

§§ 504.3–504.4

§§ 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 the final prohibition order in order to take into account changes in relevant facts and circumstances by following the procedure contained in § 501.52(d).

(d) *Prohibition order compliance schedule.* The certification described above, which forms the basis for the issuance of a prohibition order to a powerplant, shall include a prohibition order compliance schedule. The compliance schedule should contain the following:

(1) A schedule of progressive events involved in the conversion project, including construction of any facilities for the production of fuel or fuel handling equipment, and contracts for the purchase of alternate fuels, and estimated date of compliance with the applicable prohibitions of the Act; and

(2) A schedule indicating estimated dates for obtaining necessary federal, state, and local permits and approvals. Any prohibition order issued under the certification provisions of §§ 504.5, 504.6, and 504.8 will be subject to appropriate

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conditions subsequent 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.

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(Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7101 *et seq.*); Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93–319, as amended by Pub. L. 94–163, Pub. L. 95–70, and Pub. L. 95–620 (15 U.S.C. 719 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, as amended by Pub. L. 97–35 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35)

[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

(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

(d) *Substantial physical modification.* In the case of electing and certifying powerplants, OFP will make its determination on whether a physical modification to a unit is “substantial” on a case-by-case basis. In the case of certifying powerplants, OFP will consider the factors set forth below for the purpose of concurrence in the certification. OFP will consider physical modifications made to the unit as “substantial” where warranted by the magnitude and complexity of the engineering task or where the modification would impact severely upon operations at the site.⁵ OFP will not, however, assess physical modification on the basis of cost.

(e) *Substantial reduction in rated capacity.* In the case of electing and certifying powerplants, OFP will make this determination on the basis of the following factors. A certifying powerplant should present information to support its certification regarding these factors in order for OFP to make its review for concurrence.

(1) OFP regards a unit’s derating of 25 percent or more, as a result of converting a unit from oil or gas to an alternate fuel, as substantial.

(2) OFP will presume that a derating of less than 10 percent, as a result of converting a unit from oil or gas to an alternate fuel, is not substantial unless

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.

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convincing evidence to the contrary is submitted in rebuttal.⁶

(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

⁶For example, units that are the subject of a prohibition order will not have installed 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.

the firm's ability or inability to finance the conversion including, but not limited to, the following:

(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.⁷ 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.

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(Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended by Pub. L. 94-163, Pub. L. 95-70, and 15 U.S.C. 719 *et seq.*; 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)

[45 FR 53692, Aug. 12, 1980, as amended at 47 FR 17044, Apr. 21, 1982; 47 FR 50849, Nov. 10, 1982]

§ 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 and an alternate fuel as its primary energy source, OFP may prohibit, by order, the use in that unit of

⁷OFP will not require the proposed order recipient to cancel or defer construction or reconstruction of any alternate-fuel-fired facility, or any facility exempt from the prohibitions of the Act, for which a decision to finance such facility has been made by the appropriate company official before the publication of the prohibition order. The proposed order recipient may choose to cancel or defer any such facility.