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§ 791. Congressional declaration of purpose

The purposes of this chapter are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources.

(Pub. L. 93-319, §1(b), June 22, 1974, 88 Stat. 246.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-319 which, in addition to enacting this chapter and provision set out as a note under this section, enacted sections 1857c-10 and 1857f-6f of Title 42, The Public Health and Welfare, and amended sections 1857b-1, 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, 1857f-6e, 1857f-7, 1857h-5, and 1857i of Title 42. For complete classification of this Act to the Code, see Tables.

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 93-319, §1(a), June 22, 1974, 88 Stat. 246, provided that Pub. L. 93-319 [enacting this chapter, enacting sections 1857c-10 and 1857f-6f of Title 42, The Public Health and Welfare, and amending sections 1857b-1, 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, 1857f-6e, 1857f-7, 1857h-5, and 1857i of Title 42] may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

§ 792. Coal conversion and allocation

(a) Powerplant and fuel burning installations

The Federal Energy Administrator—

(1) shall, by order, prohibit any powerplant, and

(2) may, by order, prohibit any major fuel burning installation, other than a powerplant,

from burning natural gas or petroleum products as its primary energy source, if the requirements of subsection (b) are met and if (A) the Federal Energy Administrator determines such powerplant or installation on June 22, 1974, had, or thereafter acquires or is designed with, the capability and necessary plant equipment to burn coal, or (B) such powerplant or installation is required to meet a design or construction requirement under subsection (c).

(b) Prerequisites to issuance or effectiveness of orders prohibiting use of natural gas or petroleum products as primary energy source

The requirements referred to in subsection (a) are as follows:

(1) An order under subsection (a) may not be issued with respect to a powerplant or installation unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum

products or natural gas, is practicable and consistent with the purposes of this chapter, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met; and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

(2)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(A)¹ of title 42 is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 1857c-10(d)(3)(B)¹ of title 42.

(3)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2) applies, so as to apply such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 1857c-10(d)(1)(B)¹ of title 42 that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 1857c-10(c)¹ of title 42, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(B)¹ of title 42 is the earliest date that such plant or installation will be able to comply with all applicable requirements of such 1857c-10¹ of title 42. Such order (or modification) shall not be effective

¹ See References in Text note below.

during any period certified by the Administrator of the Environmental Protection Agency under section 1857c-10(d)(3)(B)¹ of title 42.

(c) Construction and design of powerplants or other major fuel burning installations

The Federal Energy Administrator may require that any powerplant or other major fuel burning installation in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant or other major fuel burning installation may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) in the case of a powerplant to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any capital investment made as a result of any requirement imposed under this subsection.

(d) Allocation of coal

The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or major fuel-burning installation to which an order under subsection (a) has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this chapter.

(e) Definitions

For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange.

(2) The term "coal" includes coal derivatives.

(f) Expiration of authority; effective dates

(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, December 31, 1978. Such a rule or order may take effect at any time before January 1, 1985.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1984; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1985.

(Pub. L. 93-319, §2, June 22, 1974, 88 Stat. 246; Pub. L. 94-163, title I, §101, Dec. 22, 1975, 89 Stat. 875; Pub. L. 95-70, §7, July 21, 1977, 91 Stat. 277.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subssecs. (b)(1) and (d), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

Section 1857c-10 of title 42, referred to in subsec. (b)(2)(B), (3)(B), was in the original a reference to sec-

tion 119 of the Clean Air Act, and was repealed by Pub. L. 95-95, §112(b), which provided in part that references in this section to section 1857c-10 shall be construed to refer to section 7413(d) of title 42 and to paragraph (5) thereof in particular. Subsequently, section 7413 of title 42 was amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) no longer relates to final compliance orders. See section 7413(a) of title 42 for provisions relating generally to compliance orders. For further details, see Compliance Orders note set out below.

AMENDMENTS

1977—Subsec. (f)(1). Pub. L. 95-70 substituted "shall expire at midnight, December 31, 1978" for "shall expire at midnight, June 30, 1977".

1975—Subsec. (a). Pub. L. 94-163, §101(b), authorized the Administrator to prohibit any powerplant or other fuel burning installation from burning natural gas or petroleum products as its primary energy source if such powerplant or other installation is required to meet a design or construction requirement under subsec. (c) of this section.

Subsec. (c). Pub. L. 94-163, §101(c), inserted "or other major fuel burning installation" after "powerplant" wherever appearing and inserted "in the case of a powerplant" after "if the Administrator determines that (1)".

Subsec. (f)(1). Pub. L. 94-163, §101(a)(1), substituted "June 30, 1977" for "June 30, 1975" and "January 1, 1985" for "January 1, 1979".

Subsec. (f)(2). Pub. L. 94-163, §101(a)(2), substituted "December 31, 1984" for "December 31, 1978" and "January 1, 1985" for "January 1, 1979".

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

COMPLIANCE ORDERS

Pub. L. 95-95, title I, §112(b), Aug. 7, 1977, 91 Stat. 709, repealed section 119 of the Clean Air Act, which was classified to section 1857c-10 of Title 42, The Public Health and Welfare, and which related to the Administrator's authority to deal with the energy shortage. Section 112(b) of Pub. L. 95-95 provided that:

"(1) Section 119 of such Act [section 1857c-10 of Title 42, The Public Health and Welfare] is hereby repealed. All references to such section 119 [section 1857c-10 of Title 42] or subsections thereof in section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319) [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93-319, June 22, 1974, 88 Stat. 246], shall be construed to refer to section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and to paragraph (5) thereof in particular. Any certification or notification required to be given by the Administrator of the Environmental Protection Agency under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be given only when the Governor of the State in which is located the source to which the proposed order under section 113(d)(5) of the Clean Air Act [section 7413(d)(5) of Title 42] is to be issued gives his prior written concurrence.

"(2) In the case of any major stationary source to which any requirement is applicable under section 113(d)(5)(B) of the Clean Air Act [section 7413(d)(5)(B) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes

such Act [Pub. L. 93-319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such source will be able to comply with all such requirements. In the case of any plant or installation which the Administrator of the Environmental Protection Agency determines (after consultation with the State) will not be subject to an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93-319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such plant or installation will be able to burn coal in compliance with all applicable emission limitations under the implementation plan.

“(3) Any certification required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93-319], or under this subsection may be provided in an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42].”

§ 793. Protection of public health and environment

(a) Distribution of low sulfur fuel

Any allocation program provided for in section 792 of this title or in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],¹ shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

(b) Study of chronic effects of sulfur oxide emissions among exposed populations

In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119¹ of the Clean Air Act [42 U.S.C. 1857c-10] applies, the Department of Health and Human Services shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of \$3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

(c) Major Federal actions significantly affecting the quality of the human environment

(1) No action taken under the Clean Air Act [42 U.S.C. 7401 et seq.] shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) No action under section 792 of this title for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human en-

vironment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. However, before any action under section 792 of this title that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)], to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 792 of this title which will be in effect for more than a one-year period or any action to extend an action taken under section 792 of this title to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this chapter.

(d) Importation of hydroelectric energy

In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 [42 U.S.C. 4332] for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

(Pub. L. 93-319, § 7, June 22, 1974, 88 Stat. 259; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§ 751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

Section 119 of the Clean Air Act [42 U.S.C. 1857c-10], referred to in subsec. (b), was repealed by Pub. L. 95-95, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which is set out as a Compliance Orders note under section 792 of this title. A new section 119 of the Clean Air Act was added by Pub. L. 95-95, § 117(b), and is classified to section 7419 of Title 42, The Public Health and Welfare.

The Clean Air Act, referred to in subsec. (c), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act of the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

¹ See References in Text note below.