30 for each MCF of natural gas or up to $11 for each barrel of oil used in excess of that authorized in the exemption.

(2) OFE may compromise and settle, and collect civil penalties whenever it considers it to be appropriate or advisable.

(d) Corporate personnel. (1) If a director, officer, or agent of a corporation willfully authorizes, orders, or performs any act or practice constituting in whole or in part a violation of the Act, or any rule or order thereunder, he will be subject to the penalties specified in paragraphs (b) and (c) of this section without regard to any penalties to which the corporation may be subject. He will not, however, be subject to imprisonment under paragraph (b) of
this section unless he knew of non-compliance by the corporation, or had received from OFE notice of non-compliance by the corporation.

(2) Purposes of this paragraph:
   (i) Agent includes any employee or other person acting on behalf of the corporation on either a temporary or permanent basis; and
   (ii) Notice of noncompliance is a final Fuel Use Order issued under §501.167 of this part.


§ 501.182 Injunctions.
Whenever it appears to OFE that any person has committed, is committing, or is about to commit a violation of any provision of the Act, or any rule or order thereunder, OFE may, in accordance with section 724 of FUA, bring a civil action in the appropriate United States District Court to enjoin such acts or practices. The relief sought may include a mandatory injunction commanding any person to comply with any provision of such provision, order or rule, the violation of which is prohibited by section 724 of FUA and may also include interim equitable relief.

§ 501.183 Citizen suits.
(a) General. A person who believes he is aggrieved by the failure of OFE to perform any nondiscretionary act of duty under the Act may file a Petition for Action for OFE to take such action as he may feel to be proper. This petition must be filed at the address provided in §501.11. The petition must specify the action requested and set forth the facts and legal arguments that constitute the basis for the request. The filing of a Petition for Action will serve as notice to OFE under FUA section 725(b) for purposes of any citizen suits that may be subsequently filed.

(b) OFE decision. Within sixty (60) days of receiving the Petition for Action, OFE will notify the person giving notice under this section that it has instituted the action requested or that other described action is being taken, or that other described action is being taken, or that no action is being taken and the reasons therefor.

Subpart M—Use of Natural Gas or Petroleum for Emergency and Unanticipated Equipment Outage Purposes

§ 501.190 Purpose and scope.
(a) If a person operates a powerplant covered by any of the prohibitions of titles II, III, or IV of FUA, §501.191 of this subpart establishes procedures to be followed for the use of minimum amounts of natural gas or petroleum under FUA section 103(a)(15)(B) in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare that would result from electric power outages.

(b) Explanatory note: If a person operates a rental boiler as a powerplant covered by any of the prohibitions of titles II, III, or IV of FUA, he may be able to use the provisions of this subpart for the emergency use of natural gas or petroleum.

[54 FR 52893, Dec. 22, 1989]

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the act.
(a) In the event of the occurrence or imminent occurrence of an emergency, or of the occurrence or imminent occurrence of an unanticipated equipment outage in the unit, an owner or operator of a powerplant is automatically permitted to use minimum amounts of natural gas or petroleum in the unit or in a substitute unit to prevent or alleviate the outage or to prevent or alleviate the emergency if he complies with procedures contained in paragraph (b) of this section.

(b) If the use of minimum amounts of petroleum or natural gas is required for purposes specified in this section, the owner or operator must notify OFE of such use by telegram or telephone within 24 hours after the commencement of such use. Immediately thereafter a written confirmation must be submitted to OFE, describing, to the best estimate of the owner or operator, (1) the nature of the emergency and (2) how long petroleum or natural gas use is likely to be required.
(c) For purposes of this section only:
(1) An emergency is the occurrence or threat of imminent occurrence of a condition which results or would result from an electric power outage and directly effects or would directly effect the public health, safety or welfare;
(2) Unanticipated equipment outage shall mean an unexpected outage due to equipment failure.
(3) Minimum amounts required to alleviate or prevent shall mean:
(i) For powerplants, the amounts of natural gas or petroleum required to prevent curtailment of electric supply where the operating utility has, to the maximum extent possible, utilized alternate fuel-fired capacity to prevent such curtailment. Note—A utility operating hydroelectric facilities may take into account seasonal fluctuations in storage capacity and shall be permitted to prevent depletion of stored power-producing capacity as deemed necessary by the utility; and
(ii) For installations, the amounts of natural gas or petroleum required to meet plant protection or human health and safety needs, including services to hospitals, public transportation facilities, sanitation, or water supply and pumping.


§ 501.192 [Reserved]

PART 503—NEW FACILITIES

Subpart A—General Prohibition

Sec.
503.1 Purpose and scope.
503.2 Prohibition.
503.3 [Reserved]

Subpart B—General Requirements for Exemptions

503.4 Purpose and scope.
503.5 Contents of petition.
503.6 Cost calculations for new powerplants and installations.
503.7 State approval—general requirement for new powerplants.
503.8 No alternate power supply—general requirement for certain exemptions for new powerplants.
503.9 Use of mixtures—general requirement for certain permanent exemptions.
503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.
503.11 Alternative sites—general requirement for permanent exemptions for new powerplants.
503.12 Terms and conditions; compliance plans.
503.13 Environmental impact analysis.
503.14 Fuels search.

Subpart C—Temporary Exemptions for New Facilities

503.20 Purpose and scope.
503.21 Lack of alternate fuel supply.
503.22 Site limitations.
503.23 Inability to comply with applicable environmental requirements.
503.24 Future use of synthetic fuels.
503.25 Public interest.

Subpart D—Permanent Exemptions for New Facilities

503.30 Purpose and scope.
503.31 Lack of alternate fuel supply for the first 10 years of useful life.
503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.
503.33 Site limitations.
503.34 Inability to comply with applicable environmental requirements.
503.35 Inability to obtain adequate capital.
503.36 State or local requirements.
503.37 Cogeneration.
503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.
503.39—503.44 [Reserved]


SOURCE: 46 FR 59903, Dec. 7, 1981, unless otherwise noted.


EDITORIAL NOTE: Nomenclature changes to this part appear at 54 FR 52893, Dec. 22, 1989.

Subpart A—General Prohibition

§ 503.1 Purpose and scope.

This subpart sets forth the statutory prohibition imposed by the Act upon new powerplants. The prohibition in the subpart applies to all new baseload
Section 201 of the Act prohibits, unless an exemption has been granted under subpart C or D of this part, any new electric powerplant from being constructed or operated as a baseload powerplant without the capability to use coal or another alternate fuel as a primary energy source.

§ 503.3 [Reserved]

Subpart B—General Requirements for Exemptions

§ 503.4 Purpose and scope.

This subpart establishes the general requirements necessary to qualify for either a temporary or permanent exemption under this part and sets out the methodology for calculating the cost of using an alternate fuel and the cost of using imported petroleum.

§ 503.5 Contents of petition.

Before OFE will accept a petition for either a temporary or permanent exemption under this part, the petition must include all of the evidence and information required in this part and part 501 of this chapter.

§ 503.6 Cost calculations for new powerplants and installations.

(a) General. (1) This calculation compares the cost of using alternate fuel to the cost of using imported petroleum. It must be performed for each alternate fuel and/or alternate site that the petitioner is required to examine.

(2) The cost of using an alternate fuel as a primary energy source will be deemed to substantially exceed the cost of using imported oil if the difference between the cost of using alternate fuel and the cost of using imported oil is greater than zero.

(3) There are two comparative cost calculations—a general cost test and a special cost test. Both take into consideration cash outlays for capital investments, annual expenses, and the effect of depreciation and taxes on cash flow. To demonstrate eligibility for a permanent exemption, a petitioner must use the procedures specified in the general cost test (paragraph (b) of this section). To demonstrate eligibility for a temporary exemption, the petitioner may apply the procedures specified in either the general cost test or the special cost test (paragraph (c) of this section).

(b) Cost calculation—general cost test.

(1) A petitioner may be eligible for a permanent exemption if he can demonstrate that the cost of using an alternate fuel from the first year of operation substantially exceeds the cost of using imported petroleum. Unless the best practicable cost estimates as prescribed below will not materially change during the first ten years of operation of the unit (given the best information available at the time the petition is filed), the petitioner must also demonstrate that the cost of using alternate fuel beginning at any time within the first ten years of operation and using imported petroleum or natural gas until such time (i.e., delayed use of alternate fuel) would substantially exceed the cost of using only imported petroleum.

(2) The petitioner would only be eligible for a temporary exemption if the computed costs of delayed alternate fuel use, commencing at the start of the second through eleventh years of operation, do not always substantially exceed the cost of using only imported petroleum. The length of the temporary exemption would be the minimum period from the start of operation in which the cost of using alternate fuel substantially exceeds the cost of using imported petroleum.

(3) To conduct the general cost test, calculate the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 1 through 3 below and the comparison procedures in paragraph (b)(5) of this section.
(4) The terms in Equations 2 and 3 are defined as follows:

\( i = \text{Year. } i \) is a specified year either before year 0 or after year 0. Year 0 is the year before the unit becomes operational. For example, in the third year before the unit becomes operational, \( i \) would equal -2, and in the third year following commencement of operations of the unit, \( i \) would equal +3. Years are represented by 52 week periods prior to or following the date on which the unit becomes operational. Outlays before the unit becomes operational are future valued to the year before the unit becomes operational (year 0), and outlays after the unit becomes operational are present valued to the year before the unit becomes operational. Year 0 must be the same for the units being compared.

\( g = \text{The number of years prior to the year before the unit becomes operational (year 0) that (1) a cash outlay is first made for capital investments, or (2) an investment tax credit is first used—whichever occurs first.} \)

\( N = \text{The useful life of the unit (see paragraph (d)(5) of this section).} \)

\( I_1 = \text{Yearly cash outlay (in dollars) from the year outlays first occur to the last year of the unit's useful life for capital investments. (See paragraph (d)(2) of this section for the items that must be included.)} \)

\( \text{OM}_i = \text{Annual cash outlay in year } i \) (in dollars) for all operations and maintenance expenses except fuel (i.e., all non-capital and non-fuel cash outlays caused by putting the capital investments (I) into service). This may include labor, materials, insurance, taxes (except income taxes), etc. (See paragraph (d)(3) of this section.)

\( ITC_i = \text{Federal investment tax credit used in year } i \) resulting from capital investments (see paragraph (d)(6) of this section.)

\( DPR_i = \text{Depreciation in year } i \) resulting from capital investments (see paragraph (d)(6) of this section.)

\( t_i = \text{Marginal income tax rate in year } i \) (see paragraph (d)(6) of this section.)

\( IX = \text{Inflation index value for year } i \) (see appendix II to part 504 for method of computation).

\( IX_e = \text{Inflation index value for the year } e, \text{ the year before the asset is placed in service.} \)

(5) The step-by-step procedure that follows shows the comparison that the petitioner must make.
(i) Compute the cost of using an alternate fuel (COST(ALTERNATE)) unit throughout the useful life of the unit using Equations 2 and 3.

(ii) Compute the cost of using oil or natural gas (COST(OIL)) throughout the useful life of the unit using Equations 2 and 3.

(iii) Using Equation 1, compute the difference (DELTA) between COST(ALTERNATE) and COST(OIL). If the difference (DELTA) is less than or equal to zero, a petitioner is not eligible for a permanent or temporary exemption using the general cost test and need not complete the remainder of the general cost test calculation. However, he still may be eligible for a temporary exemption using the special cost test (paragraph (c) of this section). If the difference (DELTA) is greater than zero and if the best practicable cost estimates will not materially change during the first ten years of operation (given the best information available at the time the petition is filed), the petitioner has completed the test and is eligible for a permanent exemption. However, if the best practicable cost estimate will materially change during the first ten years, the petitioner must complete the remainder of the general cost test—the delayed use calculations which follow.

(iv) Recompute COST(ALTERNATE) with Equations 2 and 3, assuming that an alternate fuel is not used as the primary energy source until the start of the second year of operation and that imported petroleum or natural gas is used for the first year of operation. All cash outlays should reflect postponed use of alternate fuel.

(v) Successively recompute COST(ALTERNATE) with Equations 2 and 3, assuming that the alternate fuel use is postponed until the start of the third year, fourth year, and so on, through the beginning of the eleventh year of operation (with imported petroleum or natural gas used in the years preceding alternate fuel use).

(vi) Compute the difference (DELTA) between each of the ten COST(ALTERNATE)s calculated in paragraph (b)(5) (iv) and (v) of this section and the COST(OIL) calculated in paragraph (b)(5)(ii) of this section.

(vii) If all the DELTAs computed in paragraph (b)(5) (iii) and (vi) of this section are greater than zero, the petitioner is eligible for a permanent exemption. If one or more of the DELTAs is less than or equal to zero, he is eligible for a temporary exemption for the period beginning at the start of the first year of operation and terminating at the beginning of the first year in which a DELTA is zero or less.

(c) Cost calculations—special cost test.

(1) A petitioner may be eligible for a temporary exemption if he demonstrates that the cost of using an alternate fuel will substantially exceed the cost of using imported petroleum or (natural gas) over the period of the proposed exemption. The period of the proposed temporary exemption may not exceed ten years. The petitioner must demonstrate that the cost of using an alternate fuel substantially exceeds the cost of using imported petroleum for the first year of operation, the first two years of operation, and so forth, through the period of the proposed exemption. OFE will limit the duration of a temporary exemption to the shortest time possible.

(2) To conduct the test, calculate the difference (DELTA) between the cost of using an alternate fuel (COST(ALTERNATE)) and the cost of using imported petroleum (COST(OIL)) using Equations 4 and 5 below, Equation 3 (paragraph (b)(3) of this section), and the comparison procedures in paragraph (c)(4) of this section.
Capital investment \( I \) is calculated with Equation 3 (paragraph (b)(3) of this section).

(3) The terms in Equation 5 are the same as those in Equation 2 with the addition of \( P \), the length of the proposed temporary exemption in years. (See paragraph (b)(4) of this section for other terms.)

(4) The step-by-step procedure that follows shows the comparisons which must be made.

(i) Using Equation 5, compute the cost of using an alternate fuel \( (COST(\text{ALTERNATE})) \) assuming the length of the proposed exemption is one year.

(ii) Likewise, compute the cost of using imported petroleum or natural gas \( (COST(\text{OIL})) \) assuming the length of the proposed exemption is one year.

(iii) Compute the difference \( (DELTA) \) between \( COST(\text{ALTERNATE}) \) and \( COST(\text{OIL}) \) using Equation 4.

(iv) Repeat the calculations made in (i), (ii), and (iii) above, assuming the length of the proposed exemption is two years, three years, four years, and so on, up through the period of the proposed exemption.

(v) A petitioner is eligible for a temporary exemption for the period beginning at the start of the first year of operation and terminating at the beginning of the first year in which a \( DELTA \) is zero or less.

(d) Information on parameters used in the calculations. (1) All estimated expenditures, except fuel, shall be expressed in real terms (unadjusted for inflation) by using the prices in effect at the time the petition is submitted. Instructions for fuel price calculations are contained in appendix II.

(2) Capital investment yearly cash outlays \( (I_i) \) must include all items that are capital investments for Federal income tax purposes. All purchased equipment that has a useful life greater than one year, capitalized engineering costs, land, construction, environmental offsets, fuel inventory, transmission facilities, piping, etc., that are necessary for the operation of the unit must be included. However, an item must only be included if a cash outlay is required after the decision has been made to build the unit; sunk costs must not be included (e.g., if the firm owns the land, its purchase price may not be included).

\textbf{NOTE:} The guidelines for the fuel inventory for powerplants not using natural gas shall be: (a) All powerplants with only steam driven turbines—78 days, (b) all powerplants with only combustion turbines—142 days, (c) all powerplants with combined cycles—both steam driven turbines and combustion turbines—142 days. The guidelines for the fuel inventory for installations not using natural gas shall be the greater of: (1) 21 days fuel supply, or (2) sufficient fuel to fill sixty (60) percent of the storage volume. The guidelines for the fuel inventory for all facilities using natural gas shall be zero unless the gas supply is interruptible in which case an appropriate inventory of back-up fuel must be included. Other inventory levels may be used if they are more appropriate than these guidelines; however, the source or derivation of these levels must be discussed in the evidential summary.
(3)(i) The annual cash outlays for operations and maintenance expense (OMi) and fuel expense (FLi) for a powerplant may be computed by one of the following three methods; however, the one chosen must be consistently applied throughout the analysis.

(A) Assume the energy produced by the powerplant equals seventy (70) percent of design capacity times 8760 hours for each year during the life of the powerplant, and compute cash outlays for operations, maintenance, and fuel expenses for the powerplant.

(B) Economically dispatch the new powerplant. The cash outlays for operations, maintenance, and fuel expenses of all powerplants being dispatched (where oil and natural gas are priced according to the procedures of appendix II.1) are the corresponding expenses for the purpose of the cost calculation. The dispatch analysis area must be that area with which the firm currently dispatches, anticipates dispatching, and will be interconnected. It must also include all anticipated exchanges of energy with other utilities or powerpools. The outlays for operations, maintenance, and fuel may also be estimated using a methodology that incorporates the benefits of economically dispatching units and provides consistent treatment in the alternate fuel and oil or natural gas cases being compared.

(C) Use a dispatch analysis to project the energy produced by the powerplant for a representative (not atypical) year of operation when consuming an alternate fuel. Compute the cash outlays for operations, maintenance, and fuel expenses for the powerplant based upon the level of energy production estimated for the representative year. The dispatch analysis and fuel expenses for the cost calculation must include oil and natural gas priced according to the procedures of appendix II.1.

(ii) When computing the annual cash outlays for operations and maintenance expense (OMi) and fuel expense (FLi) for an installation, specify the firing rates and the length of time each firing rate will be maintained.

(4) The discount rate (k) for analyses is 2.9 percent or that which is computed as specified in appendix I. The method of computing the inflation index (IX) is shown in appendix II to part 504. OFE will modify these specified rates from time to time as required by changed conditions after public notice and an opportunity to comment. However, the relevant set of specified rates for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever set is more favorable to the petitioner.

(5)(i) The guidelines for the useful life (N) of all powerplants except nuclear will be thirty-five (35) years. The guidelines for the useful life of a nuclear powerplant will be forty (40) years. The guidelines for the useful life of major fuel burning installations will be forty (40) years. Other useful life projections may be used if they are more appropriate than these guidelines; however, the source or derivation of these projections must be contained in the evidential summary. The summary should include a discussion of engineering, economic historical or other evidence.

(ii) If the units being compared have different useful lives, the petitioner will have to modify his calculation so that the two cash flows being compared have the length of the shorter useful life. To do this, (A) use the shorter of the two useful lives in Equations 2 and 5 for both units, and (B) multiply capital investment (I) of the unit with the longer life (computed with Equation 3) by the following adjustment factor (A):

$$A = \frac{\sum_{i=1}^{R} (1+k)^{i-1}}{\sum_{i=1}^{Q} (1+k)^{i-1}}$$

where:
- R = The useful life of the facility with the longer life.
- Q = The useful life of the facility with the shorter life.
- k = The discount rate (see paragraph (d)(4) above).

(6) All Federal investment tax credits (ITCi) and depreciation (PRi) values are those used for Federal income tax purposes and must be applied consistently throughout the analysis and in a manner consistent with the Federal tax
laws. All investment tax credits allowed under Federal tax law must be reflected in the computations. The petitioner must use the method of depreciation which results in the greatest present value of the cash flow due to the tax and depreciation effect. The marginal income tax rate \( t_i \) is the firm’s anticipated marginal Federal income tax rate in year \( i \). The relevant investment tax credits, depreciation methodology, and marginal Federal income tax rates for a specific exemption petition will be those prescribed by Federal law in effect (or those tax parameters which are known with certainty will be in effect) at the time a decision is rendered. (However, if an investment tax credit expires in a certain year under the law which is in effect at the time the petition is submitted, the petitioner must assume that it will in fact expire in that year.)

7. If powerplants are being compared, the design capacities or the maximum sustained energy per unit of time that could be produced must be the same. If installations are being compared, the maximum sustained energy per unit of time that could be produced must be the same.

8. All estimated cash outlays must be computed in accordance with generally accepted accounting principles consistently applied.

9. The scope of the estimates of relevant costs (as discussed above) of units being compared must be the same.

10. All allowances for uncertainty and risk in the cost estimates must be explicit.

11. All cash outlays must be net of any government subsidies or grants.

(e) Evidence in support of the cost calculation. Petitioners for an exemption which requires the use of the cost calculation shall certify that the cost of using alternate fuel substantially exceeds the cost of using oil as primary energy source as calculated in this section. A brief summary of the petitioner’s supporting calculations and estimates shall be submitted with the certification. The summary should include the following:

1. Cash outlays. Investment tax credits, depreciation methodologies, and anticipated salvage for capital investments including a description of all major construction and equipment;

2. Annual cash outlays for operations and maintenance expenses including the formulas used to compute them; and

3. Annual cash outlays for delivered fuel expenses including the formulas used to compute them.

§ 503.7 State approval—general requirement for new powerplants.

(a) Where approvals by the appropriate State regulatory authority are required prior to the construction or use of a new powerplant, a petition for an exemption for consideration by OFE may be submitted to OFE prior to obtaining such approvals from the State regulatory authority.

(b) An exemption granted for a powerplant shall not become effective until an adequate demonstration has been made to OFE that all applicable approvals required by the State regulatory authorities have been obtained.

§ 503.8 No alternate power supply—general requirement for certain exemptions for new powerplants.

(a) Application. To qualify for an exemption, except in the case of an exemption for cogeneration units, section 213(c) of the Act requires a demonstration that, despite reasonable good faith efforts, there is no alternative supply of electric power available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service. If a petitioner is unable to demonstrate that there is no alternate supply during the first year of operation, OFE will conclude that the absence of the proposed powerplant will not impair short-term reliability of service, and as a result will not grant the exemption. Such action would not impair long-term reliability of service, since a petition may be submitted for a powerplant that would begin operation in a subsequent year.

(b) Criteria. To meet the demonstration required under paragraph (a) of this section, a petitioner must certify that:

§ 503.10 Use of fluidized bed combustion not feasible—general requirement for permanent exemptions.

(a) OFE finding. Except in the case of an exemption for fuel mixtures, OFE may deny permanent exemptions authorized under section 212 of the Act if OFE finds on a site-specific or generic basis that use of a method of fluidized bed combustion of an alternate fuel is economically and technically feasible.

(b) Demonstration. If OFE has made such a finding, OFE will deny a petitioner’s request for exemption unless the petitioner demonstrated that the use of a method of fluidized bed combustion is not economically or technically feasible. The petition or any supplement thereto required by OFE must include the following evidence:

(1) If use of a method of fluidized bed combustion were to be required, evidence that the petitioner would be eligible for a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, lack of adequate capital, or State or local requirements; or

§ 503.9 Use of mixtures—general requirement for certain permanent exemptions.

(a) Criteria. To qualify for a permanent exemption, except in the case of an exemption for fuel mixtures, section 213(a)(1) of the Act requires a demonstration that the use of a mixture of natural gas and petroleum and an alternate fuel for which an exemption under 10 CFR 503.38 (Fuel mixtures) would be available, would not be economically or technically feasible.

(b) Evidence. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications to the criteria set forth in paragraph (a) of this section; and

(2) Exhibits containing the basis for the certifications submitted under this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support its certifications to this general requirement.)
§ 503.11

(2) Use of a method of fluidized bed combustion is not technically or economically feasible due to design or special circumstances.


§ 503.11 Alternative sites—general requirement for permanent exemptions for new powerplants.

(a) Criteria. To qualify for permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements, or inadequate capital, section 212(a) of the Act requires a demonstration that one of these exemptions would be available for any reasonable alternative site for the facility.

(b) Evidence. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications to the criteria set forth in paragraph (a) of this section; and

(2) Exhibits containing the basis for the certifications submitted under this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support its certifications to this general requirement).


§ 503.12 Terms and conditions; compliance plans.

(a) Terms and conditions generally. A petitioner must comply with any terms and conditions imposed upon the grant of an exemption petition. OFE will limit any such terms and conditions to the unit(s) which is the subject of the petition.

(b) Compliance plans for temporary exemptions. (1) Any compliance plan required to accompany a petition for a temporary exemption shall include the following:

(i) A detailed schedule of progressive events and the dates upon which the events are to take place, indicating how compliance with the applicable prohibitions of the Act will occur;

(ii) Evidence of binding contracts for fuel, or for facilities for the production of fuel, which are required for compliance with the applicable prohibitions of the Act;

(iii) A schedule indicating how any necessary permits and approvals required to burn an alternate fuel will be obtained; and

(iv) Any other documentary evidence which indicates an ability to comply with the applicable prohibitions of the Act.

(2) Any exemption for which a compliance plan is required shall not be effective until the compliance plan is approved by DOE.

(3) If the petition is granted, an updated, duly executed plan must be submitted to OFE within one (1) month of an alteration of any milestone in the compliance plan, together with the reasons for the alteration and its impact upon the scheduling of all other milestones in the plan.

§ 503.13 Environmental impact analysis.

In order to enable OFE to comply with NEPA, a petitioner must include the information indicated in this section if a permanent exemption is requested. Material which has been prepared pursuant to any Federal, State or local requirement for environmental information for this unit or site may be incorporated by reference and appended to the petition. Guidelines issued by OFE for environmental reports should be used in preparing this analysis (44 FR 63740, November 5, 1979). These guidelines, which are also available in the OFE public document room, have been designed to insure that environmental reports follow the format prescribed by Council on Environmental Quality final regulations implementing NEPA. The guidelines are subject to discussion at a prepetition conference and to modification according to the facts of a particular case.

(a) All petitions for permanent exemptions must contain the following information:

(1) A description of the facility, including site location, and surround-
those systems and equipment necessary for all fuel scenarios considered;

(2) A description of the existing environment, including air, water, and land resources;

(3) Direct and indirect environmental impacts of the proposed action including impacts of alternative fuel scenarios, and no build alternatives.

(4) Regulatory requirements governing the facility, including a description of Federal, State and local requirements for air, water, noise and solid waste disposal which must be met for each fuel considered.

(b) For exemptions for cogeneration, the information enumerated below is to be submitted in lieu of the information required by paragraph (a) of this section. However, submission of the following information merely establishes a rebuttable presumption that the grant or denial of the exemption would have no significant environmental impact. OfE may, in individual cases, during the course of the administrative proceeding, determine that additional environmental information is required. In such cases, the petitioner will be required to submit the information described in paragraph (a) of this section.

(1) A certification that the petitioner will, prior to operating the unit under the exemption, secure all applicable environmental permits and approvals pursuant to, but not limited to, the following: Clean Air Act, Rivers and Harbors Act, Coastal Zone Management Act, Safe Drinking Water Act, Resource Conservation and Recovery Act; and

(2) Information required by the following environmental checklist must be provided and certified as accurate:

Environmental Checklist for FUA Certifications Instructions

All questions are to be answered by placing a check in the appropriate box. N/A represents (not applicable). Although it is not required, the petitioner may elaborate on any question in writing on a separate sheet of paper.

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Is your facility located in, or will it affect a wetland (Protection of Wetlands Executive Order No. 11990)?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Is your facility located in, or will it affect, a 100-year floodplain (Floodplain Management Executive Order No. 11988)?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) Will your facility affect a designated wild, scenic, or recreation river (Wild and Scenic Rivers Act)?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4)(A) Is your facility located within a county in which critical habitat for threatened or endangered species are known to exist (Endangered Species Act)?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4)(B) Has a qualified biologist determined that your facility will not affect any species on the Threatened and Endangered Species list?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(5) Is your facility located on, or will it affect land that has been classified as prime or unique farmland or rangeland by the U.S. Department of Agriculture?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(6) Is your facility located on, or will it affect, historical archaeological, or cultural resources that have been designated pursuant to the National Historic Preservation Act?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

§ 503.14 Fuels search.

Prior to submitting a petition for a permanent exemption for lack of alternate fuel supply, site limitations, inadequate capital, or state or local requirements, a petitioner must examine the use of conventional solid coal as a primary energy source at the site under consideration, and at reasonable alternative sites. Where a petitioner believes that its use of such coal would be infeasible, however, and where OfE and the petitioner can reach accord, it may evaluate use of a different alternate fuel in lieu of solid coal. A petitioner of these exemptions must demonstrate for any fuel examined that he would qualify for an exemption.

§ 503.20 Purpose and scope.

(a) This subpart implements the provisions contained in section 211 of the Act with regard to temporary exemptions for new facilities.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants who petition for a temporary exemption must meet to sustain their burden of proof under the Act.

(c) All petitions for temporary exemptions shall be submitted in accordance with the procedures set out in part 501 of this chapter and the applicable requirements of part 503 of these regulations.

(d) The duration of any temporary exemption granted under this subpart shall be measured from the date that the facility is placed in service using petroleum or natural gas.

§ 503.21 Lack of alternate fuel supply.

(a) Eligibility. Section 211(a)(1) of the Act provides for a temporary exemption due to the unavailability of an adequate and reliable supply of an alternate fuel at a cost which does not substantially exceed the cost of using imported petroleum. To qualify, a petitioner must certify that:

(1) A good faith effort has been to obtain an adequate and reliable supply of an alternate fuel of the quality necessary to conform to the design and operational requirements of the unit;

(2) For the period of the proposed exemption, the cost of using such alternate fuel would substantially exceed the cost of using imported petroleum as a primary energy source as defined in §503.6 (Cost calculation) of these regulations;

(3) The petitioner will be able to comply with the applicable prohibitions of the Act at the end of the proposed exemption period; and

(4) No alternate power supply exists, as required under §503.8 of these regulations.

(b) Evidence required in support of a petition. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(3) All data required by §503.6 (cost calculation) of these regulations necessary for computing the cost calculation formula; and

(4) The anticipated duration of the lack of alternate fuel supply which constitutes the basis for the exemption.

(c) Duration. This temporary exemption, taking into account any extensions or renewals, may not exceed 10 years.

§ 503.22 Site limitations.

(a) Eligibility. Section 211(a)(2) of the Act provides for a temporary exemption due to a site limitation. To qualify for such an exemption, a petitioner must certify that:

(1) One or more specific physical limitations relevant to the location or operation of the proposed facility exist which, despite diligent good faith efforts, cannot be overcome before the end of the proposed exemption period;

(2) The petitioner will be able to comply with the applicable prohibitions of the Act at the end of the proposed exemption period; and

(3) No alternate power supply exists, as required under §503.8 of these regulations.

Note: Examples of the types of site limitations to which a petitioner may certify in order to qualify for this exemption include:

(i) Inaccessibility of alternate fuels as a result of a specific physical limitation;

(ii) Unavailability of transportation facilities for alternate fuels;
§ 503.23 Inability to comply with applicable environmental requirements.

(a) Eligibility. Section 211(a)(3) of the Act provides for a temporary exemption due to an inability to comply with applicable environmental requirements. To qualify a petitioner must demonstrate that despite diligent good faith efforts:

(1) The petitioner will be unable, as of the projected date of commencement of operation, to comply with the applicable prohibitions of the Act without violating applicable Federal or State environmental requirements; and

(2) The petitioner will be able to comply with the applicable prohibitions of the Act and with applicable environmental requirements by the end of the temporary exemption period.

NOTE: (1) For purposes of considering an exemption under this section, OFE's decision will be based solely on an analysis of the petitioner’s capacity to physically achieve applicable environmental requirements. The petition should be directed toward those conditions or circumstances which make it physically impossible to comply during the temporary exemption period. The cost of compliance is not relevant, but cost-related considerations may be presented as part of a demonstration submitted under §503.21.

(2) Prior to submitting an exemption petition, it is recommended that a meeting be requested with OFE and EPA or the appropriate State or local regulatory agency to discuss options for operating an alternate fuel fired facility in compliance with applicable environmental requirements.

(b) Evidence required in support of a petition. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption); and

(3) The anticipated duration of the site limitation which constitutes the basis for the exemption.

(c) Duration. This temporary exemption, taking into account any extensions and renewals, may not exceed five years.

modeling, and reflect current conditions of the area which would be affected by the facility. The petitioner is responsible for obtaining the necessary data to accurately characterize these conditions. Environmental compliance must be examined in the context of available pollution control equipment which would provide the maximum possible reduction of pollution. The analysis must contain: (i) Requests for bids and other inquiries made and responses received by the petitioner concerning the availability and performance of pollution control equipment; (ii) contracts signed, if any, for an alternate fuel supply and for the purchase and installation of pollution control equipment; or (iii) other comparable evidence such as technical studies documenting the efficacy of equipment to meet applicable requirements;

(6) An examination of any regulatory options available to the petitioner in seeking to achieve environmental compliance (such as offsets, variances, and State Implementation Plan revisions);

(7) Any other documentation which demonstrates an inability to comply with applicable environmental requirements;

(8) No alternate power supply exists, as required under §503.8 of these regulations.

(c) Duration. This temporary exemption, taking into account any extension and renewals, may not exceed 5 years.

(d) Certification alternative. (1) To qualify for this exemption, in lieu of meeting the evidentiary requirements of paragraph (b) of this chapter, a petitioner may certify that, for the period of the exemption:

(i) The site for the facility is or will be located in a Class I area or Class II area in which the allowable increment established by law has been consumed, as defined in part C of the Clean Air Act; the use of an alternate fuel will cause or contribute to concentrations of pollutants which would exceed the maximum allowable increases in a Class I or Class II area even with the application of best available control technology; the site for the facility is or will be located in a non-attainment area as defined in part D of the Clean Air Act for any pollutant which would be emitted by the facility; or, even with the application of the lowest achievable emission rate, the use of an alternate fuel will cause or contribute to concentrations in an air quality control region, of a pollutant for which any national ambient air quality standard is or would be exceeded; and

(ii) No alternate power supply exists, as required under §503.8 of these regulations.

(2) A petition by certification under this paragraph must include:

(i) Duly executed certifications required under paragraph (d)(1) of this section;

(ii) Exhibits containing the basis for the certifications required under paragraph (d)(1) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption); and

(iii) The anticipated duration of the circumstances which constitute the basis for the exemption.

§ 503.24 Future use of synthetic fuels.

(1) The petitioner will be able to comply with the applicable prohibitions imposed by the Act by use of a synthetic fuel derived from coal or another alternate fuel as a primary energy source in the proposed facility by the end of the proposed exemption period;

(2) The petitioner will not be able to comply with the applicable prohibitions imposed by the Act by use of a synthetic fuel until the end of the proposed exemption period; and

(3) No alternate power supply exists, as required under §503.8 of these regulations.

(b) Evidence required in support of a petition. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;
(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption); and

(3) A preliminary compliance plan, including to the extent available, the information required under §503.12.

(c) Final Compliance Plan. Before an exemption may become effective, the petitioner must submit and OFE must approve a final compliance plan as required by §503.12.

(d) Duration. This temporary exemption may be granted for a period of up to ten (10) years. Unless the petitioner requests otherwise, any temporary exemption from the fuel use prohibitions of the Act for the future use of synthetic fuels will commence on the date of commercial operation of the facility.

NOTE: Contracts based on the anticipated successful demonstration of a development program and/or the anticipated economic feasibility of a synthetic fuels facility, will generally be sufficient to meet the “binding contract” requirements for this exemption.


§ 503.25 Public interest.

(a) Eligibility. Section 211(c) of the Act provides for a temporary public interest exemption. To qualify, a petitioner must demonstrate that:

(1) The unit will be capable of complying with the applicable prohibitions at the end of the proposed exemption period;

(2) The granting of the exemption would be in accord with the purposes of the Act and would be in the public interest; and

(3) No alternate power supply exists, as required under §503.8 of these regulations.

(b) Evidence required in support of a petition. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Substantial evidence to corroborate the eligibility requirements identified above; and

(2) The anticipated duration of the circumstances which constitute the basis for the exemption.

(c) Certification alternative. If the petitioner requires use of oil or natural gas in a unit, during the construction of an alternate-fuel fired unit, the petitioner may substitute, in lieu of the evidentiary requirements of paragraphs (b)(1) and (2) of this section:

(1) A duly executed certification, including the requested duration of the exemption, that the unit will be operated on oil or natural gas only during the construction of an alternate fuel fired unit to be owned or operated by the petitioner; and

(2) Exhibits containing the basis for the certifications required under paragraph (c)(1) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption).

(d) Duration. This temporary exemption, taking into account extension and renewals, may not exceed 5 years.


Subpart D—Permanent Exemptions for New Facilities

§ 503.30 Purpose and scope.

(a) This subpart implements the provisions contained in section 212 of the Act with regard to permanent exemptions for new facilities.

(b) This subpart establishes the criteria and standards which owners or operators of new powerplants and installations who petition for a permanent exemption must meet to sustain their burden of proof under the Act.

(c) All petitions for permanent exemptions for new facilities shall be submitted in accordance with the procedures set out in part 501 of this chapter and the applicable requirements of part 503 of these regulations.

§ 503.31 Lack of alternate fuel supply for the first 10 years of useful life.

(a) Eligibility. Section 212(a)(1)(A)(i) of the Act provides for a permanent exemption due to lack of an adequate and reliable supply of alternate fuel within the first 10 years of useful life of the proposed unit. To qualify, a petitioner must certify that:
§ 503.32 Lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

(a) Eligibility. Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify for such an exemption, a petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in §503.6 (cost calculation) of these regulations;

(3) No alternate power supply exists, as required under §503.8 of these regulations.

(b) Evidence required in support of a petition. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(3) Environmental impact analysis, as required under §503.13 of these regulations; and

(4) Fuels search, as required under §503.14 of these regulations.


§ 503.33 Site limitations.

(a) Eligibility. Section 212(a)(1)(B) of the Act provides for a permanent exemption due to site limitations. To qualify for such an exemption, a petitioner must certify that:

(1) One or more specific physical limitations relevant to the location or operation of the proposed facility exist which, despite good faith efforts, cannot reasonably be expected to be overcome within five years after commencement of operations;
(2) No alternate power supply exists, as required under §503.8 of these regulations;

(3) Use of mixtures is not feasible, as required under §503.9 of these regulations; and

(4) Alternative sites are not available, as required under §503.11 of these regulations.

NOTE: Examples of the types of site limitations to which a petitioner may certify in order to qualify for this exemption include:

(i) Inaccessibility of alternate fuels as a result of a specific physical limitation;

(ii) Unavailability of transportation facilities for alternate fuels;

(iii) Unavailability of adequate land or facilities for handling, using or storing an alternate fuel;

(iv) Unavailability of adequate land or facilities for controlling and disposing of wastes, including pollution control equipment or devices necessary to assure compliance with applicable environmental requirements;

(v) Unavailability of adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements; or

(vi) Other site limitations exist which will not permit the location or operation of the proposed unit using an alternate fuel.

(b) Evidence required in support of the petition. A petitioner must include in the petition the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;

(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(3) Environmental impact analysis, as required under §503.13 of these regulations; and

(4) Fuels search, as required under §503.14 of these regulations.

§ 503.34 Inability to comply with applicable environmental requirements.

(a) Eligibility. Section 212(a)(1)(C) of the Act provides for a permanent exemption due to the inability to comply with applicable environmental requirements. To qualify, a petitioner must demonstrate that despite good faith efforts:

(1) The petitioner will be unable within 5 years after beginning operation, to comply with the applicable prohibitions imposed by the Act without violating applicable Federal or state environmental requirements; and

(2) Reasonable alternative sites, which would permit the use of alternate fuels in compliance with applicable Federal or state environmental requirements, are not available.

NOTE: (1) For purposes of considering an exemption under this section, OFE’s decision will be based solely on an analysis of the petitioner’s capacity to physically achieve applicable environmental requirements. The cost of compliance is not relevant, but cost-related considerations may be presented as part of a demonstration submitted under §503.32 (Lack of alternate fuel supply).

(2) Prior to deciding to submit an exemption petition, it is recommended that a petitioner request a meeting with OFE and EPA or the appropriate state or local regulatory agency to discuss options for operating an alternate fuel-fired facility in compliance with the applicable environmental requirements.

(b) [Reserved]

(c) Evidence required in support of a petition. The petitioner must include in the petition the following evidence in order to make the demonstration required by this section:

(1) Where the petitioner has applied for a construction permit from EPA or an appropriate state agency prior to petitioning for an exemption from OFE under this section, a copy of such application and a synopsis of all supporting documents filed with or subsequent to the application must be submitted to OFE with the petition or at the time filed with the permitting agency;

(2) To the extent applicable, a copy of the EPA or state denial of the construction permit application;

(3) To the extent applicable, a synopsis of the administrative record of the EPA or state or local permit proceedings;

(4) To the extent applicable, a summary of the technology upon which the denial was based, including a performance comparison between the proposed technology and that technology which
§ 503.35 Inability to obtain adequate capital.

(a) Eligibility. Section 212(a)(1)(D) of the Act provides for a permanent exemption due to inability to obtain adequate capital. To qualify, a petitioner must certify that:

(i) The site for the facility is or will be located in a Class I area or Class II area in which the allowable increment established by law has been consumed, as defined in part C of the Clean Air Act; the use of an alternate fuel will cause or contribute to concentrations of pollutants which would exceed the maximum allowable increases in a Class I or Class II area even with the application of best available control technology; the site for the facility is or will be located in a non-attainment area as defined in part D of the Clean Air Act for any pollutant which would be emitted by the facility; or, even with the application of the lowest achievable emission rate, the use of an alternate fuel will cause or contribute to concentrations in an air quality control region of a pollutant for which any national ambient air quality standard is or would be exceeded;

(ii) No alternate power supply exists, as required under §503.8 of these regulations;

(iii) Alternative sites are not available, as required under §503.11 of these regulations;

(iv) Use of mixtures is not feasible, as required under §503.19 of these regulations.

(b) Petition. A petition by certification under this paragraph must include:

(i) Duly executed certifications required under paragraph (d)(1) of this section;

(ii) Exhibits containing the basis for the certifications required under paragraph (d)(1) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);

(iii) Environmental impact analysis, as required under §503.13 of these regulations; and

(iv) Fuels search, as required under §503.14 of these regulations.

(1) Despite good faith efforts the petitioner will be unable to comply with the applicable prohibitions imposed by the Act because the additional capital required for an alternate fuel-capable unit beyond that required for the proposed unit cannot be raised; 
(2) The additional capital cannot be raised:
   (i) Due to specific restrictions (e.g., convenants on existing bonds) which constrain management's ability to raise debt or equity capital;
   (ii) Without a substantial dilution of shareholder equity;
   (iii) Without an unreasonably adverse affect on the utility’s credit rating; or
   (iv) In the case of non-investor-owned public utilities, without jeopardizing the utility’s ability to recover its capital investment, through tariffs, without unreasonably adverse economic effect on its service area (such as adverse impacts on local industry or undue hardship to ratepayers);
(3) No alternative power supply exists, as required under § 503.8 of these regulations;
(4) Use of mixtures is not feasible, as required under § 503.9 of these regulations; and
(5) Alternative sites are not available, as required under § 503.11 of these regulations.

(b) Evidence required in support of a petition.

A petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;
(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);
(3) Environmental impact analysis, as required under § 503.13 of these regulations; and
(4) Fuels search, as required under § 503.14 of these regulations.

§ 503.36 State or local requirements.

(a) Eligibility. Section 212(b) of the Act provides for an exemption due to certain State or local requirements. To qualify a petitioner must certify that:
(1) With respect to the proposed site of the unit, the operation or construction of the new unit using an alternate fuel is infeasible because of a State of local requirement other than a building code, nuisance, or zoning law;
(2) The petitioner has made a good faith effort to obtain a variance from the State or local requirement but has been unable to do so or has demonstrated why none is available;
(3) The granting of the exemption would be in the public interest and would be consistent with the purposes of the Act;
(4) The petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital at the site of the proposed powerplant or at any reasonable alternative site for the alternate fuel(s) considered;
(5) At the proposed site and every reasonable alternative site where the petitioner is not entitled to an exemption for lack of alternate fuel supply, site limitation, environmental requirements, or inability to obtain adequate capital, the petitioner nevertheless would be barred at each such proposed or alternate site from burning an alternate fuel by reason of a State or local requirement;
(6) No alternate power supply exists, as required under § 503.8 of these regulations; and
(7) Use of mixtures is not feasible, as required under § 503.9 of these regulations.

(b) Evidence required in support of a petition. The petition must include the following evidence in order to make the demonstration required by this section:

(1) Duly executed certifications required under paragraph (a) of this section;
(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials
§ 503.37

deemed by the petitioner to be sufficient to support the granting of this exemption;

(3) Environmental impact analysis, as required under § 503.13 of these regulations; and

(4) Fuels search, as required under § 503.14 of these regulations.


§ 503.37 Cogeneration.

The following table may be used to determine eligibility for a permanent exemption based on oil and natural gas savings.

AVERAGE ANNUAL UTILIZATION OF OIL AND NATURAL GAS FOR ELECTRICITY GENERATION BY STATE—Continued

<table>
<thead>
<tr>
<th>State name</th>
<th>Oil/gas savings Btu/kWh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>33</td>
</tr>
<tr>
<td>Arizona</td>
<td>802</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1,363</td>
</tr>
<tr>
<td>California</td>
<td>3,502</td>
</tr>
<tr>
<td>Colorado</td>
<td>289</td>
</tr>
<tr>
<td>Connecticut</td>
<td>3,924</td>
</tr>
<tr>
<td>Delaware</td>
<td>85</td>
</tr>
<tr>
<td>Washington, DC.</td>
<td>1,777</td>
</tr>
<tr>
<td>Florida</td>
<td>45</td>
</tr>
<tr>
<td>Georgia</td>
<td>0</td>
</tr>
<tr>
<td>Idaho</td>
<td>250</td>
</tr>
<tr>
<td>Illinois</td>
<td>53</td>
</tr>
<tr>
<td>Indiana</td>
<td>147</td>
</tr>
<tr>
<td>Iowa</td>
<td>686</td>
</tr>
<tr>
<td>Kansas</td>
<td>34</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4,189</td>
</tr>
<tr>
<td>Louisiana</td>
<td>2,560</td>
</tr>
<tr>
<td>Maine</td>
<td>895</td>
</tr>
<tr>
<td>Maryland</td>
<td>5,250</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>256</td>
</tr>
<tr>
<td>Michigan</td>
<td>151</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1,519</td>
</tr>
<tr>
<td>Missouri</td>
<td>57</td>
</tr>
<tr>
<td>Montana</td>
<td>60</td>
</tr>
<tr>
<td>Nebraska</td>
<td>139</td>
</tr>
<tr>
<td>Nevada</td>
<td>761</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>2,695</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1,894</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1,528</td>
</tr>
<tr>
<td>New York</td>
<td>4,219</td>
</tr>
<tr>
<td>North Carolina</td>
<td>49</td>
</tr>
<tr>
<td>North Dakota</td>
<td>47</td>
</tr>
<tr>
<td>Ohio</td>
<td>36</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>5,180</td>
</tr>
<tr>
<td>Oregon</td>
<td>0</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>771</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>1,800</td>
</tr>
<tr>
<td>South Carolina</td>
<td>24</td>
</tr>
<tr>
<td>South Dakota</td>
<td>36</td>
</tr>
<tr>
<td>Tennessee</td>
<td>20</td>
</tr>
<tr>
<td>Texas</td>
<td>4,899</td>
</tr>
<tr>
<td>Utah</td>
<td>107</td>
</tr>
<tr>
<td>Vermont</td>
<td>105</td>
</tr>
</tbody>
</table>

Average annual utilization of oil and natural gas for electricity generation by state.

Data are based upon 1987 oil, natural gas and electricity statistics published by DOE’s Energy Information Administration.

EXAMPLE: The proposed cogeneration project is to be located in Massachusetts and is to use distillate oil. It will have a capacity of 50 MW, an average annual heat rate of 7,600 Btu/kW, and be operated at a capacity factor of 90%. The annual fuel consumption is therefore calculated to be 2,996×10^6 Btu/yr. (50,000 kW×7,600 Btu/kW×0.9×8760 hr/yr) since the proposed unit would consume more oil than would be “backed off” the grid, the unit would not be eligible for a permanent exemption based on savings of oil and natural gas.

[54 FR 52895, Dec. 22, 1989]

§ 503.38 Permanent exemption for certain fuel mixtures containing natural gas or petroleum.

(a) Eligibility. Section 212(d) of the Act provides for a permanent exemption for certain fuel mixtures. To qualify a petitioner must certify that:

(1) The petitioner proposes to use a mixture of natural gas or petroleum and an alternate fuel as a primary energy source;

(2) The amount of petroleum or natural gas proposed to be used in the mixture will not exceed the minimum percentage of the total annual Btu heat input of the primary energy sources needed to maintain operational reliability of the unit consistent with maintaining a reasonable level of fuel efficiency; and

(3) No alternate power supply exists, as required under §503.8 of these regulations.

(b) Evidence required in support of a petition. The petition must include the following evidence in order to make
the demonstration required by this section:
(1) Duly executed certifications required under paragraph (a) of this section;
(2) Exhibits containing the basis for the certifications required under paragraph (a) of this section (including those factual and analytical materials deemed by the petitioner to be sufficient to support the granting of this exemption);
(3) A description of the fuel mixture, including component fuels and the percentage of each such fuel to be used; and
(4) Environmental impact analysis as required under §503.13 of these regulations.

(c) Solar mixtures. OFE will grant a permanent mixtures exemption for the use of a mixture of solar energy (including wind, tide, and other intermittent sources) and petroleum or natural gas, where:
(1) Solar energy will account for at least 20 percent of the total annual Btu heat input, of the primary energy sources of the unit; and
(2) Petitioner meets the eligibility and evidentiary requirements of paragraphs (a) and (c) of this section.

§ 504.2 Purpose and scope.

(a) Sections 504.5, 504.6, and 504.8, set forth the prohibitions that OFP, pursuant to section 301 of the Act, as amended, may impose upon existing powerplants after a review of the certification and prohibition order compliance schedule submitted by the owner or operator of a powerplant. Sections 504.5 and 504.8 are explanatory sections, and §504.6 provides the informational requirements necessary to support the certification.

(b) Sections 504.6 and 504.7, set forth the prohibitions that OFP may impose upon certain electing powerplants, pursuant to former section 301 (b) and (c) of FUA, where OFP can make the findings as to the unit's technical capability and financial feasibility to use coal or another alternate fuel as a primary energy source. The prohibitions may be made to apply to electing powerplants unless an exemption is granted by OFP under the provisions of the Final Rule for Existing Facilities (10 CFR parts 500, 501 and 504) published at 45 FR 53682, Aug. 12, 1980 and 46 FR 59872, Dec. 7, 1981. Any person who owns, controls, rents or leases an existing electing powerplant may be subject to the prohibitions imposed by and the sanctions provided for in the Act or these regulations, if OFP can make the findings required by former section 301 (b) and (c) of FUA.


§ 504.2 Purpose and scope.

(a) Sections 504.5, 504.6, and 504.8, set forth the prohibitions that OFP, pursuant to section 301 of the Act, as amended, may impose upon existing powerplants after a review of the certification and prohibition order compliance schedule submitted by the owner or operator of a powerplant. Sections 504.5 and 504.8 are explanatory sections, and §504.6 provides the informational requirements necessary to support the certification.

(b) Sections 504.6 and 504.7, set forth the prohibitions that OFP may impose upon certain electing powerplants, pursuant to former section 301 (b) and (c) of FUA, where OFP can make the findings as to the unit's technical capability and financial feasibility to use coal or another alternate fuel as a primary energy source. The prohibitions may be made to apply to electing powerplants unless an exemption is granted by OFP under the provisions of the Final Rule for Existing Facilities (10 CFR parts 500, 501 and 504) published at 45 FR 53682, Aug. 12, 1980 and 46 FR 59872, Dec. 7, 1981. Any person who owns, controls, rents or leases an existing electing powerplant may be subject to the prohibitions imposed by and the sanctions provided for in the Act or these regulations, if OFP can make the findings required by former section 301 (b) and (c) of FUA.

§§ 504.3—504.4 [Reserved]

§ 504.5 Prohibitions by order (certifying powerplants under section 301 of FUA, as amended).

(a) In the case of existing powerplants, OFP may prohibit, in accordance with section 301 of the Act, as amended, the use of petroleum or natural gas as a primary energy source where the owner or operator of the powerplant presents a complete certification concurred in by OFP. The certification, which may be presented at any time, pertains to the unit’s technical capability and financial feasibility to use coal or another alternate fuel as a primary energy source in the unit. The informational requirements necessary to support a certification are contained in §504.6 of these regulations. A prohibition compliance schedule which meets the requirements of §504.5(d) shall also be submitted.

(b) If OFP concurs with the certification, a prohibition order on the powerplant’s use of petroleum or natural gas will be issued following the procedure outlined in §501.52 of these regulations.

(c) The petitioner may amend its certification at any time prior to the effective date of the prohibitions contained in §504.5(d) so as to delay the effectiveness of the prohibitions contained in the final prohibition order until the above events or permits have occurred or been obtained.

(Approved by the Office of Management and Budget under control number 1903-0077)


[47 FR 17044, Apr. 21, 1982]

§ 504.6 Prohibitions by order (case-by-case).

(a) OFP may prohibit, by order, the use of natural gas or petroleum as a primary energy source in existing powerplants under certain circumstances. In the case of certifying powerplants under section 301 of the Act, as amended, the petitioner must present evidence to support the certification, required by §504.6 (c), (d), (e), and (f). In the case of electing powerplants, OFP must make the following findings required by §504.6 (c), (d), (e), and (f), in order to issue a prohibition order to the unit, pursuant to former section 301 (b) or (c):

(1) The unit currently has, or previously had, the technical capability to use an alternate fuel as a primary energy source;

(2) The unit has this technical capability now, or it could have the technical capability without:

(i) A substantial physical modification of the unit; or

(ii) A substantial reduction in the rated capacity of the unit; and

(3) It is financially feasible for the unit to use an alternate fuel as its primary energy source.

(b) In the case of electing powerplants, OFP must make a proposed finding regarding the technical capability of a unit to use alternate fuel as identified in paragraph (a) (1) of this section prior to the date of publication of the notice of the proposed prohibition. OFP will publish this finding in
The Federal Register along with the notice of the proposed prohibition.

(c) Technical capability. (1) In the case of electing and certifying powerplants, OFP will consider "technical capability" on a case-by-case basis in order to make the required finding. In the case of a certifying powerplant, the powerplant should present information to support the certification relevant to the considerations set forth below. OFP will consider the ability of the unit, from the point of fuel intake to physically sustain combustion of a given fuel and to maintain heat transfer.

(2) OFP considers that a unit "had" the technical capability to use an alternate fuel if the unit was once able to burn that fuel (regardless of whether the unit was expressly designed to burn that fuel or whether it ever actually did burn it), but is no longer able to do so at the present due to temporary or permanent alterations to the unit itself.3

(3) A unit "has" the technical capability to use an alternate fuel if it can burn an alternate fuel, notwithstanding the fact that adjustments must be made to the unit beforehand or that pollution control equipment may be required to meet air quality requirements.4

2OFP will not ordinarily consider the nature or absence of appurtenances outside the unit. For example, OFP will examine the furnace configuration and ash removal capability but will not normally consider the need to install pollution control equipment as a measure of technical capability. Furthermore, OFP will not normally conclude that the absence of fuel handling equipment, such as conveyor belts, pulverizers, or unloading facilities, bears on the issue of a unit's "technical capability" to burn an alternate fuel.

3For example, a unit which at one time burned solid coal but which could no longer do so because its coal firing ports and sluicing channels had been cemented over, would be classified as having "had" the technical capability to use coal. (The question of whether it again "could have" such capability without "substantial physical modification" is a separate and additional question.)

4A unit designed to burn natural gas shall be presumed to have the technical capability to burn a synthetic fuel such as medium Btu gas from coal (assuming such gas is available unless convincing evidence to the contrary is submitted in rebuttal). Also a unit designed to burn oil may, depending upon the chemical characteristics, be a unit that "has" the technical capability to burn liquefied coal. The fact that certain adjustments may be necessary does not render this a "hypothetical" as opposed to a "real" capability. Even an oil fired unit converting from the use of #2 distillate to #6 residual oil may be required to adjust or replace burner nozzles and add soot blowers.

5Generally, modification of a unit to burn coal or an alternate fuel will be considered insubstantial if significant alterations to the boiler, such as a change to the furnace configuration or a complete respacing of the tubes, are not required. Minor alterations such as replacement of burners or additions of soot blowers, and additions or alterations outside the boiler, shall not cause the modification to be substantial.

6For example, units that are the subject of a prohibition order will not have installed...
(3) OFP will assess units for which a derating is claimed of 10 percent or more, but less than 25 percent, on a case-by-case.

(4) In assessing whether a unit’s derating is not substantial, OFP will consider the impact of a reduction in rated capacity of the unit taking into consideration all necessary appurtenances such as air pollution control equipment required to burn an alternate fuel in compliance with environmental requirements expected to be applicable at the date the prohibitions contained in the final prohibition order become effective. However, the potential order recipient may raise in rebuttal the impact of derating on the site at which the unit is located and on the system as well as on the unit itself, if under paragraph (e)(2), or case-by-case, if under paragraph (e)(3) of this section.

(f) Financial feasibility. In the case of certifying and electing powerplants, OFP will make this finding based on the following considerations. A certifying powerplant should present information to support its certification relevant to these considerations in order for OFP to make its review for concurrence. Conversion of a unit to burn coal or an alternate fuel shall be deemed financially feasible if the firm has the actual ability to obtain sufficient capital to finance the conversion, including all necessary land, coal and ash handling equipment, pollution control equipment, and all other necessary expenditures, without violating legal restrictions on its ability to raise debt or equity capital, unreasonably diluting shareholder equity, or unreasonably adversely affecting its credit rating. OFP will consider any economic or financial factors presented by the proposed order recipient in determining the firm’s ability or inability to finance the conversion including, but not limited to, the following:

any operating air pollution control equipment sufficient to burn coal in compliance with applicable environmental equipments. The installation and use of air pollution control equipment alone can, in many cases, produce a derating. Moreover, the shift to coal itself will, because of differences in energy density and fuel flow characteristics, typically involve some derating.

(1) The required coverage ratios on the firm’s debt and preferred stock;
(2) The firm’s investment program;
and
(3) The financial impact of the conversion, including other conversions which are or may be undertaken voluntarily by the proposed order recipient or imposed upon the recipient’s system by the Act, and including pending or planned construction or reconstruction of alternate-fuel-fired plants and plants exempt from FUA prohibitions. Where helpful in clarifying the long-term financial feasibility of a conversion, DOE may analyze the economic benefits anticipated from operation of the converted unit or units using coal or other alternate fuel relative to those from continued operation using petroleum or natural gas.

(Approved by the Office of Management and Budget under control number 1903-0077)


§ 504.7 Prohibition against excessive use of petroleum or natural gas in mixtures—electing powerplants.

(a) In the case of electing powerplants, if OFP finds that it is technically and financially feasible for a unit to use a mixture of petroleum or natural gas as its primary energy source, OFP may prohibit, by order, the use in that unit of petroleum or natural gas, or an alternate fuel as its primary energy source, OFP may prohibit, by order, the use in that unit of petroleum or natural gas, or both, in amounts exceeding the minimum
§ 504.9 Environmental requirements for certifying powerplants.

Under §§501.52, 504.5 and 504.6 of these regulations, OFP may prohibit, in accordance with section 303 (a) and section 303 (b) of FUA, as amended, the use of natural gas or petroleum, or both, as a primary energy source in any certifying powerplant. Under sections 303(c) and 303(a) of FUA, as amended, and §§501.52, 504.6 and 504.8 of these regulations, OFP may prohibit...
the excessive use of natural gas or petroleum in a mixture with an alternate fuel as a primary energy source in a certifying powerplant.

(a) NEPA compliance. Except as provided in paragraph (c) of this section, where the owner or operator of a powerplant seeks to obtain an OFP prohibition order through the certification procedure, and did not hold either a proposed prohibition order under former section 301 of FUA or pending order under section 2 of ESECA, it will be responsible for the costs of preparing any necessary Environmental Assessment (EA) or Environmental Impact Statement (EIS) arising from OFP’s obligation to comply with NEPA. The powerplant owner or operator shall enter into a contract with an independent party selected by OFP, who is qualified to conduct an environmental review and prepare an EA or EIS, as appropriate, and who does not have a financial or other interest in the outcome of the proceedings, under the supervision of OFP. The NEPA process must be completed and approved before OFP will issue a final prohibition order based on the certification.

(b) Environmental review procedure. Except as provided in paragraph (c) of this section, environmental documents, including the EA and EIS, as necessary, will be prepared utilizing the process set forth above. OFP, the powerplant owner or operator and the independent third party shall enter into an agreement for the owner or operator to engage and pay directly for the services of the qualified third party to prepare the necessary documents. The third party will execute an OFP prepared disclosure document stating that he does not have any conflict of interest, financial or otherwise, in the outcome of either the environmental process or the prohibition order proceeding. The agreement shall outline the responsibilities of each party and his relationship to the other two parties regarding the work to be done or supervised. OFP shall approve the information to be developed and supervise the gathering, analysis and presentation of the information. In addition, OFP will have the authority to approve and modify any statement, analysis, and conclusion contained in the third party prepared environmental documents.

(c) Financial hardship. Whenever the bona fide estimate of the costs associated with NEPA compliance, if borne by the powerplant owner or operator, would make the conversion financially infeasible, OFP may waive the requirement set forth in paragraphs (a) and (b) of this section and perform the necessary environmental review.

(Approved by the Office of Management and Budget under control number 1903-0077)


[47 FR 17046, Apr. 21, 1982]

APPENDIX I TO PART 504—PROCEDURES FOR THE COMPUTATION OF THE REAL COST OF CAPITAL

(a) The firm’s real after-tax weighted average marginal cost of capital (K) is computed with equation 1.

\[
K = w_d \left[ \frac{\hat{r}_d (1-t)}{1 - f_d} - \text{INF} \right] + w_p \left[ \frac{\hat{r}_p}{1 - f_p} - \text{INF} \right] + w_e \left[ \frac{\hat{r}_e}{1 - f_e} - \text{INF} \right]
\]
The terms in equation 1 are defined as follows:

- $W_d$ = Fraction of existing capital structure which is debt.
- $W_p$ = Fraction of existing capital structure which is preferred equity.
- $W_e$ = Fraction of existing capital structure which is common equity and retained earnings.
- $R_{de}$ = Predicted nominal cost of long term debt expressed as a fraction.
- $R_{pe}$ = Predicted nominal cost of preferred stock expressed as a fraction.
- $R_{ce}$ = Predicted nominal cost of common stock expressed as a fraction.
- $INF$ = Percentage change in the GNP implicit price deflator over the past 12 months expressed as a fraction.
- $f_d$ = Flotation cost of debt expressed as a fraction.
- $f_p$ = Flotation cost of preferred stock expressed as a fraction.
- $f_e$ = Flotation cost of common stock expressed as a fraction.
- $t$ = Marginal federal income tax rate for the current year.

(b) Information on parameters used in Equation 1. (1) The parameters used in equation 1 will be the best practicable estimates. They will be obtained from the firm, accepted rating services (e.g., Standard & Poors, Moody’s), government publications, accepted financial publications, annual financial reports and statements of firms, and investment bankers.

(2) The predicted nominal cost of debt ($R_{de}$) may be estimated by determining the current average yield on newly issued bonds—industrial or utility as appropriate—which have the same rating as the firm’s most recent debt issue.

(3) The predicted nominal cost of preferred stock ($R_{pe}$) may be estimated by determining the current average yield on newly issued preferred stock—industrial or utility as appropriate—which has the same rating as the firm’s most recent preferred stock issue.

(4) (A) The predicted nominal cost of common stock ($R_{ce}$) is computed with equation 2:

$$ R_{ce} = R_{de} + B \times R_{pe} $$

where:

- $R_{de}$ = The risk free interest rate—the average of the most recent auction rates of U.S. Government 13-week Treasury Bills,
- $B$ = The “beta” coefficient—the relationship between the excess return on common stock and the excess return on the S&P 500 composite index, and
- $R_{pe}$ = The mean excess return on the S&P 500 composite index—the mean of the difference between the return on the S&P 500 composite index and the risk free interest rate for the years 1926-1976 as computed by Ibbotson and Sinquefield(1)−9.2%.

(B) The “beta” coefficient is computed with regression analysis techniques. The regression equation is Equation 3.

$$ (R_{de} - R_f) = A + B(R_{me} - R_f) + \varepsilon $$

where

- $R_{de}$ = The risk free interest rate in month t—

- $R_{me}$ = The mean excess return on the S&P 500 in month t.

- $\varepsilon$ = The error in month t.

1) Where a company issued privately placed debt that was not rated, the rating, number of shares, par value, interest rate, and terms of the debt issue will be obtained from the firm, accepted rating services (e.g., Standard & Poors, Moody’s), government publications, accepted financial publications, annual financial reports and statements of firms, and investment bankers.

2) If necessary, the following assumptions are made to determine the nominal cost of debt or preferred stock and their flotation costs.

(i) Where a company issued privately placed debt that was not rated, the rating,
applied to preferred stock could be used to determine the cost of debt and its flotation cost.

(ii) Where a company issued privately placed preferred stock that was not rated, the rating applied to debt could be used to determine the cost of preferred stock and its flotation costs.

(iii) In the case where all issues were privately placed, the current average yield on all newly issued debt or preferred could be used to determine the cost of debt or preferred respectively, and an average flotation cost, for debt or preferred, could be used.

(C) Evidence Requirements. Copies of this calculation with notations as to the source of the data must be submitted.

FOOTNOTES


(2) As an option, _R_f_ can be developed with the following equation:

\[
R_f = \frac{365D^1}{360 - ND^1} \times 12
\]

where:

- D = The average annual yield on three month U.S. Treasury bills reported in the Survey of Current Business auctioned in month _t_—which is reported using the bank discount method.
- N = Number of days to maturity.


APPENDIX II TO PART 504—FUEL PRICE COMPUTATION

(a) Introduction. This appendix provides the equations and parameters needed to specify the price of the delivered fuels to be used in the cost calculations associated with parts 503 and 504 of these regulations. The delivered price of the fuel to be used to calculate delivered fuel expenses must reflect (1) the price of each fuel at the time of the petition, and (2) the effects of future real price increases for each fuel. The delivered price of an alternate fuel used to calculate delivered fuel expenses must reflect the petitioner’s delivered price of the alternate fuel and the effects of real increases in the price of that alternate fuel. Paragraphs (b), (c) and (d) below provide the procedure to: (1) Calculate fuel price and inflation indices; (2) account for projected real increases in fuel prices when planning to burn one or more than one fuel; and (3) account for projected real increases in the price of the alternate fuel. Table II–1 of this appendix (See paragraph (b)) contains example fuel price and inflation indices based on the latest data appearing in the Energy Information Administration’s (EIA) Annual Energy Outlook (AEO).

The fuel price and inflation indices will change yearly with the publication of the AEO. Revisions shall become effective after final publication. However, the relevant set of parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time a decision is rendered, whichever is more favorable to the petitioner.

(b) Computation of Fuel Price and Inflation Indices.

(1) the Petitioner is responsible for computing the annual fuel price and inflation indices by using Equation II–1 and Equation II–2, respectively. The petitioner may compute the fuel price index specified in Equation II–1 or use his own price index. However, if he uses his own price index, the source or the derivation of the index must be fully documented and be contained in the evidential summary. Equation II–1 is:

\[
PX = \frac{Pi}{Po}
\]

where:

- _PX_ = The fuel price index for each fuel in year _i_.
- _Pi_ = Price of fuel in year _i_.
- _Po_ = Price of fuel in base year.

Equation II–2 is:

\[
IX = \frac{GXi}{GXo}
\]

where:

- _IX_ = The inflation index in year _i_.
- _GXi_ = The NIPA GNP price deflator for year _i_.
- _GXo_ = The NIPA GNP price deflator for the base year.

(2) The parameters to be used in Equation II–1 are the Base Case fuel price projections found in EIA’s current AEO.

(3) When computing annual inflation indices, the petitioner is to use the Base Case National Macroeconomic Indicators (NIPA GNP Price Deflator) contained in EIA’s current AEO. If necessary, the petitioner must rebase the projection to the same year used for the fuel price projections. For example, in 1989 AEO projects the price deflator in 1982 dollars; this must be rebased to the year in which the petition is filed. The methodology used to rebase the inflation indices must follow standard statistical procedures and must be fully documented within the petition.

This index will remain frozen at the last year of the AEO’s projection for the remainder of the unit’s useful life.
(4) Table II-1 is provided as an example of the application of equations II-1 and II-2. This table contains annual fuel price indices for distillate oil, residual oil, natural gas, and coal. It also contains annual inflation indices. These values were computed from information contained in Table A3 and Table A11 of EIA’s AEO, 1989.

### Table II-1: Price and Inflation Indices for Use in the Cost Calculations

<table>
<thead>
<tr>
<th>Year</th>
<th>Distillate (DPX)</th>
<th>Residual (RPX)</th>
<th>Natural gas (GPX)</th>
<th>Coal (CPX)</th>
<th>Inflation (IX)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1986</td>
<td>1.0000</td>
<td>1.0000</td>
<td>1.0000</td>
<td>1.0000</td>
<td>1.0000</td>
</tr>
<tr>
<td>1987</td>
<td>0.9810</td>
<td>1.2134</td>
<td>0.9508</td>
<td>0.9231</td>
<td>1.0334</td>
</tr>
<tr>
<td>1988</td>
<td>0.9429</td>
<td>0.9407</td>
<td>0.8934</td>
<td>0.8639</td>
<td>1.0554</td>
</tr>
<tr>
<td>1989</td>
<td>0.9095</td>
<td>1.0119</td>
<td>0.9221</td>
<td>0.9112</td>
<td>1.1607</td>
</tr>
<tr>
<td>1990</td>
<td>1.0381</td>
<td>1.2292</td>
<td>1.1148</td>
<td>0.9349</td>
<td>1.3512</td>
</tr>
<tr>
<td>1991</td>
<td>1.2286</td>
<td>1.3241</td>
<td>1.2170</td>
<td>0.9527</td>
<td>1.4960</td>
</tr>
<tr>
<td>1992</td>
<td>1.4000</td>
<td>1.5415</td>
<td>1.4016</td>
<td>0.9586</td>
<td>1.5768</td>
</tr>
<tr>
<td>1993</td>
<td>1.4762</td>
<td>1.6403</td>
<td>1.4918</td>
<td>0.9704</td>
<td>1.6385</td>
</tr>
<tr>
<td>1994</td>
<td>1.5452</td>
<td>1.7273</td>
<td>1.5615</td>
<td>0.9763</td>
<td>1.7410</td>
</tr>
<tr>
<td>1995</td>
<td>1.6143</td>
<td>1.7905</td>
<td>1.6475</td>
<td>0.9882</td>
<td>1.8235</td>
</tr>
<tr>
<td>2000</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2001</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2002</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2003</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2004</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2005</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2006</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2007</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2008</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2009</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
<tr>
<td>2010</td>
<td>1.6680</td>
<td>1.8340</td>
<td>1.7049</td>
<td>0.9941</td>
<td>1.9025</td>
</tr>
</tbody>
</table>

(C) Fuel Price Computation.

(1) The delivered price of the proposed fuel to be burned (FPB), must reflect the real escalation rate of the proposed fuel, and must be computed with Equation EQ II-3.

\[
\text{EQ-II-3: } \text{FPB}_i = \text{MPB} \times \text{PX}_i
\]

where:

- \(\text{FPB}_i\) = Price of the proposed fuel (distillate oil, residual oil, or natural gas) in year \(i\).
- \(\text{MPB}\) = The current delivered market price of the proposed fuel.
- \(\text{PX}_i\) = The fuel price index value in year \(i\), computed with Equation II-1.

or:

(2) When planning to use more than one fuel in the proposed unit(s), the petitioner must use Equation II-1 and Equation II-3 to calculate the annual fuel price of each fuel to be used. The petitioner then must estimate the proportion of each fuel to be burned annually over the useful life of the unit(s). With these proportions and the respective annual fuel prices for each fuel, the petitioner must compute an annual weighted average fuel price. The methodology used to calculate the weighted average fuel price must follow standard statistical procedures and be fully documented within the petition.

(d) Fuel Price Computation—Alternate Fuel.

The delivered price of alternate fuel (PFA), must reflect the real escalation rate of alternate fuel and must be computed with Equation II-4.

\[
\text{EQ-II-4: } \text{PFA}_i = \text{APF} \times \text{APX}_i
\]

where:

- \(\text{PFA}_i\) = Price of the alternate fuel in year \(i\).
- \(\text{APF}\) = The current market price of the alternate fuel f.o.b. the facility.
- \(\text{APX}_i\) = The alternate fuel price index value for year \(i\), computed with Equation II-1.

In most cases the alternate fuel will be coal. The petitioner must use Equation II-1 (paragraph (b)) to compute the escalation rate (APX). If an alternate fuel other than coal is proposed the source or the derivation of the index must be fully documented and be contained in the evidential summary.

[54 FR 52896, Dec. 22, 1989]