

§ 503.32

10 CFR Ch. II (1–1–11 Edition)

(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