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(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.

[46 FR 59889, Dec. 7, 1981, as amended at 54 FR 52893, Dec. 22, 1989]

**§ 501.192 [Reserved]**

**PART 503—NEW FACILITIES**

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

OMB Control No.: 1903–0075. See 46 FR 63209, Dec. 31, 1981.

**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 electric powerplants unless an exemption has been granted by OFE under

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subparts C and D of this part. Any person who owns, controls, rents, leases or operates a new powerplant that is subject to the prohibition may be subject to sanctions provided by the Act or these regulations.

[54 FR 52893, Dec. 22, 1989]

### § 503.2 Prohibition.

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.

[54 FR 52893, Dec. 22, 1989]

### § 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 petroleum 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 an 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.

**EQ 1**            **DELTA = COST (ALTERNATE) - COST (OIL)**

where COST(ALTERNATE) and COST(OIL) are determined by:

**EQ 2**            **COST = I +  $\sum_{i=1}^N \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$**

and I (capital investment) is:

**EQ 3**            **I =  $\sum_{i=-g}^N \frac{I_i - ITC_i - S_i - t_i(DPR_i) \left( \frac{IX_e}{IX_i} \right)}{(1+k)^i}$**

(4) The terms in Equations 2 and 3 are defined as follows:

- i=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=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=The useful life of the unit (see paragraph (d)(5) of this section).
- I<sub>i</sub>=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.)
- OM<sub>i</sub>=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.)
- S<sub>i</sub>=Salvage value of capital investment (in dollars) in year i.
- FL<sub>i</sub>=Annual cash outlay for delivered fuel expenses (in dollars) in year i. (See paragraph (d)(3) of this section for FL<sub>i</sub> calculation instructions and appendix II of these regulations for the procedures to determine fuel price.)
- k=The discount rate expressed as a fraction (see paragraph (d)(4) of this section).
- ITC<sub>i</sub>=Federal investment tax credit used in year i resulting from capital investments (see paragraph (d)(6) of this section).
- DPR<sub>i</sub>=Depreciation in year i resulting from capital investments (see paragraph (d)(6) of this section).
- t<sub>i</sub>=Marginal income tax rate in year i (see paragraph (d)(6) of this section).
- IX<sub>i</sub>=Inflation index value for year i (see appendix II to part 504 for method of computation).
- IX<sub>e</sub>=Inflation index value for the year e, 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.

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(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.

**EQ 4**                    **DELTA = COST (ALTERNATE) - COST (OIL)**

where COST(ALTERNATE) and COST(OIL) are determined by:

**EQ 5**                    **COST = I x** 
$$\frac{\sum_{i=1}^P (1+k)^{-i}}{\sum_{i=1}^N (1+k)^{-i}} + \sum_{i=1}^P \frac{(OM_i + FL_i)(1-t_i)}{(1+k)^i}$$

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(ALTERNATE)) assuming the length of the proposed exemption is one year.

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

(iii) Compute the difference (DELTA) between COST (ALTERNATE) and COST (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<sub>i</sub>) 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).

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.

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(3)(i) The annual cash outlays for operations and maintenance expense ( $OM_i$ ) and fuel expense ( $FL_i$ ) 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<sup>1</sup>) 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.<sup>1</sup>

(ii) When computing the annual cash outlays for operations and maintenance expense ( $OM_i$ ) and fuel expense ( $FL_i$ ) 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):

$$EQ\ 6\ A = \frac{\sum_{i=1}^Q (1+k)^{-i}}{\sum_{i=1}^R (1+k)^{-i}}$$

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 ( $ITC_i$ ) and depreciation ( $PR_i$ ) 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

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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 in-

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vestments 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.

[46 FR 59903, Dec. 7, 1981; 46 FR 63033, Dec. 30, 1981; 47 FR 15314, Apr. 9, 1982; 54 FR 52893, Dec. 22, 1989]

### § 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:

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(1) A diligent effort has been made to purchase firm power for the first year of operation to cover all or part of the projected shortfall at a cost that is less than ten (10) percent above the annualized cost of generating power from the proposed plant (including the capital, operation and maintenance expenses, and fuel prices); and

(2)(i) Despite these efforts, the reserve margin in the petitioner's electric region, normal dispatch area, or service area, in the absence of the proposed plant, would fall below twenty (20) percent during the first year of proposed operation; or

(ii) Despite these efforts, the reserve margin will be greater than twenty (20) percent but reliability of service would be impaired. In such case, the certification must be related to factors not included in the calculation of reserve margin, such as transmission constraints.

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

(1) Duly executed certification required under paragraph (b) of this section; and

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

(d) *FERC consultation.* OFE will forward a copy of any petition for which a showing is required under this section to FERC promptly after it is filed with OFE, and OFE will consult with FERC before making the no alternate supply of power finding.

[46 FR 59903, Dec. 7, 1981, as amended at 47 FR 15314, Apr. 9, 1982; 54 FR 52894, Dec. 22, 1989]

### § 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.)

NOTE: In meeting this general requirement, OFE will require a petitioner to examine only mixtures of oil and coal and natural gas and coal, or, where petitioner wishes to examine an additional or substitute mixture, such other alternate fuels as OFE and the petitioner agree are reasonable to petitioner's circumstances.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

### § 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

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

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

### § 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).

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

### § 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 compli-

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ance 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 surroundings, alternative site(s), the facility's current proposed operations, its

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fuel capability, and its pollution abatement systems and equipment (including 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 Certification Exemptions 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.

	Yes	No	N/A
(1) Is your facility located in, or will it affect a wetland (Protection of Wetlands Executive Order No. 11990)?			
(2) Is your facility located in, or will it affect, a 100-year floodplain (Floodplain Management Executive Order No. 11988)?			
(3) Will your facility affect a designated wild, scenic, or recreation river (Wild and Scenic Rivers Act)?			
(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)?			
(4)(B) Has a qualified biologist determined that your facility will not affect any species on the Threatened and Endangered Species list?			
(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?			
(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?			

[46 FR 59903, Dec. 7, 1981, as amended at 47 FR 15315, Apr. 9, 1982; 51 FR 18866, May 22, 1986; 52 FR 658, Jan. 7, 1987; 54 FR 52894, Dec. 22, 1989]

**§ 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.

[54 FR 52894, Dec. 22, 1989]

**Subpart C—Temporary Exemptions for New Facilities**

**§ 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.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

**§ 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.

[46 FR 59903, Dec. 7, 1981, as amended at 47 FR 15315, Apr. 9, 1982; 54 FR 52894, Dec. 22, 1989]

**§ 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) Inaccessability 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 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.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

**§ 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 prohibi-

tions 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) Where the petitioner has applied for a construction permit from EPA or an appropriate State agency prior to petitioning for an exemption under this section, a copy of that application and synopsis of supporting documents filed with or subsequent to that 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 would provide the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of its ability to meet applicable standards and criteria when using both the proposed fuel and the alternate fuel(s) which would provide the basis for exemption. All such analysis must be based on accepted analytical techniques, such as air quality

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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

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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.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

### § 503.24 Future use of synthetic fuels.

(a) *Eligibility.* Section 211(b) of the Act provides for a temporary exemption based upon the future use of synthetic fuels. To qualify, a petitioner must certify that:

(1) The petitioner will be able to comply with the applicable prohibitions imposed by the Act by the 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;

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(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.

[46 FR 59903, Dec. 7, 1981; 47 FR 15315, Apr. 9, 1982; 54 FR 52894, Dec. 22, 1989]

### § 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.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52894, Dec. 22, 1989]

## 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:

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(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 unit;

(2) Such a supply is not likely to be available within the first 10 years of useful life of the proposed unit;

(3) No alternate 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.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52895, Dec. 22, 1989]

### **§ 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 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.

(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.* 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;

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

(5) All data required by § 503.6 (cost calculation) of these regulations necessary for computing the cost calculation formula.

[46 FR 59903, Dec. 7, 1981, as amended at 47 FR 15315, Apr. 9, 1982; 54 FR 52895, Dec. 22, 1989]

### **§ 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.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52895, Dec. 22, 1989]

**§ 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 require-

ments. 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

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provides the maximum possible reduction of pollution;

(5) An examination of the environmental compliance of the facility, including an analysis of its ability to meet applicable standards and criteria when using both the proposed fuel and the alternate fuel(s) which would provide the basis for the exemption. All such analysis must be based on accepted analytical techniques, such as air quality 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; or (ii) 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 (SIP) revisions); and

(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;

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

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

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

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

(d) *Certification alternative.* (1) To qualify for this exemption, in lieu of meeting the evidentiary requirements of paragraph (c) of this section, a petitioner may 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; and

(iv) Use of mixtures is not feasible, as required under § 503.19 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);

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

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

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52895, Dec. 22, 1989]

### **§ 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:

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(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., covenants 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.

[46 FR 59903, Dec. 7, 1981, as amended at 47 FR 15315, Apr. 9, 1982; 54 FR 52895, Dec. 22, 1989]

### § 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 or 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

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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.

[46 FR 59903, Dec. 7, 1981; 46 FR 63033, Dec. 30, 1981, as amended at 54 FR 52895, Dec. 22, 1989]

**§ 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

[BTU's per KWHR sold]	
State name	Oil/gas savings Btu/kWh
Alabama .....	33
Arizona .....	802
Arkansas .....	1,363
California .....	3,502
Colorado .....	289
Connecticut .....	3,924
Delaware .....	3,478
Washington, DC. ....	895
Florida .....	3,177
Georgia .....	45
Idaho .....	0
Illinois .....	250
Indiana .....	53
Iowa .....	147
Kansas .....	686
Kentucky .....	34
Louisiana .....	4,189
Maine .....	2,560
Maryland .....	895
Massachusetts .....	5,250
Michigan .....	256
Minnesota .....	151
Mississippi .....	1,519
Missouri .....	57
Montana .....	60
Nebraska .....	139
Nevada .....	761
New Hampshire .....	2,695
New Jersey .....	1,894
New Mexico .....	1,528
New York .....	4,219
North Carolina .....	49
North Dakota .....	47
Ohio .....	36
Oklahoma .....	5,180
Oregon .....	0
Pennsylvania .....	771
Rhode Island .....	1,800
South Carolina .....	24
South Dakota .....	36
Tennessee .....	20
Texas .....	4,899
Utah .....	107
Vermont .....	105

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[BTU's per KWHR sold]	
State name	Oil/gas savings Btu/kWh
Virginia .....	460
Washington .....	3
West Virginia .....	126
Wisconsin .....	72
Wyoming .....	75

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 7600 BTU/KWHR, and be operated at a capacity factor of 90%. The annual fuel consumption is therefore calculated to be  $2,996 \times 10^9$  Btu/yr. ( $50,000 \text{ KW} \times 7600 \text{ BTU/KWHR} \times .9 \times 8760 \text{ HR/YR}$ ) The oil and gas backed off the grid would be calculated to be  $.2070 \times 10^9$  BTU/YR. ( $50,000 \text{ KW} \times 5250 \text{ BTU/KWHR} \times .9 \times 8760 \text{ HR/YR}$ ) since the proposed unit would consume more oil that 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

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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.

[46 FR 59903, Dec. 7, 1981, as amended at 54 FR 52896, Dec. 22, 1989]

§§ 503.39–503.44 [Reserved]

## PART 504—EXISTING POWERPLANTS

Sec.

504.2 Purpose and scope.

504.3–504.4 [Reserved]

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

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

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

504.8 Prohibitions against excessive use of petroleum or natural gas in mixtures—certifying powerplants.

504.9 Environmental requirements for certifying powerplants.

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

APPENDIX II TO PART 504—FUEL PRICE COMPUTATION

AUTHORITY: Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42

U.S.C. §7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3289 (42 U.S.C. 8301 *et seq.*); Energy Security Act, Pub. L. 96-294, 94 Stat. 611 (42 U.S.C. 8701 *et seq.*); E.O. 1209, 42 FR 46267, Sept. 15, 1977.

SOURCE: 45 FR 53692, Aug. 12, 1980, unless otherwise noted.

(Approved by the Office of Management and Budget under control number 1903-0075. See 46 FR 63209, Dec. 31, 1981.)

### § 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.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3269 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35; E.O. 12009, 42 FR 46267, Sept. 15, 1977)

[47 FR 50849, Nov. 10, 1982]