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ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION

Notice of Proposed Rulemaking

FEDERAL ENERGY
ADMINISTRATION

[10 CFR Parts 303, 305, 307]

ENERGY SUPPLY AND ENVIRONMENTAL
COORDINATION

Notice of Proposed Rulemaking

The Federal Energy Administration ("FEA") hereby gives notice of a proposal to amend Chapter II of Title 10 of the Code of Federal Regulations by the addition of the following new parts: Part 303—Administrative Procedures and Sanctions; Part 305—Coal Utilization; and Part 307—New Powerplants.

I. Introduction. In order to reduce the Nation's dependence on foreign oil, Congress passed the Energy Supply and Environmental Coordination Act of 1974 ("ESECA"). Congress expressly intended 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." As it relates to these regulations, the Conference Report states that ESECA was intended to "encourage increased burning of coal" and "the opening of new coal mines to increase energy supplies."

Section 2 (Coal Conversion and Allocation) of ESECA grants the Administrator of FEA the authority to: (a) prohibit certain powerplants and major fuel burning installations from burning natural gas or petroleum products as their primary energy source; (b) require that certain powerplants in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed to be capable of using coal as its primary energy source; and (c) allocate coal to any powerplant or major fuel burning installation that has been prohibited by an FEA order from burning natural gas or petroleum products as its primary energy source or to other persons as is necessary to effectuate the purposes of ESECA.

The purpose of the rulemaking proposed herein is to implement sections 2 (a), (b) and (c) of ESECA. The regulations implementing section 2(d) (allocation) will be proposed in a separate rulemaking, which will be published shortly.

FEA proposes to implement sections 2 (a), (b) and (c) of ESECA by prohibiting certain powerplants and other major fuel burning installations from burning natural gas or petroleum products as their primary energy source, through issuance of "prohibition orders," and by requiring that certain powerplants in the early planning process be designed and constructed to be capable of burning coal as their primary energy source, through issuance of "construction" orders. Before issuing either of those orders, however, FEA must make certain findings, which are discussed in connection with Part 305—Coal Utilization, and Part 307—New Powerplants.

If FEA is able to make the appropriate findings concerning a powerplant or

other major fuel burning installation, FEA is required by ESECA to issue a prohibition order to a powerplant, but has discretion concerning whether to issue a prohibition order to a major fuel burning installation. The issuance of a construction order to a powerplant in the early planning process is discretionary.

Prohibition orders cannot become effective until the Environmental Protection Agency ("EPA") makes several determinations and so notifies FEA. The nature of EPA's involvement in the coal utilization program is described in connection with Part 305.

FEA's authority to issue prohibition orders and construction orders expires on June 30, 1975, in accordance with section 2(f) of ESECA. However, FEA retains the authority to modify or rescind and enforce such orders until midnight, December 31, 1978.

In the following discussion, each subpart will be addressed separately. Parts 305 and 307 contain substantive regulations, while Part 303 constitutes the procedural regulations.

II. Part 305—Coal Utilization. Section 2(a) of ESECA authorizes FEA to issue orders prohibiting certain powerplants and major fuel burning installations from burning natural gas or petroleum products as their primary energy source if the findings stated in sections 2(a) and (b) are made, and Part 305 of these proposed regulations implements that authority.

Several terms in ESECA are central to these proposed regulations, and it is appropriate to define them at this point. "Powerplant" is defined in the proposed regulations as one or more fossil-fuel fired steam electric generating units that produce steam electric power for purposes of sale or exchange, and includes any person who owns, leases, operates, controls or supervises any such unit or units. "Major fuel burning installation" is defined in the proposed regulations as an installation or unit other than a powerplant that has or is a fossil-fuel fired boiler, burner, or other combustor of fuel or any combination thereof at a single site, and includes any person who owns, leases, operates, controls or supervises any such installation or unit. The regulations also would provide that prohibition orders will be issued only to a boiler, burner or other combustor of fuel, or combinations of combustors at a single site (major fuel burning installation) that otherwise qualify for issuance of a prohibition order under the Act and which fire at a rate of 50 million Btu's per hour or greater. "Primary energy source" would be defined by the regulations to mean, with respect to a powerplant or major fuel burning installation that utilizes fossil-fuels, the fuel that is or will be used for all purposes except for the minimum amounts required for startup, testing, flame stabilization and control.

The proposed prohibition orders would be of two durations; those applicable for a period ending on or before June 30, 1975 ("short-term orders") and those applicable after June 30, 1975 ("long-

term orders"). Prior to issuance of a short-term or long-term prohibition order, or the modification of a short-term order to make it a long-term prohibition order, ESECA requires that FEA make several findings. The findings described in paragraphs A to C below must be made before a prohibition order can be issued either to a powerplant or to a major fuel burning installation. The finding described in paragraph D is applicable only to powerplants.

FEA may at its discretion, make these findings, in the case of a powerplant, either for an individual fossil-fuel fired steam electric generating unit that produces electric power for sale or exchange, or for combinations thereof; and in the case of major fuel burning installations, either for an individual fossil-fuel fired boiler, burner or other combustor of fuel, or for combinations thereof at a single site.

A. Capability and necessary plant equipment to burn coal. FEA may issue a prohibition order only if it finds that on the date of the enactment of ESECA (June 22, 1974), the powerplant or major fuel burning installation had the capability and necessary plant equipment to burn coal. The assessment of capability and necessary plant equipment requires that FEA investigate coal handling facilities and appurtenances, both internal and external; adequate facilities for the storage of coal; and other equipment such as a boiler, unloaders, crushers, conveyors, pulverizers, scales, burners, soot blowers, and special coal-burning instrumentation and controls.

The absence of any one or combination of the above facilities or equipment is not grounds, however, for concluding that the plant lacked the capability and necessary plant equipment to burn coal. The Conference Report to ESECA makes it clear that this finding should not be rigidly applied in a way that would frustrate the purpose of the Act to encourage the burning of coal in lieu of petroleum products and natural gas. The requirement of capability to burn coal does not mean that the powerplant or major fuel burning installation actually had to have been burning coal on June 22. Therefore prohibition orders may be issued to those burning natural gas or petroleum products on that date, provided the required finding can be made. Furthermore, the fact that any reconversion required as a result of a prohibition order might necessitate the upgrading of or additions to plant equipment would not preclude a finding of capability.

B. Prohibition of the utilization of natural gas and petroleum products is practicable and consistent with the purposes of ESECA. To determine whether a prohibition order is practicable, FEA proposes to analyze the reasonableness of any additional costs associated with burning coal, including the cost of coal and the equipment required for burning coal, and any costs that may be associated with complying with section 119 of the Clean Air Act (section 3 of

ESECA). The analysis of any costs associated with compliance with the Clean Air Act would be based on the facts available to FEA before issuance of an order. FEA's analysis also would take into account the susceptibility of natural gas and petroleum products to volatile changes in price and to interruption of supply. The prohibition would be found to be consistent with the purposes of ESECA if it serves to discourage the use of natural gas and petroleum products and to encourage the use of coal as the primary energy source by powerplants and major fuel burning installations.

C. Coal and coal transportation facilities will be available during the period the prohibition is in effect. FEA would base its conclusion as to availability of coal on a determination of the anticipated demand for coal, the type of coal (which may include, but is not limited to, rank, Btu's, moisture, volatiles, ash and sulfur content) it is anticipated that the powerplant or major fuel burning installation will burn, the location of such coal, the practicability of its production including the possibility that new mines would be opened, and any State or local laws or policies that limit the extraction or utilization of such coal. To determine the availability of coal transportation facilities, FEA proposes to evaluate the means and ease with which coal is or could be transported to the powerplant or major fuel burning installation, including the availability of rolling stock and tracks, barges, pipelines and other feasible means of transportation.

D. The prohibition will not impair the reliability of service in the area served by the powerplant. Whether there will be an impairment of the reliability of service to the area served by the powerplant would be found by evaluating the length of time scheduled outage, if any, associated with any prohibition order in relation to other scheduled outages of electric power generation units that are part of the electric power generation system, and the reserve capacity of other systems with which the powerplant is interconnected. "Impairment" means an unreasonable risk of loss of load.

In addition, if the FEA proposes to issue a short-term prohibition order, it must take into account the likelihood that the powerplant or major fuel burning installation will be permitted to burn coal after June 30, 1975. To satisfy this requirement, FEA proposes to consider the likelihood that environmental or economic restraints will prevent the powerplant or installation from burning coal after June 30, 1975.

In selecting a major fuel burning installation to which it proposes to issue a prohibition order, FEA would consider, among other things, the installation's location, its product or output, the purpose for which coal would be burned, the quantity of natural gas or petroleum products now being burned, the practicability of burning coal given the short-term variation of demand for output by the installation, and the burden a pro-

hibition order would place on existing coal supply and means of delivery. As mentioned previously, no major fuel burning installation, whether a single burner, boiler or other combustor of fuel, or a combination of these, would be issued a prohibition order unless the combustor, or combinations thereof, fire at a rate of 50 million Btu's per hour or greater.

Prior to issuance of a prohibition order, short-term or long-term, or the modification of a short-term order to make it a long-term order, ESECA explicitly requires that there be public participation in the decision-making process. Prior to issuance of a short-term order, interested persons may submit written data, views and argument, before issuance of a long-term order or the modification of a short-term order to make it long-term, interested persons must be given an opportunity to make oral presentation of data, views and argument, as well as to submit written comments. In addition to satisfying these notice requirements, FEA proposes to go beyond the requirement of ESECA and to invite the submission of written data, views and argument before issuing other types of modifications or before rescission of a prohibition order, when the impact of such actions would be of public interest.

The presentation of data, views and argument, whether oral or written, may be made by interested persons, which includes members of the public. The public participation will be invited by issuance of a "Notice of Intent to Issue Prohibition Order (or to Modify or Rescind a Prohibition Order)", as appropriate, in the FEDERAL REGISTER. The time period for submission of written comments will be no less than 10 days from publication of the notice.

EPA involvement. Section 3 of ESECA, which amended the Clean Air Act (42 U.S.C. 1851 et seq., as amended by Pub. L. 93-319, 88 Stat. 246) by adding section 119, authorizes EPA, subject to certain qualifications, to issue a "temporary suspension", during the period June 22, 1974 to June 30, 1975, of any stationary source fuel or emission limitation. EPA is also authorized to issue a "compliance date extension," for the period through December, 1978 to any powerplant or major fuel burning installation that has been issued a prohibition order.

Issuance of a compliance date extension means that the powerplant or major fuel burning installation shall not, until January 1, 1979, be prohibited from burning coal that is available to that source as a result of the application of any air pollution requirement in that section, except as provided in section 119 (d) (3). Section 119(d) (3) states that if a source to which a temporary suspension or compliance date extension applies is determined not to be in compliance with an applicable primary standard condition or regional limitation, EPA may revoke the suspension or extension. Further, if the Administrator of EPA finds that the burning of coal by the source will result in an increase in

emissions of any air pollutant for which national ambient air quality standards have not been promulgated (or an air pollutant which is transformed in the atmosphere into an air pollutant for which such a standard has not been promulgated), and that such increase may cause (or materially contribute to) a significant risk to public health, the Administrator of EPA shall certify the period for which the prohibition order shall not be in effect.

The issuance of a temporary suspension or a compliance date extension is contingent on the Administrator of EPA making certain findings, set out in sections 119(b) and 119(c), respectively, of the Clean Air Act. Not all powerplants and major fuel burning installations that receive prohibition orders from FEA will be eligible for temporary suspensions or compliance date extensions. They will, nevertheless, be prohibited from burning petroleum products or natural gas as soon as they are able to burn coal in compliance with all applicable air pollution requirements. EPA's findings are fully discussed in the preamble to its proposed regulations for temporary suspensions and compliance date extensions (39 FR 32624-31 (September 10, 1975)).

Under the provisions of ESECA, a short-term prohibition order cannot become effective until the date that the Administrator of EPA certifies, pursuant to section 119(d) (1) (A) of the Clean Air Act, is the earliest date that the powerplant or major fuel burning installation will be able to comply with the air pollution requirements that will be applicable to it. A long-term prohibition order (or modification of a short-term order to make it long-term) cannot become effective until the Administrator of EPA notifies FEA, pursuant to section 119(d) (1) (B) of the Clean Air Act, that the powerplant or major fuel burning 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 119(c) of the Act, or if such notification is not given, the date which the Administrator of EPA certifies, pursuant to section 119(d) (1) (B) is the earliest date that such powerplant or installation will be able to burn coal in compliance with all applicable requirements of section 119.

Neither a short-term order, a long-term order, nor the modification of a short-term order to make it long-term can become effective until the date determined by EPA, and transmitted to FEA as described above. Under the proposed regulations, however, those orders would not become effective until the date determined by EPA and until FEA serve a Notice of Effectiveness on the powerplant or major fuel burning installation to which a prohibition order was issued, which notice would inform it of the effective date of the order.

III. PART 307—New Powerplants. Section 2(c) of ESECA authorizes FEA to require that a powerplant in the early planning process (other than a combustion gas turbine or a combined cycle

unit) be designed and constructed to be capable of using coal as its primary energy source, which would be effected by issuance of a construction order. The proposed regulations provide that such a requirement is discretionary, but FEA intends to issue construction orders to all powerplants in the early planning process, for which FEA can make the findings required by section 2(c) of ESECA.

A construction order would require that a powerplant in the early planning process be designed and constructed to be capable of using coal as its primary energy source. A powerplant would satisfy that requirement if it is designed and constructed either to use only coal as its primary energy source, or to use two or more fuels, one of which is coal, as its primary energy source. ("Powerplant" and "primary energy source" each have the same definitions as in Part 305.)

The regulatory scheme in Part 307 is similar to that of Part 305. The issuance of a construction order to a powerplant in the early planning process would depend on the making of several findings by FEA. No powerplant would be issued a construction order unless FEA finds that it is in the early planning process. "Early planning process" would be defined to mean either of the following time periods: (1) Before the formation of a contract, express or implied, for the design of a powerplant or before the commencement of the design of a powerplant, if such design is not to be performed in accordance with a contract, or (2) after commencement of the design of a powerplant, but not later than commencement of field erection of boiler steel.

ESECA does not define "early planning process." The definition proposed in the regulations fixes on the commencement of field erection of boiler steel as the time at which a powerplant no longer would be in the early planning process. Other time periods were considered to set the outside limits of the early planning process, including three months after formation of a contract for the boiler or the point in the contract for the boiler at which the powerplant would incur substantial termination charges. Comments are solicited regarding the adequacy of the proposed definition of early planning process. Those comments should take into account the variations in design and construction schedules for powerplants, and the potential effect on design schedules of the republication of prior designs or the use of standard designs.

As with prohibition orders, FEA, at its discretion, may issue a construction order for an individual fossil-fuel fired electric steam generating unit that produces electric power for sale or exchange, or for combinations thereof. FEA would not issue a construction order if it finds that the design or construction of a powerplant with the capability of using coal as its primary energy source is likely to result in the impairment of the reliability or adequacy of service to be provided by the powerplant, or an adequate and reliable supply of coal is not reasonably expected to be available.

FEA proposes to determine if there is an impairment of the reliability or adequacy of service by evaluating the length of any delay in commencement of the sale or exchange of electric power, if any, and the effect of such delay, if any, on reserve capacity margin within the electric power generator system or combination of systems to determine if there is an unreasonable risk of loss of load.

It is proposed that the availability of an adequate supply of coal be determined by an evaluation of the powerplant's anticipated demand for coal, the type of coal (including, but is not limited to, rank, Btu's, moisture, volatiles, ash and sulfur content) it is anticipated the powerplant would be able to utilize, the location of such coal, the practicability of its production including the possibility that new mines will be opened before the powerplant commences the sale or exchange of electric power and any State or local laws or policies limiting the extraction or utilization of coal. The availability of a reliable supply of coal would be determined on the basis of an evaluation of the supply's susceptibility to interruption and the nature of the supply contract that the powerplant reasonably could be expected to enter into.

In addition to the above findings, ESECA also directs FEA to consider the existence and effect of any contractual commitment for the construction of such powerplant, and the capability of the powerplant (as defined to include its owner) to recover any increase in projected capital investment required as a result of a construction order. FEA proposes also to consider the relevant regulations or policies of any State or local agency with jurisdiction over the sale or exchange of electric power by powerplants, and the potential loss of revenue resulting from a delay in the commencement of the sale or exchange of electric power resulting from a construction order, to the extent that electric power will have to be purchased from another powerplant.

Although not required by ESECA, FEA proposes to invite public participation through written comment prior to issuance of a construction order. A notice of FEA's intention to issue a construction order would be published in the FEDERAL REGISTER, which would provide that interested persons could submit written comments regarding the construction order within 10 days of its publication.

The identification of powerplants in the early planning process would be accomplished by submission to FEA of an Identification Report, which would be a form available from the National Office. Under FEA's proposed regulations, the initial report shall be filed within 30 days of the effective date of Part 307. Thereafter, any powerplant that enters the early planning process at any time in a month would file an Identification Report with FEA by the fifteenth day of the next month.

IV. *Part 303—Administrative procedures and sanctions.* Much of Part 303 is identical to Part 205 of Chapter II, 10 Code of Federal Regulations, the procedural regulations for the mandatory petroleum allocation program. Therefore, this discussion will focus on the differences between the two procedural regulations that are necessitated by the particular requirements of the coal utilization program. If there is no discussion of a particular procedure or proceeding it can be assumed either that it is identical to that in Part 205 or that only minor, technical changes are proposed to be incorporated in Part 303, e.g., address changes, time schedule alterations, or minor improvements in or clarification of language. Part 205 was fully discussed in the rulemaking proceeding regarding it (39 FR 25602 (July 11, 1974) and 39 FR 32262 (September 5, 1975)).

The coal utilization program requires that FEA propose several new procedures. Prohibition orders would be issued to prohibit certain powerplants and major fuel burning installations from burning natural gas or petroleum products as their primary energy source and construction orders would be issued to require that a powerplant in the early planning process be designed and constructed to be capable of burning coal as its primary energy source. New procedures have been developed concerning the appeal, modification or rescission of prohibition orders and construction orders, procedures for the modification or rescission of any other order remain similar to those in Part 205. Furthermore, as previously discussed, the public participation provisions are tailored to the requirements of ESECA.

Subpart A—General provisions. Definitions (§ 303.2): In general, the proposed definitions in Subpart A are restated in identical form in the "Definitions" section of each part to which they are applicable. However, the term "action" is differently defined in each part. Several of the more important terms defined in Subpart A have been more fully discussed previously in connection with the substantive regulations.

The term "air pollution requirements" is similar to the definition of that term in § 119(a) of the Clean Air Act, as is the definition of "stationary source fuel or emission limitation." The terms "compliance date extension" and "temporary suspension" are descriptions of actions EPA is authorized to take by § 119 (b) and (c), respectively, of the Clean Air Act.

The term "petroleum product" is defined to include the term "refined petroleum products," which term is used in the mandatory petroleum allocation program and crude oil and residual fuel oil. The term "natural gas" includes gas and casinghead gas.

Effective date of orders (§ 303.10(b)): The involvement of EPA in the process of prohibiting a powerplant or major fuel burning installation from burning natural gas or petroleum products as its primary energy source, as previously discussed, necessitates a revision of the

section that describes the effective date of FEA orders. FEA proposes that a prohibition order (or modification of a short-term order to make it long-term) would not be effective until FEA has received the previously described certification or notification from EPA and has, in turn, issued a Notice of Effectiveness to the affected powerplant or major fuel burning installation.

Addresses for filing documents with FEA (§ 303.12): Unless the applicable subpart of this part provides that an application or other document filed by mail be sent to the Office of Exceptions and Appeals, the Office of General Counsel or the Office of Private Grievances and Redress, the document would be mailed to: Federal Energy Administration, Code OFU, Attn: (name of person to receive document, if known, and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

Office of Private Grievances and Redress (§ 303.14): The procedures applicable to a "Petition for Special Redress or Other Relief" would be governed by Subpart R of Part 205.

Subpart B—Prohibition orders. This proposed proceeding, as well as the one for issuance of construction orders, is intended to satisfy the intention of the Conference Report that procedures be informal and expedited. A proceeding regarding the issuance of a prohibition order would be commenced either by application from a powerplant or major fuel burning installation or by FEA on its initiative. The sections in this subpart that describe notice, the criteria to be considered in making the determination regarding issuance of a prohibition order, the effective date and content of a prohibition order, and the right of appeal are applicable regardless of whether the proceeding was initiated by application or by FEA.

In recognition of the practical effect of the June 30, 1975 expiration of FEA's authority to issue prohibition orders, applications for prohibition orders filed after April 1, 1974 would be dismissed automatically, with no right of administration appeal. The acceptance of applications after April 1 would not give sufficient time to permit FEA to process the application and any administrative appeal of denial of the application. An order dismissing an application filed after April 1, 1975 is a final order of FEA.

An application for a prohibition order would be required to contain the information FEA needs to make a decision as to whether it can make the findings specified by ESECA. The accuracy of this information must be certified by the applicant's chief executive officer or his duly authorized representative. Any information or documents provided during a proceeding may be investigated by FEA. Third person submissions regarding an application may be solicited or accepted by FEA, provided the applicant is afforded an opportunity to respond to all relevant third person submissions (except written or oral presentation of data, views or arguments submitted in response

to the notice of intention published in the FEDERAL REGISTER).

The criteria for issuance of a prohibition order are contained in §§ 305.3 and 305.4 are derived in part from language in section 2 (a) and (b) of ESECA. If a prohibition order is issued, it would include a recitation of the conclusions regarding those findings and a summary of the rationale for each.

The timeliness section of Subpart B is drafted to accommodate the time constraints imposed on FEA by the June 30, 1975 expiration of its authority to issue prohibition orders. If FEA has not taken any action on an application for a short-term or long-term prohibition order within 30 days of the filing or by May 1, 1975, whichever is earlier, the applicant may treat it as denied and may file an administrative appeal. Given the requirements for written comment and oral presentation, and the June 30 expiration of authority, the significant action by FEA with respect to a prohibition order is service on the applicant of the notice of intent to issue such order, and, accordingly, the definition of the term "action" has been expanded to include that event.

The appeal of an order denying an application for a prohibition order must be filed within 10 days of service of that order, or within 10 days of the date the applicant can treat the application as denied. Appeal of an issued prohibition order can only be taken after it becomes effective—that is after EPA review and FEA issuance of a Notice of Effectiveness; the appeal must be filed within 30 days of service of that notice. A further discussion of the appeals procedure for effective prohibition orders is in the discussion of Subpart H—Appeals.

Subpart C—Construction orders. The requirement that a powerplant (other than a combustion gas turbine or combined cycle unit) in the early planning process be designed and constructed to be capable of burning coal as its primary energy source is proposed to be effected by issuance of a construction order. Unlike a prohibition order, a construction order would be effective upon issuance. The proceeding for issuance of a construction order would be initiated either by application from a powerplant in the early planning process or by FEA. If the proceeding is to be initiated by an applicant, an "Application for Construction Order" would be filed.

FEA proposes that all applications for construction orders be filed by April 1, 1975, and that those filed after that date would be dismissed automatically. The rationale for this cut-off date is the same as for applications for prohibition orders.

Although not a requirement of ESECA, FEA proposes that before issuance of a construction order, it will publish a notice of its intention to issue a construction order in the FEDERAL REGISTER. The notice would state that interested persons would be allowed no less than 10 days from publication of the notice within which to file written data, views and arguments.

ESECA requires that FEA make certain findings before issuing a construction

order. These findings are similar to those required for prohibition orders. An applicant for a construction order would be required to provide FEA with information regarding these findings, in addition to more general descriptive information regarding locale, fuels to be utilized, area to be served by the powerplant and other factors that are stated in Part 307.

Any construction order will be issued subject to the findings stated in § 307.3 (b) and (c). FEA also will give consideration to the factors stated in § 307.3(d) that were discussed in connection with Part 307. The proposed construction order would state FEA's conclusions and a summary of the rationale for the findings required by ESECA, and its conclusions regarding the other factors FEA must consider prior to issuance of an order.

In view of the June 30, 1975 expiration of FEA's authority to issue construction orders, the proposed regulations treat FEA's failure to take action within 30 days of filing or by May 1, 1975, whichever is earlier, as a denial of the application. The term "action" includes service of the notice of intention to issue a construction order. Appeal must be taken within 10 days of service of the construction order or the order denying the application, or within 10 days of the date on which the applicant can treat the application as having been denied.

Subparts E/F—Exception/exemption. These procedures are the same as those stated in Subparts D and E of Part 205. Subpart E of this part provides a procedure for obtaining an exception from a regulation, ruling or generally applicable requirement, while Subpart F states a procedure for seeking an exemption from no less than an entire part or subpart of Parts 303, 305 or 307. These procedures are included because of the requirements of section 7(d)(1)(D) of the Federal Energy Administration Act of 1974. It is unlikely, however, that they will have much application to the coal utilization program. Specifically, neither the exception nor the exemption procedures provide relief from an FEA order. Thus, neither proceeding could result in relief from a prohibition order or construction order, nor from the orders FEA would issue to deny applications for such orders. An appeal or, if appropriate, modification or rescission, would be the appropriate vehicle for relief from these orders.

The criteria for issuance of an exception are special hardship, inequity or unfair distribution of burdens. These factors are also considered by FEA in making its determination to issue a prohibition order or construction order, and could be raised, if appropriate, on administrative appeal and in applications for modification or rescission. Since Subpart E provides that an exception will not be considered when a more appropriate proceeding is available, it is likely that appeals and modification/rescission procedures will be used more often than the exceptions procedure.

The exemption procedure also is of limited applicability to the proposed ESECA substantive regulations. If the

findings specified in ESECA are made regarding a particular powerplant, the Act requires FEA to issue a prohibition order. It is unlikely that FEA could offer a procedure that could be used to thwart the mandatory requirements of ESECA. Conversely, since FEA has discretionary authority with respect to prohibition orders issued to major fuel burning installations and with respect to construction orders, the exemption proceeding may not be available for those procedures either, since it is not clear whether a request for exemption from discretionary authority is a meaningful request. The appeals and modification/rescission procedures, in any event, provide adequate relief to any person aggrieved by a construction order, or a prohibition order issued to a major fuel burning installation.

Subpart H—Appeal. The procedures for appeal of construction orders, most other orders, or interpretations are basically the same as those provided in Subpart H of Part 205. However, there would be a change in the procedures regarding the appeal of a prohibition order. The proposed appeals procedures provide that the appeal of a prohibition order must be filed within 30 days after FEA serves a Notice of Effectiveness and cannot be filed prior to service of that notice.

FEA has received preliminary inquiries concerning the procedures by which it intends to take into account new information that develops subsequent to the issuance by FEA of a prohibition order, particularly new information regarding the costs of compliance with air quality requirements that are engendered by EPA action on an issued prohibition order. The proposed regulations provide that the modification and rescission procedures of Subpart J are the appropriate vehicle for requesting that a prohibition order be reconsidered on the ground of significantly changed circumstances, such as discovery of material facts affecting the findings on which the prohibition order is based. Therefore, these procedures would be the appropriate method of seeking the modification or rescission of a prohibition order based on an assertion that FEA's finding of practicability (including economic feasibility) is affected by material new facts concerning the requirements of section 119 of the Clean Air Act that result from EPA's evaluation of an issued prohibition order. Because it is contemplated that an application for modification or rescission of a prohibition order is the proper procedure in these circumstances, this subpart contains a conforming provision stating that the appeal of a prohibition order may not raise the issue of significantly changed circumstances.

If a powerplant or major fuel burning installation files an application for modification or rescission of a prohibition order (other than a modification to make a short-term order long-term), any appellate proceeding on that order would be suspended automatically. The suspension would be in effect until 30 days after an order is issued in the modification/

rescission proceeding or until 30 days after the applicant for modification or rescission of the prohibition order could treat the application as denied. If an appeal arises from the modification/rescission proceeding, it would be consolidated with the appeal of the prohibition order.

At two points in any appeals procedure the appellant may treat FEA inaction as a denial and may seek judicial review: (1) 90 days after service of a notice that all substantive information has been received, and (2) 120 days after the appeal has been filed, notwithstanding the provision in number 1. However, if the appeal is suspended because an application for modification or rescission has been filed, the running of the 120 days also would be suspended.

Subpart J—Modification or Rescission of Prohibition Orders and Construction Orders. As proposed, Part 303 contains two separate procedures for the modification or rescission of an FEA order: Subpart J, which applies only to the modification or rescission of prohibition and construction orders, and Subpart K, which applies to modification or rescission of all other orders issued in the coal utilization program. Within Subpart J, there is a distinction between the procedures for modification of short-term prohibition orders to make them long-term and other modifications or rescissions of prohibition orders: this distinction is made because the former action must conform to the special requirements that ESECA places on the issuance of long-term orders.

It is proposed that the proceeding for modification or rescission of a prohibition order or a construction order may be commenced by application or by FEA on its initiative. In all such proceedings the sections of the subpart pertaining to notice, criteria for issuance of an order, the content of an order, and appeals would be applicable.

The basis on which there could be a modification or rescission of a prohibition order (other than modification of a short-term order to make it a long-term order) or a construction order is "significantly changed circumstances." This term is defined as:

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based—in particular, those that would substantially affect the findings made by FEA in accordance with §§ 305.3(b), 305.4(b), or 307.3(b) and (c), or the factors considered pursuant to §§ 305.4(c) and 307.3(d).

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application or order is based and which, if such had been made known the FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts of circumstances upon which was based an outstanding

and continuing prohibition order or, upon which was based an outstanding and continuing construction order, which change occurred during the interval between issuance of the order and service of the Notice of Effectiveness, or occurred during the interval after service of the Notice of Effectiveness and the application for modification or rescission of a prohibition order, or during the interval between issuance of a construction order and the date of the application for modification or rescission of it, and was caused by forces or circumstances beyond the control of the applicant.

A short-term prohibition order would be modified to make it a long-term order only if FEA is able to make the findings required by ESECA. These criteria are stated in §§ 305.3 and 305.4 of the regulations. The application to modify a short-term order to make it a long-term order would have to be filed by May 15, 1975.

If the application for modification or rescission of a prohibition order is the result of significantly changed circumstances that occurred during the interval between issuance of the order and service of the Notice of Effectiveness, the application would be required to be filed within 30 days of service of that notice. An application based on significantly changed circumstances, other than those that occurred during that interval, may be filed at any time after the notice is served.

It is proposed that an application for modification of a construction order not be filed until the lapse of the 30-day period within which a person may file an appeal of that order, or if an appeal has been filed, a final order has been issued.

Before FEA modifies or rescinds a prohibition order (other than modification of a short-term order to make it long-term) or a construction order, the proposed regulations would provide that FEA may publish notice of its intention to take such action in the FEDERAL REGISTER. This provides FEA the discretion not to publish a notice when the proceeding involves insubstantial issues. For modification of a short-term order to make it a long-term order, however, ESECA requires that FEA publish notice in the FEDERAL REGISTER of its intention to make such modification and give interested persons an opportunity to make written or oral presentation of data, views or arguments. Any notice published would provide no less than a 10-day period from the date of its publication within which written comments must be made.

The content of an application for modification or rescission of a prohibition order (other than modification of a short-term order to make it a long-term order) or a construction order would be required to include sufficient information to demonstrate that there were significantly changed circumstances. An application for modification of a short-term order to make it a long-term order would have to contain sufficient information to enable FEA to determine whether it can make the findings required by ESECA.

As with a long-term prohibition order, the effective date of the order modifying a short-term order to make it long-term order is dependent upon FEA's receipt of the EPA certification or notification, previously described in conjunction with the discussion of subpart B, and service by FEA of a Notice of Effectiveness. The modified short-term order would not be effective for any period certified by the Administrator of EPA under § 119(d)(3)(B) of the Clean Air Act. The order modifying a short-term order would include a recitation of the findings required by ESECA and a summary of the rationale for each.

The modification or rescission of other prohibition orders and construction orders would state the pertinent facts and legal basis of the order, and that any person aggrieved thereby may file an appeal with the Office of Exceptions and Appeals. These orders are effective upon issuance.

The proposed regulations provide that if FEA fails to take action on an application to modify or rescind any prohibition order within 30 days of its filing, the applicant may treat the application as being denied and may file an appeal. In each case, the term "action" would include publication of a notice of intention to modify or rescind in the FEDERAL REGISTER, if such were published. If the action taken by FEA is publication of that notice, FEA proposes that if it fails to grant or deny the application within 150 days of filing, the applicant may treat the application as being denied and may file an appeal.

Pursuant to Subpart I, a stay of the effectiveness of a prohibition order may be obtained incident to an application for modification or rescission of a prohibition order (other than the modification of a short-term order to make it a long-term order).

Subpart N—Conferences, Hearings and Public Hearings. FEA proposes that conferences may be requested in connection with any proceeding, but will be held only in the discretion of FEA. Hearings, other than public hearings, may be requested only in connection with exceptions and appeals proceedings. The granting of the request for a hearing would be in the discretion of FEA. FEA on its initiative, however, may determine that a hearing or a conference should be held in connection with any proceedings.

In response to the ESECA requirement that there be made available an opportunity for oral presentation of data, views and argument prior to issuance of a long-term prohibition order or the modification of a short-term order to make it a long-term order, this proposed subpart provides that there shall be a public hearing prior to issuance of those orders.

Subpart Q—Investigations, Violations, Sanctions and Judicial Actions. The violation of Parts 303, 305 or 307 will subject the violator to the civil and criminal penalties provided in ESECA. The willful violation of any of those parts by any person shall subject that person to a criminal fine of not more than \$5,000 for

each violation. The violation of those parts also will subject the person to a civil penalty of not more than \$2,500 for each violation. When appropriate, FEA may compromise, settle and collect civil penalties.

Criminal violations and actions for civil penalties are prosecuted by the Department of Justice upon referral by FEA.

A public hearing on this proposed rule-making will be held beginning at 9:30 a.m., on February 19, 1975, in Room 2105, 2000 M Street, NW, Washington, D.C., to receive oral presentation of data, views and argument from interested persons. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, may make a written request for an opportunity to make oral presentation. That request should be directed to FEA Executive Communications and must be received before 4:30 p.m., e.s.t., February 11, 1975. The request may be hand-delivered to FEA Executive Communications, Room 3309, Federal Building, 12th and Pennsylvania Avenues NW, Washington, D.C., between the hours of 8 a.m., and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned; if appropriate, to state why he or she is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he or she may be contacted through February 18, 1975. Each person selected to be heard will be so notified by the FEA before 5:30 p.m., February 14, 1975, and must submit 100 copies of the statement to Executive Communications, FEA, Room 3309, Federal Building, Washington, D.C. 20461, before 3:00 p.m., e.s.t., February 18, 1975.

The FEA reserves the right to limit the number of representatives of a particular group or class of persons to be heard at the hearing, to schedule their or other person's presentations, and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. It will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by the FEA with respect to the subject matter of the hearing will be based on all information available to the FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to the time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to FEA

Executive Communications before 4:30 p.m., February 14, 1975. Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The FEA, or the presiding officer if the question is submitted at the hearing, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules necessary for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the FEA and made available for inspection at the FEA Administrator's Reception Area, Room 3400, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit data, views, or arguments with respect to the proposed regulations to Executive Communications, Federal Energy Administration, Box BY, Washington, D.C. 20461.

Comments should be identified on the outside envelope and on documents submitted to FEA Executive Communications with the designation "Coal Utilization Regulations." Fifteen copies should be submitted. All comments received by February 18, 1975, and all relevant information, will be considered by FEA.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

As required by § 7(c)(2) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, a copy of this notice has been submitted to the Administrator of EPA for his comments concerning the impact of this proposed rulemaking on the quality of the environment. The EPA has stated that "[d]ue to the complexity of these proposals [the proposed coal utilization regulations] and the time limitations of this initial review period, EPA intends to review the FEA proposals under the more extended agency review process and pursuant to our authority under section 309 of the Clean Air Act, as amended."

(Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319); Federal Energy Administration Act of 1974 (Pub. L. 93-275); E.O. 11790 (39 FR 23185))

In consideration of the foregoing, it is proposed to amend Chapter II, Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., January 31, 1975.

ROBERT E. MONTGOMERY, Jr.,
General Counsel,
Federal Energy Administration.

1. Chapter II of 10 Code of Federal Regulations is amended to add Part 303, which reads as follows:

PART 303—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart A—General Provisions	
Sec.	
303.1	Purpose and scope.
303.2	Definitions.
303.3	Appearance before the FEA.
303.4	Filing of documents.
303.5	Computation of time.
303.6	Extension of time.
303.7	Service.
303.8	Subpoenas; witness fees.
303.9	General filing requirements.
303.10	Effective date of orders.
303.11	Order of precedence.
303.12	Address for filing documents with the FEA.
303.13	Public docket room.
303.14	Office of Private Grievances and Redress.
Subpart B—Prohibition Orders	
303.30	Purpose and scope.
303.31	What to file.
303.32	Where to file.
303.33	When to file.
303.34	Notice.
303.35	Contents.
303.36	FEA evaluation.
303.37	Decision and order.
303.38	Timeliness.
303.39	Appeal.
Subpart C—Construction Orders	
303.40	Purpose and scope.
303.41	What to file.
303.42	Where to file.
303.43	When to file.
303.44	Notice.
303.45	Contents.
303.46	FEA evaluation.
303.47	Decision and order.
303.48	Timeliness.
303.49	Appeal.
Subpart D—[Reserved]	
Subpart E—Exception	
303.60	Purpose and scope.
303.61	What to file.
303.62	Where to file.
303.63	Notice.
303.64	Contents.
303.65	FEA evaluation.
303.66	Decision and order.
303.67	Timeliness.
303.68	Appeal.
Subpart F—Exemption	
303.70	Purpose and scope.
303.71	Procedures.
303.72	What to file.
303.73	Where to file.
303.74	Contents.
303.75	FEA evaluation.
303.76	Decision and order.
303.77	Timeliness.
303.78	Appeal.
Subpart G—Interpretation	
303.80	Purpose and scope.
303.81	What to file.
303.82	Where to file.
303.83	Contents.
303.84	FEA evaluation.
303.85	Decision and order.
303.86	Appeal.
Subpart H—Appeal	
303.90	Purpose and scope.
303.91	Who may file.
303.92	What to file.
303.93	Where to file.
303.94	When to file.
303.95	Notice.
303.96	Contents.

Sec.	
303.97	FEA evaluation.
303.98	Decision and order.
303.99	Appeal of a remedial order.
303.100	Timeliness.

Subpart I—Stay

303.110	Purpose and scope.
303.111	What to file.
303.112	Where to file.
303.113	Notice.
303.114	Contents.
303.115	FEA evaluation.
303.116	Decision and order.

Subpart J—Modification or Rescission of Prohibition Orders and Construction Orders

303.120	Purpose and scope.
303.121	What to file.
303.122	Where to file.
303.123	When to file.
303.124	Notice.
303.125	Contents.
303.126	FEA evaluation.
303.127	Decision and order.
303.128	Timeliness.
303.129	Appeal.

Subpart K—Modification or Rescission of Orders (Other Than Prohibition Orders and Construction Orders) and Interpretations

303.130	Purpose and scope.
303.131	What to file.
303.132	Where to file.
303.133	Notice.
303.134	Contents.
303.135	FEA evaluation.
303.136	Decision and order.
303.137	Timeliness.
303.138	Appeal.

Subpart L—Rulings

303.150	Purpose and scope.
303.151	Criteria for issuance.
303.152	Modification or rescission.
303.153	Comments.
303.154	Appeal.

Subpart M—Rulemaking

303.160	Purpose and scope.
303.161	What to file.
303.162	Where to file.

Subpart N—Conferences, Hearings, and Public Hearings

303.170	Purpose and scope.
303.171	Conferences.
303.172	Hearings.
303.173	Public hearings.

Subpart O—Complaints

303.180	Purpose and scope.
303.181	What to file.
303.182	Where to file.
303.183	Contents.
303.184	FEA evaluation.
303.185	Decision.

Subpart P—Notice of Probable Violation and Remedial Order

303.190	Purpose and scope.
303.191	Notice of probable violation.
303.192	Remedial order.
303.193	Remedial order for immediate compliance.
303.194	Remedies.
303.195	Appeal.

Subpart Q—Investigations, Violations, Sanctions and Judicial Actions

303.200	Investigations.
303.201	Violations.
303.202	Sanctions.
303.203	Injunctions.

Subpart A—General Provisions

§ 303.1 Purpose and scope.

(a) Part 303 establishes the procedures to be utilized and identifies the sanctions that are available in proceedings before

the Federal Energy Administration in accordance with Parts 305 and 307 of this chapter.

(b) This subpart defines certain terms and establishes procedures that are applicable to each proceeding described in this part.

§ 303.2 Definitions.

As used in this part, the term:

“Action” means an order, or modification or rescission thereof, interpretation, notice of probable violation, or ruling issued, or a rulemaking undertaken by the FEA.

“Aggrieved”, for purposes of administrative proceedings, means a person with an interest sought to be protected under the FEAA or ESECA who is adversely affected by an order or interpretation issued by the FEA.

“Air pollution requirements” means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including the Clean Air Act (except for any requirement prescribed under subsections (c) or (d) or section 119, section 110(a) (2) (F) (v), or section 303 of such Act), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic).

“Clean Air Act” means the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. (1970), as amended by Pub. L. 93-319, 88 Stat. 246.

“Coal” includes coal derivatives.

“Compliance date extension” means an extension issued by the Administrator of EPA in accordance with section 119 (c) of the Clean Air Act as a result of which a powerplant or major fuel burning installation may not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirements, from burning coal which is available to such source, except as otherwise provided in section 119(d) (3) of that Act.

“Conference” means an informal meeting, incident to any proceeding, between FEA and any person aggrieved by that proceeding.

“Construction order” means a directive issued by FEA pursuant to section 2(c) of ESECA that requires a powerplant in the early planning process to be designed and constructed to be capable of using coal as its primary energy source.

“Duly authorized representative” means a person who has been designated to appear before the FEA in connection with a proceeding on behalf of a person interested in or aggrieved by that proceeding. Such appearance may consist of the submission of applications, petitions, requests, statements, memoranda of law, other documents, or of a personal appearance, verbal communication, or any other participation in the proceeding.

“Early planning process” means a stage in the design and construction of a powerplant to be determined in accordance with § 307.3(b) of Part 307 of this chapter.

"EPA" means the Environmental Protection Agency.

"ESECA" means the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

"Exception" means the waiver or modification of the requirements of a regulation, ruling or generally applicable requirement under a specific set of facts.

"Exemption" means the release from the obligation to comply with all or each part of any subpart of Parts 303, 305 or 307 of this chapter.

"FEA" means the Federal Energy Administration, including the Administrator of FEA or his delegate.

"FEAA" means the Federal Energy Administration Act of 1974 (Pub. L. 93-275).

"Federal legal holiday" means: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a national holiday by the President or the Congress of the United States.

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

"Interested person" includes members of the public, as well as any person with an interest sought to be protected under ESECA.

"Major fuel burning installation" means an installation or unit other than a powerplant that has or is a fossil-fuel fired boiler, burner, or other combustor of fuel, or any combination thereof at a single site, and includes any person who owns, leases, operates, controls or supervises any such installation or unit.

"Natural gas" includes dry gas and casinghead gas.

"Notice of effectiveness" means a written statement issued by FEA to a powerplant or major fuel burning installation, subsequent to a certification or notification by EPA pursuant to section 119 (d) (1) of the Clean Air Act, advising such powerplant or installation of the date that a prohibition order applicable to it becomes effective.

"Notice of probable violation" means a written statement issued to a person by the FEA that states one or more alleged violations of the provisions of Parts 303, 305, or 307 of this chapter or any order issued pursuant thereto.

"Order" means a written directive or verbal communication of a written directive, if promptly confirmed in writing, issued by the FEA pursuant to Parts 303, 305 or 307 of this chapter. It may be issued in response to an application, petition or request for FEA action or in response to an appeal from an order, or it may be a remedial order or other directive issued by the FEA on its initiative, including prohibition orders, and construction orders. A notice of probable violation is not an order. For purposes of this definition a "written directive" shall

include telegrams, teletypes and similar transmissions.

"Person" means any association, firm, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government, including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments, and includes any officer, director, owner or duly authorized representative thereof. The FEA may, in regulations and in any forms issued in this part, treat as a person:

- (a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls,
- (b) a parent and its consolidated entities,
- (c) an unconsolidated entity, or
- (d) any part of a person.

"Petroleum product" means crude oil, residual fuel oil or any refined petroleum product, as that last term is defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973.

"Powerplant" means one or more fossil-fuel fired steam electric generating units that produce electric power for purposes of sale or exchange, and includes any person who owns, leases, operates, controls or supervises any such unit or units.

"Primary energy source" means, with respect to a powerplant or major fuel burning installation that utilizes a fossil-fuel, the fuel that is or will be used for all purposes except for the minimum amounts required for startup, testing, flame stabilization and control.

"Proceeding" means the process and activity, and any part thereof, instituted by the FEA, either on its initiative or in response to an application, complaint, petition or request submitted by a person, that may lead to an action by the FEA.

"Prohibition order" means a directive issued by FEA pursuant to sections 2 (a) and (b) of ESECA that prohibits a powerplant or major fuel burning installation from burning natural gas or petroleum products as its primary energy source.

"Remedial order" means a directive issued by the FEA requiring a person to cease a violation or to eliminate or to compensate for the effects of a violation, or both.

"Ruling" means an official interpretative statement of general applicability issued by the FEA General Counsel and published in the FEDERAL REGISTER that applies the FEA regulations to a specific set of circumstances.

"Stationary source fuel or emission limitation" means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under the Clean Air Act (other than sections 119, 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a)(2)(F)(v)), and which

limits, or is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.

"Temporary suspension" means a suspension issued to any person by the Administrator of EPA in accordance with section 119(b) of the Clean Air Act that results in the temporary suspension of any stationary source fuel or emission limitation as it applies to such person during any period beginning June 22, 1974 and prior to or on June 30, 1975.

"United States", when used in the geographic sense, means the several States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

Throughout this part the use of a word or term in the singular shall include the plural and the use of the male gender shall include the female gender.

§ 303.3 Appearance before the FEA.

(a) A person may make an appearance and participate in any proceeding described in this part on his own behalf or by a duly authorized representative. Personal appearances are at the discretion of FEA, except as required by ESECA or the FEAA. Any application, appeal, petition, request or complaint filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an FEA form requires otherwise. Falsification of such certification will subject such person to the sanctions stated in 18 U.S.C. 1001 (1970).

(b) *Suspension and disqualification.* The FEA may deny, temporarily or permanently, the privilege of participating in proceedings, including oral presentation, to any individual who is found by FEA—

- (i) to have made false or misleading statements, either verbally or in writing;
- (ii) to have filed false or materially altered documents, affidavits or other writings;
- (iii) to lack the specific authority to represent the person seeking an FEA action; or
- (iv) to have engaged in or to be engaged in contumacious conduct that substantially disrupts a proceeding.

§ 303.4 Filing of documents.

(a) Any document, including, but not limited to, an application, request, complaint, petition and other documents submitted in connection therewith, filed with the FEA under Parts 303, 305 or 307 of this chapter is considered to be filed when it has been received by the FEA National Office. Documents transmitted to the FEA shall be addressed as required by § 303.12. All documents and exhibits submitted become part of an FEA file and will not be returned.

(b) Notwithstanding the provisions of subsection (a) of this section, if transmitted by registered or certified mail and addressed to the appropriate office, the following are considered to be filed upon mailing: (1) an application for a pro-

hibition order or for a modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, or for a construction order, (2) an appeal, (3) a response to a denial of an appeal or application for modification or rescission of an order in accordance with §§ 303.97(a)(3) and 303.135(a)(3), respectively, (4) an application for modification or rescission of a prohibition order as a result of significantly changed circumstances that occurred during the interval between issuance of the prohibition order and service of the Notice of Effectiveness, (5) an application for the quashing or modification of a subpoena, (6) a reply to a notice of peobable violation, (7) the appeal of a remedial order or remedial order for immediate compliance, (8) a response to denial of a claim of confidentiality, or (9) a comment submitted in connection with any proceeding.

(c) Hand-delivered documents to be filed with the Office of Exceptions and Appeals shall be submitted to Room 8002 at 2000 M Street NW, Washington, D.C. All other hand-delivered documents to be filed with the FEA National Office shall be submitted to Executive Communications, Room 3309, 12th and Pennsylvania Avenue NW, Washington, D.C.

(d) Documents received after regular business hours are deemed filed on the next regular business day. Regular business hours for the FEA National Office are 8 a.m. to 4:30 p.m.

§ 303.5 Computation of time.

(a) *Days* (1) Except as provided in subsection (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the FEA, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a Federal legal holiday.

(2) Saturdays, Sundays or intervening Federal legal holidays shall be excluded from the computation of time when the period of time allowed or prescribed is 7 days or less.

(b) *Hours* If the period of time prescribed in an order issued by the FEA is stated in hours rather than days, the period of time shall begin to run upon actual notice of such order, whether by verbal or written communication, to the person directly affected, and shall run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended or rescinded. When a written order is transmitted by verbal communication, the written order shall be served as soon thereafter as is feasible.

(c) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of

time after issuance to such person of an order, notice, interpretation or other document and the order, notice, interpretation or other document is served by mail, 3 days shall be added to the prescribed period.

§ 303.6 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the office with which the document is required to be filed upon good cause shown.

§ 303.7 Service.

(a) All orders, notices, interpretations or other documents required to be served under this part shall be served personally or by registered or certified mail or by regular United States mail (only when service is effected by the FEA), except as otherwise provided.

(b) Service upon a person's duly authorized representative shall constitute service upon that person.

(c) Service by registered or certified mail or, if by FEA, by regular mail is complete upon mailing. Official United States Postal Service receipts from such registered or certified mailing shall constitute prima facie evidence of service.

§ 303.8 Subpoenas; witness fees.

(a) The Administrator of the FEA, his duly authorized agent, the FEA General Counsel, or the agency official designated to conduct a hearing or public hearing convened in accordance with Subpart N of this part, may sign and issue subpoenas either on his own initiative or upon the request of any person participating in that proceeding, which request shall be supported by an adequate showing that the information sought will materially advance a proceeding.

(b) A subpoena may require the attendance of a witness, or the production of documentary or other tangible evidence in the possession or under the control of the person served, or both.

(c) A subpoena may be served personally by any person who is not an interested person and is not less than 18 years of age, or by certified or registered mail. For purposes of this section "interested person" means a person who is not participating in this proceeding or who would not be aggrieved by any action taken by FEA as a result of the proceeding.

(d) Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person and by tendering the fees for one day's attendance and mileage as specified by paragraph (f) of this section. When a subpoena is issued at the instance of any officer or agency of the United States, fees and mileage need not be tendered at the time of service. Delivery of a copy of a subpoena and tender of the fees to a natural person may be made by handing them to the person; leaving them at his office with the person in charge thereof; leaving them at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing

them by registered or certified mail to him at his last known address; or by any method whereby actual notice is given to him and the fees are made available prior to the return date. When the person to be served is not a natural person, delivery of a copy of the subpoena and tender of the fees may be effected by handing them to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing them by registered or certified mail to such representative at his last known address or by any method whereby actual notice is given to such representative and the fees are made available prior to the return date. If any person is an entity with offices and operations in more than one jurisdiction, such person may designate one address to which any subpoena may be served by filing such designation with the General Counsel at the address specified in § 303.12.

(e) The original subpoena bearing a certificate of service shall be filed with the FEA office with the responsibility for the proceeding in connection with which the subpoena was issued.

(f) A witness subpoenaed by the FEA shall be paid the same fees and mileage as would be paid to a witness in a proceeding in the district courts of the United States. The witness fees and mileage shall be paid by the person at whose instance the subpoena was issued.

(g) Notwithstanding the provisions of paragraph (f) of this section, and upon request, the witness fees and mileage shall be paid by the FEA when it is shown that:

(1) The presence of the subpoenaed witness will materially advance the proceeding; and

(2) The person at whose instance the subpoena was issued would suffer a serious hardship if required to pay the witness fees and mileage. The designated FEA official issuing the subpoena shall make the determination required by this paragraph.

(h) (1) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the designated FEA official who issued the subpoena, or if he is unavailable, to the Administrator of FEA, to quash or modify such subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein.

(2) The Administrator of FEA or such other designated FEA official specified in paragraph (h) (1) of this section may (i) deny the application, (ii) quash or modify the subpoena, or (iii) condition denial of the application to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements. Such denial may be summary.

(i) If there is a refusal to obey a subpoena served upon any person under the provisions of this section, the FEA may request the Attorney General to seek the aid of the District Court of the United

States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the agency, or both.

§ 303.9 General filing requirements.

(a) *Purpose and scope.* The provisions of this section shall apply to all documents required or permitted to be filed with the FEA.

(b) *Signing.* All applications, petitions, requests, appeals, complaints, comments, or any other documents that are required to be signed shall be signed by the person filing the document or a duly authorized representative. Any application, petition, request, appeal, complaint, comment or other document filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an FEA form otherwise requires. (A false certification is unlawful under the provisions of 18 U.S.C. 1001 (1970)).

(c) *Labeling.* An application, petition, or other request for action by the FEA should be clearly labeled according to the nature of the action involved (e.g., "Application for Prohibition Order") both on the document and on the outside of the envelope in which the document is transmitted.

(d) *Obligation to supply information.* (1) A person who files an application, petition, complaint, appeal or other request for action and other documents relevant thereto, or to whom a prohibition order is issued is under a continuing obligation during the proceeding to provide the FEA with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other application, petition, complaint, appeal or request for action or document required to be submitted that is subsequently filed by that person with any FEA office or EPA office if such document pertains to Parts 303, 305 or 307 of this chapter, or Subpart A of 40 C.F.R., Part 55 (which states the EPA regulations implementing section 3 of ESECA).

(2) With respect to documents required to be filed with EPA in accordance with Subpart A of 40 C.F.R., Part 55, notice of the filing of such documents shall be filed with FEA within 5 days of their filing with EPA.

(e) *The same or related matters.* A person who files an application, petition, complaint or other request for action by the FEA shall state whether, to the best knowledge of that person, the same or related issue, act or transaction has been or presently is being considered or investigated by any FEA office, other Federal agency, department or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with the proceeding described in this part or under Subpart A of 40 C.F.R., Part 55 (which states the EPA regulations implementing section 3 of ESECA).

In addition, the person shall state whether contact subsequent to the issuance of Parts 303, 305 or 307 of this chapter has been made by the person or one acting on his behalf with any person who is employed by the FEA or EPA with regard to the same issue, act or transaction or a related issue, act or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) If any person filing a document with the FEA claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552 (1970)), as amended, or is information referred to in 18 U.S.C. 1905 (1970), or is otherwise exempt by law from public disclosure, and if such person requests the FEA not to disclose such information, such person shall file together with the document a second copy of the document from which has been deleted the information for which such person wishes to claim confidential treatment. The person shall indicate in the original document that it is confidential or contains confidential information and shall file a concise statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b) (4) for trade secrets and commercial or financial information or is covered by 18 U.S.C. 1905, such person shall include a concise statement specifying why such information is privileged or confidential.

If the person filing a document does not submit a second copy of the document with the confidential information deleted, the FEA may assume that there is no objection to public disclosure of the document in its entirety.

(2) The FEA retains the right to make its own determination with regard to any claim of confidentiality. Notice of the decision by the FEA to deny such claim, in whole or in part, and an opportunity to respond shall be given to a person claiming confidentiality of information no less than 48 hours prior to the public disclosure of such information.

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

§ 303.10 Effective date of orders.

(a) Any order issued by the FEA under Parts 303, 305 or 307 of this chapter, except a prohibition order or modification thereof as stated in subsection (b) of this section, is effective as against all persons having actual notice thereof upon issuance, in accordance with its terms, unless and until it is stayed, modi-

fied, suspended, or rescinded. Such order is deemed to be issued on the date, as specified in the order, on which it is signed by an authorized representative of FEA, unless the order provides otherwise.

(b) A prohibition order or the modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975 shall not become effective before certain action by EPA and service by FEA upon the affected powerplant or major fuel burning installation of a "Notice of Effectiveness," in accordance with § 305.7 of this chapter. A prohibition order or Notice of Effectiveness is deemed to be issued on the date, as specified in the order or notice, on which it is signed by an authorized representative of FEA.

§ 303.11 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions of Parts 305 or 307 of this chapter, the provisions of this part shall control with respect to procedure.

§ 303.12 Addresses for filing documents with the FEA.

(a) All applications, requests, petitions, appeals, reports, FEA forms, written communications and other documents to be submitted to or filed with the FEA National Office in accordance with Parts 303, 305 or 307 of this chapter shall be addressed as provided in this section.

The FEA National Office has facilities for the receipt of transmissions via TWX and FAX. The FAX is a 3M full duplex 4 or 6 minute (automatic) machine.

FAX NUMBERS

(202) 254-6175
(202) 254-6461

TWX NUMBERS

(710) 822-9454
(710) 822-9469

(b) Documents for which a specific address number is not provided in accordance with subsections (c)-(e) below shall be addressed as follows: Federal Energy Administration, Code, OFU, Attn: (name of person to receive document, if known, and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

(c) Documents to be filed with the Office of Exceptions and Appeals, as provided in this part or otherwise, shall be addressed as follows: Office of Exceptions and Appeals, Federal Energy Administration, Attn: (name of person to receive document, if known, and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

(d) Documents to be filed with the Office of General Counsel, as provided in this part or otherwise, shall be addressed as follows: Office of the General Counsel, Federal Energy Administration, Attn: (name of person to receive document, if known, and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

(e) Documents to be filed with the Office of Private Grievances and Redress shall be addressed as follows:

Office of Private Grievances and Redress, Federal Energy Administration, Attn: (name of person to receive document, if known and/or labeling as specified in § 303.9(c)), Washington, D.C. 20461.

§ 303.13 Public docket room.

There shall be made available at the public docket room of FEA National Office, 12th and Pennsylvania Avenue NW., Washington, D.C., for public inspection and copying:

(a) A list of all persons who have applied for an exception, an exemption, or an appeal, and a digest of each application;

(b) Each decision and statement setting forth the relevant facts and legal basis of an order, with confidential information deleted, issued in response to an application for an exception or exemption or at the conclusion of an appeal;

(c) The written comments received from interested persons in connection with issuance of prohibition orders, or modification or rescission thereof if applicable, or construction orders, with a verbatim transcript of the public hearing held prior to issuance of a prohibition order applicable for a period after June 30, 1975 or held prior to modification of a prohibition order for a period ending prior to or on June 30, 1975 to make it applicable for a period after June 30, 1975;

(d) The comments received during each rulemaking proceeding, with a verbatim transcript of the public hearing, if such a public hearing was held; and

(e) Any other information required by statute to be made available for public inspection and copying, and any information that the FEA determines should be made available to the public.

§ 303.14 Office of Private Grievances and Redress.

Petitions that seek special redress, relief or other extraordinary assistance apart from or in addition to the proceedings and procedures described in this part, including those petitions based on an assertion that the FEA is not complying with the FEAA, ESECA, FEA regulations, orders, rules, or otherwise, shall be filed in accordance with Subpart R of Part 205 of this chapter.

Subpart B—Prohibition Orders

§ 303.30 Purpose and scope.

(a) This subpart establishes the procedures for the filing by any powerplant or major fuel burning installation of an application for a prohibition order that is applicable for a period ending either prior to or on June 30, 1975, or for a period ending after June 30, 1975, which application shall be filed only by a powerplant or major fuel burning installation. (The procedure for filing an application for modification of a prohibition order that is applicable for a period ending prior to or on June 30,

1975, to make it applicable after June 30, 1975, is stated in Subpart J of this part.)

(b) A proceeding for issuance of a prohibition order may be commenced by FEA on its initiative or in response to an application. Sections 303.34, 303.36, 303.37, 303.39 shall be applicable to the proceeding regardless of the manner in which it is initiated. Other sections of this subpart apply only to a proceeding commenced in response to an application.

§ 303.31 What to file.

(a) A powerplant or major fuel burning installation filing under this subpart shall file an "Application for Prohibition Order" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) Application may be made in the case of a powerplant for an individual fossil-fuel fired steam electric generating unit that produces electric power for sale or exchange, or for combinations thereof, and in the case of a major fuel burning installation, for an individual fossil-fuel fired boiler, burner or other combustor of fuel, or for combinations thereof at a single site. The application should specify the unit or units or combustor, or combinations thereof, with respect to which application is being made.

(c) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9 (f) shall apply.

§ 303.32 Where to file.

All applications for a prohibition order shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.33 When to file.

All applications for prohibition orders shall be filed by April 1, 1975.

§ 303.34 Notice.

(a) *Prohibition orders that are applicable for a period ending prior to or on June 30, 1975.* Prior to issuance of a prohibition order that is applicable for a period ending prior to or on June 30, 1975, either in response to an application or on its initiative, FEA shall publish notice of the intention to issue such order in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. The notice shall describe the proposed action and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views and arguments.

(b) *Prohibition orders applicable after June 30, 1975.* Prior to issuance of a prohibition order that is applicable after June 30, 1975, either in response to an

application or on its initiative, FEA shall publish notice of the intention to issue such order in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. The notice shall describe the proposed action and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views or arguments, and shall set a date, time and place at which there shall be an opportunity for interested persons to make oral presentation of data, views and arguments in accordance with Subpart N.

§ 303.35 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application. In addition to such information, the application shall include the following information:

(1) Description of applicant, including but not limited to, location, output, fuels utilized and rate of use thereof, and, in the case of a powerplant, area served.

(2) Information regarding the applicant's capability to burn coal as of June 22, 1974 and an identification and description of the applicant's plant equipment as of that date that is necessary to the burning of coal. ("Capability" and "necessary" are defined in § 305.3(b) (1) and 305.4(b) (1) of this chapter.)

(3) Information regarding sources of coal now available and potentially available, the type of coal that is anticipated the applicant will burn (including rank, Btu's, moisture, volatiles, ash and sulfur content), State or local laws or policies limiting the extraction or utilization of such coal, and the means and ease of transporting such coal to the applicant.

(4) An estimate of the practicability of burning coal as the applicant's primary energy source. ("Practicability" is defined in §§ 305.3(b) (2) (i) and 305.4 (b) (2) (i) of this chapter.)

(5) With respect to powerplants, information regarding the reliability of service in the area served by such powerplant if the plant were to be subject to a prohibition order. ("Reliability of service" is defined in § 305.3(b) (4) of this chapter.)

(6) An estimate of the anticipated effect that denial of the application would have on the applicant's operation.

(7) Any other information that the applicant believes would be pertinent to FEA's evaluation of the application.

(8) A certification by the applicant's chief executive officer or his duly authorized representative of the accuracy of the information stated in the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it is most beneficial. The request and FEA's determination concerning it shall be made in accordance with Subpart N of this part, which determination is in FEA's discretion.

§ 303.36 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third parties relevant to the application or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions, other than written comments or oral presentations in response to a notice of intention to issue an order. In evaluating an application or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference, if, in its discretion, it considers that a conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice.

(3) Applications for prohibition orders filed after April 1, 1975 shall be dismissed automatically.

(b) *Criteria.* The decision with respect to an application and the decision with respect to an FEA-initiated proceeding shall depend on whether FEA can make the findings stated in § 305.3(b) or § 305.4(b) of this chapter, as appropriate, and, with respect to a major fuel burning installation, shall include a consideration of the factors stated in § 305.3(d) and § 305.4(c) and (d) of this chapter, as applicable.

§ 303.37 Decision and order.

(a) Upon consideration of an application for a prohibition order and other relevant information received or obtained during the proceeding, the FEA shall issue either a prohibition order or an order denying the application.

(b) Prohibition orders, whether issued in response to an application or on FEA's initiative, shall not become effective until the notification or certification procedures described in this paragraph are satisfied.

(1) Prohibition orders that are applicable for a period ending prior to or on June 30, 1975 shall not become effective (i) until the date which the Administra-

tor of EPA certifies, pursuant to section 119(d)(1)(A) of the Clean Air Act, is the earliest date that the powerplant or major fuel burning installation will be able to comply with the air pollution requirements that will be applicable to it and (ii) until FEA has served the affected powerplant or major fuel burning installation a Notice of Effectiveness. Such order shall not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of such Act.

(2) Prohibition orders that are applicable after June 30, 1975 shall not become effective (i) until either (A) the Administrator of EPA notifies the FEA, in accordance with section 119(d)(1)(B) of the Clean Air Act, that the powerplant or major fuel burning 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, or (B) if no notification is given, the date which the Administrator of EPA certifies pursuant to section 119(d)(1)(B) of the Clean Air Act is the earliest date that the powerplant or major fuel burning installation will be able to comply with all applicable requirements of section 119, and (ii) until FEA has served the affected powerplant or major fuel burning installation a Notice of Effectiveness. Such order shall not be effective during any period certified by the Administrator of EPA under section 119(d)(3)(B) of such Act.

(3) Upon receipt of notification or certification by the Administrator of EPA, in accordance with the procedure described in paragraphs (1) and (2) of this subsection, the FEA shall issue a Notice of Effectiveness.

(c) The prohibition order or the order denying an application for a prohibition order shall include a written statement of the pertinent facts, a statement of the legal basis upon which the order is issued, and, when the order is a prohibition order, a recitation of the conclusions regarding the findings to be made by FEA in accordance with §§ 305.3(b) or 305.4(b) of this chapter, as appropriate, and a summary of the rationale for each. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part, except that an order dismissing the application for a prohibition order filed after April 1, 1975 shall state that it is a final order of which the applicant may seek judicial review. A prohibition order shall state that it will not be effective prior to a date in accordance with section 119 of the Clean Air Act, and service of a Notice of Effectiveness by FEA, and that it will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of such Act.

(d) The FEA shall serve a copy of the prohibition order, or of the order denying or dismissing the application for a prohibition order, upon the applicant or, if the action was initiated by FEA, upon

the affected powerplant or major fuel burning installation, and any other person who participated in the proceeding by filing written comments or making oral presentation. Notice of issuance of a Notice of Effectiveness of a prohibition order shall be published in the FEDERAL REGISTER.

§ 303.38 Timeliness.

(a) *Prohibition orders applicable for a period ending prior to or on June 30, 1975.* If the FEA fails to take action on an application for a prohibition order applicable for a period ending prior to or on June 30, 1975 within 30 days of filing, or by May 1, 1975, whichever is earlier, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(b) *Prohibition orders applicable after June 30, 1975.* If the FEA fails to take action on an application for a prohibition order applicable after June 30, 1975 within 30 days of filing, or by May 1, 1975, whichever is earlier, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(c) For purposes of this section, the term "action" includes service on the applicant of the notice of intention to issue a prohibition order.

§ 303.39 Appeal.

(a) Any person aggrieved by an order issued by the FEA under this subpart that denies an application for a prohibition order may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal shall be filed within 10 days of service of the order from which the appeal is taken or within 10 days of the date on which the applicant can treat the application as being denied in all respects.

(b) Any person aggrieved by a prohibition order may file an appeal with the FEA Office of Exceptions and Appeals, after issuance of a Notice of Effectiveness. The appeal shall be filed within 30 days after the service by FEA of the Notice of Effectiveness.

(c) If a powerplant or major fuel burning installation applies for a modification or rescission of a prohibition order, in accordance with Subpart J of this part, any appeal of such prohibition order shall be suspended until 30 days after an order has been issued in accordance with Subpart J or until 30 days from the date on which such powerplant or major fuel burning installation may treat that application as being denied in all respects.

(d) There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal, except that an order dismissing an application for a prohibition order that was filed after April 1, 1975 shall be a final order of which there may be judicial review.

Subpart C—Construction Orders**§ 303.40 Purpose and scope.**

(a) This subpart establishes the procedures for the filing by a powerplant (other than a combustion gas turbine or combined cycle unit) in the early planning process of an application for a construction order.

(b) A proceeding for issuance of a construction order may be commenced by FEA on its initiative or in response to an application. Sections 303.44, 303.46, 303.47, 303.49 shall be applicable to the proceeding regardless of the manner in which the proceeding is initiated. Other sections of this subpart apply only to proceedings commenced in response to an application.

§ 303.41 What to file.

(a) A powerplant filing under this subpart shall file an "Application for Construction Order" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) Application may be made for an individual fossil-fuel fired steam generating unit that produces electric power for sale or exchange, or for combinations thereof. The application should specify the unit or units with respect to which the application is being made.

(c) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.42 Where to file.

All applications for construction orders shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.43 When to file.

(a) All applications for construction orders must be filed by April 1, 1975.

§ 303.44 Notice.

Prior to issuance of a construction order, FEA shall publish notice of the intention to issue such order in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant that would be affected by the proposed order. The notice shall describe the proposed action and provide a period of no less than 10 days from the date of publication in which interested persons may file written data, views and adjustments.

§ 303.45 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the subject of the application and the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in the docu-

ments submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application. In addition to such information, the application shall include the following information:

(1) Description of applicant's proposed powerplant, including, but not limited to, location, output, fuels to be utilized, and rate of use thereof, area served, and stage of early planning process that the powerplant has reached at time of application. ("Early planning process" is defined in § 307.3(b) of this chapter.)

(2) A description of the modifications to the design and construction of the powerplant, if any, required to render it capable of using coal as its primary energy source, if the use of coal currently is not intended. ("Capable" is defined in § 307.3(a) of this chapter.)

(3) An analysis of the likelihood that use of coal would result in the impairment of reliability or adequacy of service, as such terms are defined in § 307.3(c) (1) of this chapter.

(4) An analysis of the availability of a supply of coal and its adequacy and reliability, as such terms are defined in § 307.3(c) (2) of this chapter.

(5) The identification and description of any contractual commitments for the design or construction of the powerplant and an analysis of the impact, if any, (taking into account the considerations stated in § 307.3(d) of this chapter) of the requirement that the powerplant be designed and constructed to be capable of using coal as its primary energy source.

(6) An analysis of the capability of the powerplant to recover any increase in projected capital investment that might be required as a result of a construction order.

(7) The identification of any loss of revenue resulting from a delay in the commencement of the sale or exchange of electric power, to the extent that electric power will have to be purchased from another powerplant, resulting from a construction order.

(8) The identification of any relevant regulations or policies of any State or local agency with jurisdiction over the sale or exchange of electric power by powerplants.

(9) Any other information that the applicant believes would be pertinent to FEA's evaluation of the application.

(10) An estimate of the anticipated effect that denial of the application would have on the applicant's proposed operation.

(11) A certification by the applicant's chief executive office or his duly authorized representative of the accuracy of the information stated in the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it is most beneficial. The request and

FEA's determination concerning it shall be made in accordance with Subpart N of this part, which determination is in FEA's discretion.

§ 303.46 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions, other than written comments in response to a notice of intention to issue an order. In evaluating an application or other documents, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted by the applicant, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice.

(3) Applications for construction orders filed after April 1, 1975 shall be dismissed automatically.

(b) *Criteria.* The decision with respect to an application and the decision with respect to an FEA-initiated proceeding shall be subject to the findings stated in § 307.3 (b) and (c) of this chapter and shall include a consideration of the factors stated in § 307.3(d) of this chapter.

§ 303.47 Decision and order.

(a) Upon consideration of an application for a construction order and other relevant information received or obtained during the proceeding, the FEA shall issue either a construction order or an order denying the application.

(b) The construction order, or the order denying an application for a construction order, shall include a written statement of the pertinent facts, statement of the legal basis upon which the order is issued, and when the order is a construction order, a recitation of the conclusions regarding the findings FEA stated in § 307.3 (b) and (c) of this chapter, as appropriate, and a summary of the rationale for each. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part, except that an order dismissing an application for a construction order filed after April 1, 1975 shall state that it is a final order of which the applicant may seek judicial review.

(c) The FEA shall serve a copy of the construction order, or of the order denying the application for a construction

order, upon the applicant or, if the action was initiated by FEA, upon the affected powerplant, and any other person who participated in the proceeding by filing written comments. Notice of issuance of a construction order shall be published in the FEDERAL REGISTER.

§ 303.48 Timeliness.

If the FEA fails to take action on an application for a construction order filed under this subpart within 30 days of filing, or by May 1, 1975, whichever is earlier, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart. For purposes of this section, the term "action" includes service on the applicant of a notice of intention to issue construction order.

§ 303.49 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal shall be filed within 10 days of service of the order from which the appeal is taken or within 10 days of the date on which the applicant can treat the application as being denied in all respects. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal, except that an order dismissing an application for a construction order that was filed after April 1, 1975 shall be a final order of which there may be judicial review.

Subpart D—[Reserved]

Subpart E—Exception

§ 303.60 Purpose and scope.

(a) This subpart establishes the procedures for applying for an exception from a regulation, ruling or generally applicable requirement based on an assertion of serious hardship, inequity or unfair distribution of burdens and for the consideration of such application by the FEA.

(b) A request for an interpretation or other specific action which includes, or could be construed to include, an application for an exception may be treated solely as a request for an interpretation or other action, and processed as such by FEA.

(c) The filing of an application for an exception shall not constitute grounds for non-compliance with the requirements of the regulation, ruling or generally applicable requirement from which an exception is sought, unless a stay has been issued in accordance with Subpart I.

§ 303.61 What to file.

(a) A person filing under this subpart shall file an "Application for Exception (ESECA)" which should be clearly labeled as such on the application and on the outside of the envelope in which the application is transmitted, and shall

be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9 (f) shall apply.

§ 303.62 Where to file.

All applications for exception shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.63 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the FEA action sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the FEA Office of Exceptions and Appeals within 10 days of service of such application. The application filed with the FEA shall include certification to the FEA that the applicant has complied with the requirements of this subsection and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding the provisions of subsection (a) of this section, if an applicant determines that compliance with subsection (a) of this section would be impracticable, the applicant shall:

(1) Comply with the requirements of subsection (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

The FEA may require the applicant to provide additional or alternative notice, or may determine that the notice required by subsection (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of such notice.

(d) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to the applicant. The person shall certify to the FEA that he has complied with the requirements of this sub-

section. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

(e) At regular intervals, the FEA shall publish a list of all persons who have applied for an exception under this subpart, with a brief description of the factual situation and the relief requested.

§ 303.64 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested action; and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference or hearing regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is within FEA's discretion.

(c) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA and EPA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the particular action sought therein.

(d) The application shall specify the exact nature and extent of the relief requested.

§ 303.65 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions. In evaluating an application or other documents, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a hearing or conference, if, in its discretion, it considers that such hearing or conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request necessary additional information is not submitted by the applicant, the FEA may

dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 303.63, the FEA may dismiss the application without prejudice.

(b) *Criteria.* (1) The FEA shall only consider an application for an exception when it determines that a more appropriate proceeding is not provided by this part.

(2) An application for an exception may be granted to alleviate or prevent special hardship, inequity or unfair distribution of burdens.

(3) An application for an exception shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous applications for exception.

§ 303.66 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order either granting or denying the application.

(b) The order shall include a written statement setting forth the pertinent facts and the legal basis upon which the order is issued. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the FEA as one who is aggrieved by such order. A copy of each order, with such modification as is necessary to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, will be on file in the public docket room described in § 303.13. If such copy contains information that has been claimed by an applicant or other person to be confidential, notice of the FEA's intention to place a copy in the docket room and an opportunity to respond shall be given to such person no less than five days prior to its placement in such room. The Office of Exceptions and Appeals shall publish periodically a digest of all orders issued.

§ 303.67 Timeliness.

(a) When the FEA has received all substantive information deemed necessary to process an application filed under this subpart, the FEA shall serve notice of that fact upon the applicant and all other persons who received notice of the proceeding pursuant to the provisions of § 303.63; and if the FEA fails to take action on the application within 90 days of serving such notice, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the FEA fails to take action on the application within 150 days from the filing of

the application, the applicant may treat it as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 303.68 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the order from which the appeal is taken or within 30 days of the date on which the applicant can treat the application as being denied in all respects. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart F—Exemption

§ 303.70 Purpose and scope.

This subpart establishes the procedures for filing an application for exemption and the consideration of such by the FEA. The applicant must be seeking an exemption from no less than an entire part, or subpart thereof, of Parts 303, 305, 307 or 309 of this chapter.

§ 303.71 Procedures.

(a) An exemption may be effected only by amendment to the regulations. Although an application for an exemption is a request for a rulemaking, the application is not subject to the procedures of Subpart M of this part. If a rulemaking proceeding is convened, however, it shall be held in accordance with Subpart M.

(b) An application for an exemption shall be submitted separate and apart from any other application, appeal, petition or other request submitted in accordance with this part. If an application for exemption is included with any other application, appeal, petition, or other request, the application for exemption will not be processed, nor will it be severed for separate consideration.

§ 303.72 What to file.

A person filing under this subpart shall file an "Application for Exemption (ESECA)" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application.

The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

§ 303.73 Where to file.

An application for exemption shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.74 Contents.

The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances,

acts or transactions that are the subject of the application and to the FEA action sought. The application shall identify the part or parts, or subparts thereof, of this chapter from which the exemption is sought; describe the business or other reason that would justify such exemption; identify the persons or classes of persons and acts or transactions that would be aggrieved or affected by such exemption and describe the adverse impact; describe the benefit to the person making the application, or others, that would result if the exemption were effected; and explain the reasons why the action sought by the application cannot be accomplished by any other proceeding provided in this part. Upon request, the applicant shall submit copies of relevant contracts, agreements, leases, instruments, and other documents that are representative of those that would be affected by the granting of the requested exemption.

§ 303.75 FEA evaluation.

(a) *Processing.* All applications for exemption shall be evaluated by FEA to determine if the institution of a rulemaking proceeding is warranted and if the FEA action sought by the applicant could more appropriately be considered in any other proceeding provided by this part. The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application for exemption or other document provided that the person making the request is afforded an opportunity to respond to all relevant third person submissions other than written comments or oral presentations in response to a rulemaking. In evaluating an application or other document, the FEA may conduct its own investigation and consider any other source of information.

(b) *Criteria.* (1) Rulemaking proceedings for the purpose of considering an application for exemption will be instituted only if the FEA is its discretion determines that such a proceeding would be appropriate. Among the factors that the FEA will evaluate in making a determination with respect to a rulemaking are—

(i) The impact that granting the exemption would have on the regulatory scheme and objectives;

(ii) The number of persons who would be exempted; and

(iii) The economic justification for such exemption.

(2) The FEA may summarily deny an application for exemption if—

(i) The exemption sought is not from each or all of Parts 303, 305 or 307, or a subpart thereof, of this chapter;

(ii) The granting of an exemption to the person making the application would not have sufficient national impact, economic or otherwise, to warrant rulemaking proceedings for the purpose of considering an amendment to the regulation;

(iii) It is determined that the statutory criteria cannot be met; or

(iv) It is determined that another proceeding provided by this part is more appropriate.

§ 303.76 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an appropriate order. If the application is not denied, the order shall provide for publication of a Notice of Proposed Rulemaking regarding the application in the FEDERAL REGISTER.

(b) The order shall include a written statement setting forth the pertinent facts and legal basis upon which the order is issued. The order denying the application shall state that any person aggrieved thereby may file an appeal with the Office of Exceptions and Appeals in accordance with Subpart H of this part.

§ 303.77 Timeliness.

(a) If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 303.78 Appeal.

Any person aggrieved by an order issued by the FEA under this subpart that denies an application for exemption may file an appeal with the Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the order from which the appeal is taken or within 30 days of the date on which the applicant can treat the application as being denied in all respects. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart G—Interpretation

§ 303.80 Purpose and scope.

(a) This subpart establishes the procedures for the filing of a formal request for an interpretation and for the consideration of such request by the FEA. Interpretations shall be in writing and shall only be issued by the FEA General Counsel. Responses, which may include verbal or written responses, to general inquiries or to other than formal written requests for interpretation filed with the General Counsel are not interpretations and merely provide general information.

(b) A request for interpretation that includes, or could be construed to include, an application for an exception or an exemption may be treated solely as a request for interpretation and processed as such.

§ 303.81 What to file.

(a) A person filing under this subpart shall file a "Request for Interpretation (ESECA)" which should be clearly

labeled as such both on the request and on the outside of the envelope in which the request is transmitted, and shall be in writing and signed by the person filing the request. The person filing the request shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the person filing the request wishes to claim confidential treatment for any information contained in the request or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.82 Where to file.

A request for interpretation shall be filed with the General Counsel at the address provided in § 303.12.

§ 303.83 Contents.

(a) The request shall contain a full and complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of the request and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the request. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the request.

(b) The request for interpretation shall include a discussion of all relevant authorities, including, but not limited to, FEA and EPA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the particular interpretation sought therein.

§ 303.84 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in a request or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any request for interpretation or other document provided that the person making the request is afforded an opportunity to respond to all relevant third person submissions. In evaluating a request for interpretation or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its own initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the request.

(2) The FEA shall issue its interpretation on the basis of the information provided in the request, unless that information is supplemented by other information brought to the attention of the General Counsel during the proceeding. The interpretation shall, therefore, depend for its authority on the accuracy of the factual statement and may be relied upon only to the extent that the facts of the actual situation correspond to those upon which the interpretation was based.

(3) If the FEA determines that there is insufficient information upon which to base a decision and if upon request necessary additional information is not submitted by the person requesting the interpretation, the FEA may refuse to issue an interpretation.

(b) *Criteria.* (1) The FEA shall base an interpretation on the FEAA and ESECA and the regulations and published rulings of the FEA as applied to the specific factual situation.

(2) The FEA shall take into consideration previously issued interpretations dealing with the same or a related issue.

§ 303.85 Decision and effect.

(a) Upon consideration of the request for interpretation and other relevant information received or obtained during the proceeding, the General Counsel may issue a written interpretation.

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

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

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

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

§ 303.86 Appeal.

Any person aggrieved by an interpretation issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 30 days of service of the interpretation from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart H—Appeal

§ 303.90 Purpose and scope.

(a) This subpart establishes the procedures for the filing of an administrative

PROPOSED RULES

tive appeal of FEA actions taken under Subparts B, C, E, F, G, J, K or P of this part and the consideration of such appeal by the FEA.

(b) A person who has appeared before the FEA in connection with a matter arising under Subparts B, C, E, F, G, J, K or P of this part has not exhausted his administrative remedies until an appeal has been filed under this subpart and an order granting or denying the appeal has been issued.

§ 303.91 Who may file.

Any person aggrieved by an order or interpretation issued by the FEA under Subparts B, C, E, F, G, J, K or P of this part may file an appeal.

§ 303.92 What to file.

(a) A person filing under this subpart shall file an "Appeal of Order (ESECA)" or an "Appeal of Interpretation (ESECA)" which should be clearly labeled as such both on the appeal and on the outside of the envelope in which the appeal is transmitted, and shall be in writing and signed by the person filing the appeal. The appellant shall comply with the general filing requirements stated in § 303.9 (other than § 303.9(e), as provided in § 303.96(c) of this subpart) in addition to the requirements stated in this subpart.

(b) If the appellant wishes to claim confidential treatment for any information contained in the appeal or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.93 Where to file.

The appeal of an order or interpretation shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.94 When to file.

The time within which an appeal must be filed and, in the case of a prohibition order, the time before which an appeal cannot be filed is stated in the appeals section of each subpart, unless a subpart describes a proceeding for which there is not an administrative appeal.

§ 303.95 Notice.

(a) The appellant shall send by United States mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to each person who is reasonably ascertainable by the appellant as a person who will be aggrieved by the FEA action sought, including those who participated in the prior proceeding, except as provided in paragraphs (b) and (c) of this section. The copy of the appeal shall be accompanied by a statement that the person may submit comments regarding the appeal to the FEA Office of Exceptions and Appeals within 10 days. The appeal filed with the FEA shall include certification to the FEA that the appellant has complied with the requirements of this para-

graph and shall include the names and addresses of each person to whom a copy of the appeal was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if an appellant determines that compliance with subsection (a) would be impracticable, the appellant shall:

(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the appeal a description of the persons or class or classes of persons to whom notice was not sent.

(c) The FEA may require the appellant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER. With respect to the appeal of a construction order, a prohibition order, or the modification or rescission of a prohibition order as a result to significantly changed circumstances that occurred during the interval between issuance of a prohibition order and service to Notice of Effectiveness, FEA shall provide notice of the appeal of those orders by publication in the FEDERAL REGISTER. Such notice shall state that aggrieved persons shall have 10 days from publication of the notice to file written comments regarding the appeal.

(d) The FEA shall serve notice on any other person reasonably identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the appeal will be accepted if filed within 10 days of service of that notice, except as stated in paragraph (c) of this section with respect to prohibition orders, construction orders, or the modification or rescission of such orders.

(e) Any person submitting written comments to the FEA with respect to an appeal filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to the appellant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 303.96 Contents.

(a) The appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It shall include a discussion of all relevant authorities, including, but not limited to, FEA rulings, regulations, interpretations and decisions on appeals and exceptions relied upon to support the appeal.

An appeal of a prohibition order, or of an order modifying a prohibition order that is applicable for the period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, may not contain an assertion of significantly changed circumstances, as that term is

defined in this subpart, as modified in § 303.126(b)(2). An assertion of significantly changed circumstances relating to such orders should be made pursuant to Subpart J of this part.

If the appeal (other than the appeal of a prohibition order or of the modification of a prohibition order applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1974) includes a request for relief based on significantly changed circumstances, there shall be a complete description of the events, acts, or transactions that comprise the significantly changed circumstances, and the appellant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding. For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(1) The discovery of material facts that were not known or could not have been known at the time of the prior proceeding;

(2) The discovery of a law, regulation, interpretation, ruling, order or decision on an appeal or exception that was in effect at the time of the proceeding upon which the order or interpretation is based and which, if such had been made known to FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(3) A substantial change in the facts or circumstances upon which an outstanding and continuing order or interpretation affecting the appellant was issued, which change has occurred during the interval between issuance of the order or interpretation and the date of the appeal and was caused by forces or circumstances beyond the control of the appellant.

(b) A copy of the order or interpretation that is the subject of the appeal shall be submitted with the appeal.

(c) The appellant shall state whether to the best of his knowledge the same or a related issue, act or transaction that is the subject of the appeal has been or presently is being considered or investigated by any FEA or EPA office, other Federal agency, department or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with an FEA proceeding described in this part, other than the proceeding from which the appeal is taken, or under Subpart A of 40 C.F.R., Part 55 (which states the EPA regulations implementing section 3 of ESECA). In addition, the appellant shall state whether contact has been made by the appellant or a person acting on his behalf with any person who is employed by the FEA or EPA subsequent to service of the order or interpretation that is being appealed with regard to the issue, act or transaction that is the subject of the appeal; the name of the person contacted; whether the contact was verbal or in writing; the nature and substance of the contact; and the date or dates of the contact. An ap-

pellant shall comply with this paragraph in lieu of § 303.9(e).

(d) The appellant shall state whether he requests or intends to request that there be a conference or hearing regarding the appeal. Any request not made at the time the appeal is filed shall be made as soon thereafter as possible, to insure that the conference or hearing is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is within FEA's discretion.

§ 303.97 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an appeal or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any appeal or other document provided that the appellant is afforded an opportunity to respond to all relevant third person submissions. In evaluating an appeal or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference or hearing if, in its discretion, it considers that such conference or hearing will advance its evaluation of the appeal.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the FEA may dismiss the appeal with leave to amend within a specified time. If the failure to supply additional information is repeated or willful, the FEA may dismiss the appeal with prejudice. If the appellant fails to provide the notice required by § 303.95, the FEA may dismiss the appeal without prejudice.

(3) *Failure to satisfy requirements.*

(i) If the appellant fails to satisfy the requirements of paragraph (b) (1) of this section, the FEA may issue an order summarily denying the appeal. The order shall state the grounds for the denial and a copy of the order shall be served upon the appellant and any other person who participated in the appellate proceeding.

(ii) The order denying the appeal shall become a final order of the FEA within 10 days of its service upon the appellant, unless within such 10-day period an amendment to the appeal that corrects the deficiencies identified in the order is filed with the Office of Exceptions and Appeals.

(iii) Within 10 days of the filing of such amendment, as provided in paragraph (b) (1) of this section, the FEA shall notify the appellant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiencies, that notice shall be an order dismissing the appeal as amended. Such order shall be a final order of the FEA of which appellant may seek judicial review.

(b) *Criteria.* (1) An appeal may be summarily denied if—

(i) It is not filed in a timely manner, unless good cause is shown; or

(ii) It is defective on its face for failure to state, and to present facts and legal argument in support thereof, that the FEA action was erroneous in fact or in law, or that it was arbitrary or capricious.

(2) The FEA may deny any appeal if the appellant does not establish that—

(i) The appeal was filed by a person aggrieved by an FEA action;

(ii) The FEA's action was erroneous in fact or in law; or

(iii) The FEA's action was arbitrary or capricious. The denial of an appeal shall be a final order of FEA of which the appellant may seek judicial review.

§ 303.98 Decision and order.

(a) Upon consideration of the appeal and other relevant information received or obtained during the proceeding, the FEA shall enter an appropriate order, which may include the modification of the order or interpretation that is the subject of the appeal.

(b) The order shall include a written statement setting forth the pertinent facts and the legal basis of the order. The order shall state that it is a final order of the FEA of which the appellant may seek judicial review.

(c) The FEA shall serve a copy of the order upon the appellant, any other person who participated in the appellate proceeding and upon any other person reasonably identifiable by the FEA as one who is aggrieved by such order.

(d) A copy of each order, with such modification as is necessary to insure the confidentiality of information protected from disclosure under 18 U.S.C. 1905 and 5 U.S.C. 552, will be filed in the public docket room described in § 303.13. If such copy contains information that has been claimed by an appellant or other person to be confidential, notice of the FEA's intention to place a copy in the public docket room and an opportunity to respond shall be given to such person no less than five days prior to its placement in such room.

§ 303.99 Appeal of a remedial order.

The appeal of a remedial order shall be in accordance with the procedures stated in this subpart, except:

(a) the appeal must be filed within 10 days of the service of the remedial order; and

(b) if the appeal is of a remedial order that was issued subsequent to a notice of probable violation that relates to an order or interpretation previously issued by the FEA, with respect to which there was an exhaustion of administrative remedies, no issues will be considered on the current appeal that were raised in that prior proceeding.

(c) If an issue raised on an appeal of a remedial order is also being considered in connection with any other FEA proceeding, the FEA may consolidate such issues and consider them in

the appellate proceeding for the remedial order.

§ 303.100 Timeliness.

(a) When the FEA has received all substantive information deemed necessary to process any appeal filed under this subpart, the FEA shall serve notice of that fact upon the appellant and all other persons who received notice of the proceeding pursuant to the provisions of § 303.95, except those persons who received notice by publication of the notice in the FEDERAL REGISTER, or participated in the appellate proceeding by the filing of comments; and if the FEA fails to take action on the appeal within 90 days of serving such notice, the appellant may treat the appeal as having been denied in all respects and may seek judicial review thereof.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the FEA fails to take action on the appeal within 120 days of the filing of the appeal, the appellant may treat it as having been denied in all respects and may seek judicial review thereof.

(c) If a powerplant or major fuel burning installation applies for a modification or rescission of a prohibition order in accordance with Subpart J of this part (other than a modification to a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975), any appeal of the prohibition order that is the subject of such application shall be suspended until 30 days after an order has been issued in accordance with Subpart J or until 30 days from the date on which the powerplant or major fuel burning installation may treat that application for modification or rescission as being denied in all respects pursuant to Subpart J. The 120-day period provided in paragraph (b) shall be suspended during the period the appeal is stayed.

Subpart I—Stay

§ 303.110 Purpose and scope.

This subpart establishes the procedures for the application for and granting of a stay by the FEA. An application for a stay will only be considered—

(a) Incident to or pending an appeal from an order of the FEA;

(b) Incident to an application for an exception from the application of any applicable requirements when the stay FEA regulations, rulings, or generally apportioned is of the same regulation, ruling or generally applicable requirement from which the exception is sought;

(c) Incident to an application for modification or rescission of a prohibition order (other than the modification of an order that is applicable for a period ending prior to or before June 30, 1975 to make it applicable after June 30, 1975); or

(d) pending judicial review.

All FEA orders, regulations, rulings, and generally applicable requirements shall be complied with unless and until an application for a stay is granted.

§ 303.111 What to file.

(a) A person filing under this subpart shall file an "Application for Stay (ESECA)" which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.112 Where to file.

(a) An application for stay of an FEA order incident to an appeal from such order shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

(b) An application for stay of the application of any or all FEA regulations, rulings, or generally applicable requirements incident to an application for an exception therefrom shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

(c) An application for stay of an FEA order or of the application of any FEA regulations, rulings or generally applicable requirements pending judicial review shall be filed with the office that issued the order of which judicial review is sought.

§ 303.113 Notice.

(a) When administratively feasible, the FEA shall notify each person reasonably identifiable by the FEA as one who would be aggrieved by the FEA action sought that the applicant has filed for a stay and that the FEA will accept written comment on the application.

(b) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to the applicant. The person shall certify to the FEA that it has complied with the requirements of this paragraph. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 303.114 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the application and to the FEA action sought. Such facts shall include, but not be limited to, all information that relates to the satisfaction of the criteria in § 303.115(b).

(b) The application shall include a description of the proceeding incident to which the stay is being sought. This description shall contain a discussion of all FEA and EPA actions relevant to the proceeding.

(c) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is within FEA's discretion.

§ 303.115 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions. In evaluating an application or other documents, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted by the applicant, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice.

(3) The FEA shall process applications for stay as expeditiously as possible. When administratively feasible, the FEA shall grant or deny the application for stay within 10 business days after receipt of the application.

(4) Notwithstanding the provision for notice to third persons in § 303.113(a), the FEA may make a decision on an application for stay prior to the receipt of written comments.

(b) *Criteria.* The grounds for granting a stay are a showing that there is a likelihood of success on the merits and one or more of the following:

(1) A showing that irreparable injury will result in the event that the stay is denied;

(2) A showing that denial of the stay will result in a more immediate special hardship, inequity or unfair distribution of burdens to the applicant than to the other persons affected by the proceeding;

(3) A showing that it would be desirable for public policy or other reasons to preserve the status quo ante pending a decision on the merits of the appeal or exception; or

(4) A showing that it is impossible for the applicant to fulfill the requirements of the original order.

§ 303.116 Decision and order.

(a) Upon consideration of the application and other relevant information

received or obtained during the proceeding, the FEA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the relevant facts and the legal basis of the decision, and the terms and conditions of the stay.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person reasonably identifiable by FEA as one who is aggrieved by such decision.

(d) The grant or denial of a stay is not an order of the FEA subject to administrative review.

(e) In its discretion and upon a determination that such is in accordance with the objectives of the regulations and the FEAA or ESECA, the FEA may order a stay on its own initiative.

Subpart J—Modification or Rescission of Prohibition Orders and Construction Orders**§ 303.120 Purpose and scope.**

(a) This subpart establishes the procedures for the filing by any powerplant or major fuel burning installation of an application for modification or rescission of a prohibition order or a construction order.

(b) A proceeding for modification or rescission of a prohibition order or a construction order may be commenced by FEA in response to an application or upon its initiative. Sections 303.124, 303.126, 303.127 and 303.129 of this subpart shall be applicable to the proceeding regardless of the manner in which the proceeding was initiated. Other sections of this subpart apply only to a proceeding commenced in response to an application.

§ 303.121 What to file.

(a) A powerplant or major fuel burning installation filing under this subpart shall file an "Application for Modification (or Rescission) of Prohibition Order (or Construction Order)" which should be clearly labeled as such, using the applicable terms, both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures stated in § 303.9(f) shall apply.

§ 303.122 Where to file.

An application for modification or rescission shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.123 When to file.

(a) *Prohibition orders.* (1) An application for modification of a prohibition order that is applicable for the period ending prior to or on June 30, 1975, to make it applicable for a period after

June 30, 1975, shall be filed by May 15, 1975.

(2) An application for modification or rescission of a prohibition order based on significantly changed circumstances, which circumstances occurred during the interval between issuance of the order and service of a Notice of Effectiveness, shall be filed within 30 days of service of such notice.

(3) An application for modification or rescission of a prohibition order based on significantly changed circumstances other than those stated in subparagraph (2) of this paragraph may be filed at any time after the Notice of Effectiveness is served.

(b) *Construction orders.* An application for modification or rescission of a construction order may not be filed until the 30-day period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

§ 303.124 Notice.

(a) *Prohibition orders applicable for a period ending prior to or on June 30, 1975.* (1) Prior to issuance of an order or modifying or rescinding a prohibition order that is applicable for a period ending prior to or on June 30, 1975 (other than the modification described in subparagraph (2) of this paragraph), either in response to an application or on its initiative, FEA may publish notice of the intention to take any such action in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. Any such notice shall describe the proposed action and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views and arguments.

(2) Prior to issuance of an order modifying a prohibition order that is applicable for a period ending prior to or on June 30, 1975, to make it applicable after June 30, 1975, either in response to an application or on its initiative, FEA shall publish notice of the intention to take such action in the FEDERAL REGISTER and shall serve a copy of such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. Such notice shall describe the proposed action and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views or arguments, and shall set a date, time and place at which there shall be an opportunity for interested persons to make oral presentation of data, views and arguments in accordance with Subpart N of this part.

(b) *Prohibition orders applicable after June 30, 1975.* Prior to issuance of an order modifying or rescinding a prohibition order that is applicable after June 30, 1975, either in response to an application or on its initiative, FEA may publish notice of the intention to take such action in the FEDERAL REGISTER and shall

serve a copy of any such notice on the powerplant or major fuel burning installation that would be affected by the proposed order. Any such notice shall describe the proposed action and provide a period of no less than 10 days from date of publication in which interested persons may file written data, views or arguments.

(c) *Construction orders.* Prior to issuance of an order modifying or rescinding a construction order, either in response to an application or on its initiative, FEA may publish notice of the intention to take such action in the FEDERAL REGISTER and shall serve a copy of any such notice on the powerplant that would be affected by the proposed order. Such notice shall describe the proposed action and provide a period of no less than 10 days from the date of its publication in which interested persons may file written data, views or arguments.

§ 303.125 Contents.

(a) An application (other than an application for modification of a prohibition order that is applicable for the period ending prior to June 30, 1975 to make it applicable after June 30, 1975) shall contain a full and complete statement of all relevant facts pertaining to the circumstances, acts or transactions that is the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a description of the acts or transactions that would be affected by the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the FEA upon its request. A copy of the prohibition order or construction order of which modification or rescission is sought shall be included with the application.

The application shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances, as defined in § 303.126(b)(2), upon which the application for modification or rescission of a prohibition order or construction order is based. The application shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(b) An application for modification of a prohibition order that is applicable for the period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975 shall contain the information required to be submitted by § 303.35(a).

(c) The applicant shall state whether he requests or intends to request that there be a conference regarding an application (other than an application for modification of an order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975). Any request not made at the time the application is filed shall be made as soon thereafter as possible, to

insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is in FEA's discretion.

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA or EPA rulings, regulations, interpretations, and decisions on appeal and exceptions relied upon to support the action sought therein.

§ 303.126 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to any application for modification or rescission or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions, other than written comments or oral presentations in response to a notice of intention to issue modification or rescission of an order. In evaluating an application for modification or rescission or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA may on its initiative convene a conference, if, in its discretion, it considers that such will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice.

(b) *Criteria.* (1) The decision with respect to modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, either in response to an application or on its initiative, shall depend on whether FEA can make the findings stated in § 305.3 (b) or § 305.4(b) of this chapter, as appropriate, and, with respect to major fuel burning installations, shall include a consideration of the factors stated in § 305.4 (c) and (d) of this chapter when applicable.

(2) FEA's decision with respect to modification or rescission of a prohibition order or a construction order, other than the modification described in subparagraph (1) of this paragraph, either in response to an application or on its initiative, shall be based on a determination that there are significantly changed circumstances. For purposes of this paragraph, the term "significantly changed circumstances" shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based—in particular, those that would substantially affect the findings

made by FEA in accordance with §§ 305.3(b), 305.4(b), or 307.3(b) and (c) of this chapter, or the factors considered pursuant to §§ 305.4(c) and 307.3(d) of this chapter.

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application or order is based and which, if such had been made known the FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which was based an outstanding and continuing prohibition order or, upon which was based an outstanding and continuing construction order, which change occurred during the interval between issuance of the order and service of the Notice of Effectiveness, or occurred during the interval after service of the Notice of Effectiveness and the application for modification or rescission of a prohibition order, or during the interval between issuance of a construction order and the date of the application for modification or rescission of it, and was caused by forces or circumstances beyond the control of the applicant.

§ 303.127 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an appropriate order.

(1) If the appropriate order is a modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975, such order shall not become effective (i) until (A) the Administrator of EPA notifies the FEA under section 119(d)(1)(B) of the Clean Air Act that the affected powerplant or major fuel burning 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 or (B) if no notification is given, the date which the Administrator of EPA certifies pursuant to section 119(d)(1)(B) of the Clean Air Act is the earliest date that the powerplant or major fuel burning installation will be able to comply with all applicable requirements of such section 119, and (ii) until FEA has served the affected powerplant or major fuel burning installation a Notice of Effectiveness. Upon receipt of notification or certification by the Administrator of EPA, in accordance with the procedures described in this paragraph, FEA shall issue a Notice of Effectiveness.

(2) Prohibition orders as modified shall not be effective during any period certified by the Administrator of EPA under section 119(d)(3)(B) of the Clean Air Act.

(b) (1) *Prohibition orders applicable for a period ending prior to or on June 30, 1975 modified to make them applicable after June 30, 1975.* The order shall

include a written statement of the pertinent facts, a recitation of the conclusions regarding the findings to be made by FEA in accordance with §§ 305.3(b) or 305.4(b) of this chapter, as appropriate, and a summary of the rationale for each, and a statement of the legal basis upon which the order is issued. The order shall provide that any person aggrieved thereby may file an appeal with the Office of Exceptions and Appeals in accordance with Subpart H of this part. The order shall state that it will not become effective prior to a date set in accordance with section 119 of the Clean Air Act and service of a Notice of Effectiveness by FEA, and that it will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of such Act.

(2) *Other prohibition orders.* The order shall include a written statement setting forth the pertinent facts and legal basis of the order. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. If appropriate, it shall state that the modified prohibition order will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d)(3)(B) of the Clean Air Act.

(c) *Construction orders.* The order shall include a written statement setting forth the pertinent facts and legal basis of the order. The order shall provide that any person aggrieved thereby may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part.

(d) The FEA shall serve a copy of the order upon the applicant or, if the action was initiated by FEA, upon the affected powerplant or major fuel burning installation, and any other person who participated in the proceeding by filing written comments or making oral presentation. Notice of issuance of an order modifying or rescinding a prohibition order or a construction order shall be published in the FEDERAL REGISTER.

§ 303.128 Timeliness.

(a) *Prohibition orders applicable for a period ending prior to or on June 30, 1975.* If the FEA fails to take action on an application for modification or rescission of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 within 30 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(b) *Prohibition orders for a period ending after June 30, 1975.* If the FEA fails to take action on an application for modification or rescission of a prohibition order for a period ending after June 30, 1975 within 30 days of filing, the applicant may treat the application as having been denied in all respects, and may appeal therefrom as provided in this subpart.

(c) *Construction orders.* If FEA fails to take action on an application for modification or rescission of a construc-

tion order within 30 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

(d) In any event, the applicant may treat the application as having been denied in all respects and may seek appeal therefrom as provided in this subpart if FEA fails to issue an order granting or denying the application within 150 days of the filing of such application.

(e) For purposes of this section, the term "action" includes service of a "Notice of Intention to Modify (or Rescind) Prohibition Order (or Construction Order)" on the applicant.

§ 303.129 Appeal.

(a) Any person aggrieved by an order issued by the FEA under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part.

(b) (1) The appeal of an order (including an order modifying a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975) shall be filed within 30 days of service of the order from which the appeal is taken or within 30 days of the date on which the applicant can treat the application as being denied in all respects.

(2) The appeal of an order denying an application to modify a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make it applicable after June 30, 1975 shall be filed within 10 days of service of a Notice of Effectiveness under this subpart.

(c) There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of this part and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Subpart K—Modification or Rescission of Orders (Other Than Prohibition Orders or Construction Orders) and Interpretations

§ 303.130 Purpose and scope.

(a) This subpart establishes the procedures for the filing of an application for modification or rescission of an FEA order (other than a prohibition order or construction order) or an interpretation. Modification or rescission is a summary proceeding that will be initiated only if the criteria described in § 303.135(b) are satisfied.

(b) A proceeding for modification or rescission of an order (other than a prohibition order or construction order) or an interpretation may be commenced by FEA in response to an application or on its initiative. Sections 303.133(c)(2), 303.135(a)(1), 303.136(b) and (c), and 303.138 of this subpart shall be applicable to the proceeding regardless of the manner in which the proceeding was initiated. Other sections of this subpart apply only to a proceeding commenced in response to an application.

§ 303.131 What to file.

(a) A person filing under this subpart shall file an "Application for Modifica-

tion (or Rescission)" which should be clearly labeled, using the appropriate terms, as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing and signed by the person filing the application. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.132 Where to file.

All applications for modification or rescission filed under this subpart shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.133 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, from which confidential information has been deleted in accordance with § 303.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the FEA action sought, including persons who participated in the prior proceeding. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application to the FEA office with which the application was filed within 10 days. The application filed with the FEA shall include certification to the FEA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses. The applicant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart.

(b) If the applicant wishes to claim confidential treatment for any information contained in the application or other documents submitted under this subpart, the procedures set out in § 303.9(f) shall apply.

§ 303.132 Where to file.

All applications for modification or rescission filed under this subpart shall be filed with the Office of Exceptions and Appeals at the address provided in § 303.12.

§ 303.133 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, from which confidential information has been deleted in accordance with § 303.9(f), to each person who is reasonably ascertainable by the applicant as a person who will be aggrieved by the FEA action sought, including persons who participated in the prior proceeding. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the ap-

plication to the FEA office with which the application was filed within 10 days. The application filed with the FEA shall include certification to the FEA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) would be impracticable, the applicant shall:

(1) Comply with the requirements of subsection (a) of this section with regard to those persons whom it is reasonable and possible to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was not sent.

The FEA may require the applicant to provide additional or alternative notice, or may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) (1) The FEA shall serve notice on any other person readily identifiable by the FEA as one who will be aggrieved by the FEA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of that notice.

(2) If FEA on its initiative commences a proceeding for the modification or rescission of an order (other than a prohibition order or construction order) or an interpretation, it shall give notice, either by service of a written notice or by verbal communication, which communication shall be promptly confirmed in writing, on each person who was served the order or interpretation that FEA proposes to modify. A reasonable period of time shall be given for each person notified to file a written response or give a verbal communication, if promptly confirmed in writing.

(d) Any person submitting written comments to the FEA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with § 303.9(f), to the applicant. The person shall certify to the FEA that it has complied with the requirements of this subsection. The FEA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 303.134 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, acts or transactions that are the subject of the application and to the FEA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by

the requested action; and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the FEA upon its request. A copy of the order or interpretation of which modification or rescission is sought shall be included with the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible, to insure that the conference is held when it will be most beneficial. The request and the FEA's determination regarding it shall be made in accordance with Subpart N of this part, which determination is in FEA's discretion.

(c) The applicant shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances, as defined in § 303.135(b)(2), upon which the application is based. The applicant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the prior proceeding.

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, FEA or EPA rulings, regulations, interpretations and decisions on appeal and exception relied upon to support the action sought therein.

§ 303.135 FEA evaluation.

(a) *Processing.* (1) The FEA may initiate an investigation of any statement in an application or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions from third persons relevant to the application for modification or rescission or other document provided that the applicant is afforded an opportunity to respond to all relevant third person submissions. In evaluating an application for modification or rescission or other document, the FEA may conduct its own investigation and consider any other source of information. The FEA on its initiative may convene a conference if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the FEA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the FEA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the FEA may dismiss the application with prejudice. If the applicant fails to provide the notice required by § 303.133, the FEA may dismiss the application without prejudice.

(3) *Failure to satisfy requirements.* (1) If the applicant fails to satisfy the requirements of paragraph (b)(1) of this section, the FEA shall issue an order denying the application. The order shall state the grounds for the denial.

PROPOSED RULES

(ii) The order denying the application shall become final within 10 days of its service upon the applicant, unless within such 10-day period an amendment to correct the deficiencies identified in the order is filed with the Office of Exceptions and Appeals.

(iii) Within 10 days of the filing of such amendment, the FEA shall notify the applicant whether the amendment corrects the specified deficiencies. If the amendment does not correct the deficiencies, the notice shall be an order dismissing the application as amended. Such order shall be a final order of the FEA of which the applicant may seek judicial review.

(b) *Criteria.* (1) An application for modification or rescission of an order (other than a prohibition order or construction order) or an interpretation shall be processed only if—

(1) The application demonstrates that it is based on significantly changed circumstances; and

(ii) The 30-day period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

(2) For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(1) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based;

(ii) The discovery of a law, regulation, interpretation, ruling, order or decision on appeal or exception that was in effect at the time of the proceeding upon which the application is based and which, if such had been made known to the FEA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order or interpretation of the FEA affecting the applicant was issued, which change has occurred during the interval between issuance of such order or interpretation and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

§ 303.136 Decision and order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the FEA shall issue an order granting or denying the application.

(b) The order shall include a written statement setting forth the pertinent facts and the legal basis of the order. The order shall state that it is a final order of which the applicant may seek judicial review.

(c) The FEA shall serve a copy of the order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the FEA as one who is aggrieved by such order.

§ 303.137 Timeliness.

(a) If the FEA fails to take action on any application filed under this subpart within 90 days of filing, the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

§ 303.138 Appeal.

The denial of an application for modification or rescission filed under this subpart shall be a final order of FEA of which the applicant may seek judicial review.

Subpart L—Rulings

§ 303.150 Purpose and scope.

This subpart establishes the criteria for the issuance of interpretative rulings by the General Counsel. All rulings shall be published in the FEDERAL REGISTER. Any person is entitled to rely upon such ruling to the extent provided in this subpart.

§ 303.151 Criteria for issuance.

(a) A ruling may be issued, in the discretion of the General Counsel, whenever there have been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations.

(b) The General Counsel may issue a ruling whenever it is determined that it will be of assistance to the public in applying the regulations to a specific situation.

§ 303.152 Modification or rescission.

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

(1) Publication of the modification or rescission in the FEDERAL REGISTER; or

(2) A rulemaking proceeding in accordance with Subpart M of this part.

(b) Unless and until a ruling is modified or rescinded as provided in subsection (a) of this section, no person shall be subject to the sanctions or penalties stated in Subpart Q of this part for actions taken in reliance upon the ruling, notwithstanding that the ruling shall thereafter be declared by judicial or other competent authority to be invalid. Upon such declaration, no person shall be entitled to rely upon the ruling.

§ 303.153 Comments.

A written comment on or objection to a published ruling may be filed at any time with the General Counsel at the address provided in § 303.12.

§ 303.154 Appeal.

There is no administrative appeal of a ruling.

Subpart M—Rulemaking

§ 303.160 Purpose and scope.

(a) This subpart establishes the procedures that govern a rulemaking proceeding. The initiation of a rulemaking proceeding is within the sole discretion of the FEA.

(b) Rulemaking by the FEA shall be in accordance with the Administrative Pro-

cedure Act (5 U.S.C. 551, *et seq.* (1970)) and the FEAA.

§ 303.161 What to file.

(a) *Comments in connection with a rulemaking.* Any comments filed in connection with a rulemaking shall be filed in accordance with the instructions in the Notice of Proposed Rulemaking published in the FEDERAL REGISTER. Such comments shall be in writing and signed by the person filing them.

(b) *Petition for rulemaking.* (1) Any person may at any time file a petition regarding any FEA regulation or amendment thereto or, by letter, request that a rulemaking proceeding be instituted. Such petition or request shall be signed by the person filing it.

(2) Upon due consideration of a petition for rulemaking, expressly designated as such, the FEA shall either: (i) institute a rulemaking as proposed or as modified in its discretion; (ii) notify the petitioner in writing that it does not intend to institute a rulemaking as proposed or as modified and stating the reasons therefore; or (iii) notify the petitioner in writing that the matter is under continuing consideration and that no decision can be made at that time because of the inadequacy of available information, changing circumstances or other reasons as set forth in such notice.

§ 303.162 Where to file.

All comments filed in connection with a rulemaking shall be submitted in accordance with the instructions in the Notice of Proposed Rulemaking. Any other petition or request shall be filed with the General Counsel at the address provided in § 303.12.

Subpart N—Conferences, Hearings, and Public Hearings

§ 303.170 Purpose and scope.

This subpart establishes the procedures for requesting and conducting an FEA conference, hearing, or public hearing. Such proceedings shall be convened in the discretion of the FEA, consistent with the requirements of the FEAA and ESECA.

§ 303.171 Conferences.

(a) The FEA in its discretion may direct that a conference be convened, on its initiative or upon request by a person, when it appears that such conference will materially advance the proceeding. The determination as to who may attend a conference convened under this subpart shall be in the discretion of the FEA, but a conference will usually not be open to the public.

(b) A conference may be requested in connection with any proceeding of the FEA by any person who might be aggrieved by that proceeding. The request may be made in writing or verbally, but must include a specific showing as to why such conference will materially advance the proceeding. The request shall be addressed to the FEA office that is conducting the proceeding.

(c) A conference may only be convened after actual notice of the time,

place, and nature of the conference is provided to the person who requested the conference.

(d) When a conference is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the conference, but will be treated as if submitted in the regular course of the proceedings. A transcript of the conference will not usually be prepared. However, the FEA in its discretion may have a verbatim transcript prepared.

(e) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the FEA in its discretion determines that such would be advisable.

§ 303.172 Hearings.

(a) The FEA in its discretion may direct that a hearing be convened, on its initiative or upon request by a person, when it appears that such hearing will materially advance the proceeding. The determination as to who may attend a hearing convened under this subpart shall be in the discretion of the FEA, but a hearing will usually not be open to the public.

(b) A hearing may only be requested in connection with an application for an exception, or an appeal. Such request may be by the applicant, appellant, or any other person who might be aggrieved by the FEA action sought. The request shall be in writing and shall include a specific showing as to why such hearing will materially advance the proceeding. The request shall be addressed to the Office of Exceptions and Appeals as provided in § 303.12.

(c) The FEA will designate an agency official to conduct the hearing, and will specify the time and place for the hearing.

(d) A hearing may only be convened after actual notice of the time, place, and nature of the hearing is provided both to the applicant or appellant and to any other person reasonably identifiable by the FEA as one who will be aggrieved by the FEA action involved. The notice shall include, as appropriate:

(1) A statement that such person may participate in the hearing; or

(2) A statement that such person may request a separate conference or hearing regarding the application or appeal.

(e) When a hearing is convened in accordance with this section, each person may present views as to the issue or issues involved. Documentary evidence may be presented at the hearing, but will be treated as if submitted in the regular course of the proceedings. A transcript of the hearing will not usually be prepared. However, the FEA in its discretion may have a verbatim transcript prepared.

(f) The official conducting the hearing may administer oaths and affirmations, rule on the presentation of information, receive relevant information, dispose of procedural requests, determine the format of the hearing, and otherwise regulate the course of the hearing.

(g) Because a hearing is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the FEA in its discretion determines that such would be advisable.

§ 303.173 Public hearings.

(a) A public hearing shall be convened prior to issuance of a prohibition order applicable after June 30, 1975 and prior to the modification of a prohibition order that is applicable for a period ending prior to or on June 30, 1975 to make such order applicable after June 30, 1975.

(b) A public hearing shall be convened incident to a rulemaking:

(1) When the proposed rule or regulation is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses; or

(2) When the FEA determines that a public hearing would materially advance the consideration of the issue. A public hearing may be requested by any interested person in connection with a rulemaking proceeding, but shall only be convened on the initiative of the FEA unless otherwise required by statute.

(c) A public hearing may be convened incident to any other proceeding when the FEA in its discretion determines that such public hearing would materially advance the consideration of the issue.

(d) A public hearing may only be convened after publication of a notice in the FEDERAL REGISTER, which shall state the time, place, and nature of the public hearing.

(e) Interested persons may file a request to participate in the public hearing in accordance with the instructions in the notice published in the FEDERAL REGISTER. The request shall be in writing and signed by the person making the request. It shall include a description of the person's interest in the issue or issues involved and of the anticipated content of the presentation. It shall also contain a statement explaining why the person would be an appropriate spokesperson for the particular view expressed.

(f) The FEA shall appoint a presiding officer to conduct the public hearing. An agenda shall be prepared that shall provide, to the extent practicable, for the presentation of all relevant views by competent spokespersons.

(g) A verbatim transcript shall be made of the hearing. The transcript, together with any written comments submitted in the course of the proceeding, shall be made available for public inspection and copying in the public docket room described in § 303.13.

(h) The information presented at the public hearing, together with the written comments submitted and other relevant information developed during the course of a proceeding, shall provide the basis for the FEA decision.

Subpart O—Complaints

§ 303.180 Purpose and scope.

This subpart establishes the procedures for the filing and consideration of complaints relating to alleged violations of the regulations stated in Parts 303, 305 or 307 of this chapter.

§ 303.181 What to file.

A person filing under this subpart shall file a "Complaint (ESECA)" which should be clearly labeled as such both on the complaint and on the outside of the envelope in which the complaint is transmitted, and shall be in writing and signed by the person filing the complaint. The complainant shall comply with the general filing requirements stated in § 303.9 in addition to the requirements stated in this subpart. Verbal complaints that otherwise satisfy the requirements of this subpart will be accepted, but written verification may be requested by the FEA.

§ 303.182 Where to file.

A complaint shall be filed with the FEA National Office at the address provided in § 303.12.

§ 303.183 Contents.

The complaint shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the complaint and to the FEA action sought. Such facts shall include the names and addresses of all persons involved (if reasonably ascertainable) and a description of the events that led to the complaint. It shall include a statement describing the regulation, ruling, order or interpretation that allegedly has been violated.

§ 303.184 FEA evaluation.

(a) *Processing.* The FEA may initiate an investigation of any statement in a complaint or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by such investigation. The FEA may solicit or accept submissions relevant to a complaint or other document from third persons to the proceeding. In evaluating a complaint, the FEA may consider any other source of information. The FEA on its initiative may order a conference if, in its discretion, it considers such conference will advance its evaluation of the complaint.

(b) *Confidentiality of information.* Information received in the investigation of a complaint, including the identity of the complainant and any other person who provides information during the proceeding, shall remain confidential to the extent it is covered by the investigatory file exception to public disclosure contained in 5 U.S.C. 552 unless, upon proper notice to the complainant and an opportunity to respond, the FEA determines that disclosure would be in the public interest.

§ 303.185 Decision.

After consideration of a written complaint, unless written verification of a verbal complaint was not requested, and of other relevant information received or obtained during the proceeding, the FEA may:

(a) Issue a notice of probable violation or remedial order for immediate compliance in accordance with the provisions of Subpart P of this part;

(b) Determine that no violation has occurred or that a notice of probable violation or a remedial order for immediate compliance would not be appropriate; or

(c) Take such other action as it deems appropriate.

Subpart P—Notice of Probable Violation and Remedial Order

§ 303.190 Purpose and scope.

(a) This subpart establishes the procedures for determining the nature and extent of violations of the FEA regulations stated in Parts 303, 305, and 307 of this chapter and the procedures for issuance of a notice of probable violation, a remedial order, or a remedial order for immediate compliance.

(b) When any report required by the FEA or any audit or investigation discloses, or the FEA otherwise discovers, that there is reason to believe a violation of any provision of Parts 303, 305, or 307 of this chapter, or any order issued thereunder, has occurred, is continuing or is about to occur, the FEA may conduct proceedings to determine the nature and extent of the violation and may issue a remedial order thereafter. The FEA may commence such proceeding by serving a notice of probable violation or by issuing a remedial order for immediate compliance.

§ 303.191 Notice of probable violation.

(a) The FEA may begin a proceeding under this subpart by issuing a notice of probable violation if the FEA has reason to believe that a violation has occurred, is continuing, or is about to occur.

(b) Within 10 days of the service of a notice of probable violation, the person upon whom the notice is served may file a reply with the FEA office that issued the notice of probable violation at the address provided in § 303.12. The FEA may extend the 10-day period for good cause shown.

(c) The reply shall be in writing and signed by the person filing it. The reply shall contain a full and complete statement of all relevant facts pertaining to the act or transaction that is the subject of the notice of probable violation. Such facts shall include a complete statement of the business or other reasons that justify the act or transaction, if appropriate; a detailed description of the act or transaction; and a full discussion of the pertinent provisions and relevant facts reflected in any documents submitted with the reply. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the reply. When the notice of probable violation pertains to only one step of a larger integrated transaction, the facts, circumstances, and other relevant information regarding the entire transaction shall be submitted.

(d) The reply shall include a discussion of all relevant authorities, including, but not limited to FEA and EPA rulings, regulations, interpretations, and decisions on appeal and exception relied upon to support the particular position taken.

(e) The reply should indicate whether the person requests or intends to request a conference regarding the notice. Any request not made at the time of the reply shall be made as soon thereafter as possible to insure that the conference is held when it will be most beneficial. A request for a conference must conform to the requirements of Subpart N of this part, which determination is within FEA's discretion.

(f) If a person has not filed a reply with the FEA within the 10-day period provided, and the FEA has not extended the 10-day period, the person shall be deemed to have conceded the accuracy of the factual allegations and legal conclusions stated in the notice of probable violation.

(g) If the FEA finds, after the 10-day period provided in § 303.191(b), that no violation has occurred, is continuing, or is about to occur, or that for any reason the issuance of a remedial order would not be appropriate, it shall notify in writing, the person to whom a notice of probable violation has been issued that the notice is rescinded.

§ 303.192 Remedial order.

(a) If the FEA finds, after the 10-day period provided in § 303.191(b), that a violation has occurred, is continuing, or is about to occur, the FEA may issue a remedial order. The order shall include a written statement setting forth the relevant facts and the legal basis of the remedial order.

(b) A remedial order issued under this section shall be effective upon issuance, in accordance with its terms, until stayed, suspended, modified, or rescinded. A remedial order shall remain in effect notwithstanding the filing of an application to modify or rescind it under Subpart K.

(c) A remedial order may be referred at any time to the Department of Justice for appropriate action in accordance with Subpart Q of this part.

§ 303.193 Remedial order for immediate compliance.

(a) Notwithstanding the provisions of §§ 303.191 and 303.192, the FEA may issue a remedial order for immediate compliance, which shall be effective upon issuance and until rescinded or suspended, if it finds that:

(1) there is a strong probability that a violation has occurred, is continuing or is about to occur;

(2) irreparable harm will occur unless the violation is remedied immediately; and

(3) the public interest requires the avoidance of such irreparable harm through immediate compliance and waiver of the procedures afforded under §§ 303.191 and 303.192.

(b) A remedial order for immediate compliance shall be served promptly by telex or telegram upon the person against whom such order is issued, with a copy of the remedial order for immediate compliance served by registered or certified mail. The order shall contain a written statement of the relevant facts

and the legal basis for the remedial order for immediate compliance, including the findings required by paragraph (a) of this section.

(c) The FEA may rescind or suspend a remedial order for immediate compliance if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a notice of probable violation issued under § 303.191.

(d) If at any time in the course of a proceeding commenced by a notice of probable violation the criteria set forth in subsection (a) of this section are satisfied, the FEA may issue a remedial order for immediate compliance, even if the 10-day period for reply specified in § 303.191 (b) has not expired.

(e) At any time after a remedial order for immediate compliance has become effective, the FEA may refer such order to the Department of Justice for appropriate action in accordance with Subpart Q of this part.

§ 303.194 Remedies.

A remedial order or a remedial order for immediate compliance may require the person to whom it is directed to take such action as the FEA determines is necessary to eliminate or to compensate for the effects of a violation.

§ 303.195 Appeal.

(a) No notice of probable violation issued pursuant to this subpart shall be deemed to be an action of which there may be an administrative appeal pursuant to Subpart H of this part.

(b) Any person to whom a remedial order or a remedial order for immediate compliance is issued under this subpart may file an appeal with the FEA Office of Exceptions and Appeals in accordance with Subpart H of this part. The appeal must be filed within 10 days of service of the order from which the appeal is taken.

Subpart Q—Investigations, Violations, Sanctions and Judicial Actions

§ 303.200 Investigations.

(a) *General.* The FEA may, in its discretion, initiate investigations relating to compliance by any person with any rule, regulation, or order promulgated by the FEA under the authority of sections 2 and 12 of ESECA, any decree of court relating thereto, or any other agency action. The FEA encourages voluntary cooperation with its investigations. When the circumstances warrant, however, the FEA may issue subpoenas in accordance with and subject to § 303.8. The FEA may conduct investigative conferences and hearings in the course of any investigation in accordance with Subpart N of this part, which determination is within FEA's discretion.

(b) *Investigators.* Investigations will be conducted by representatives of the FEA who are duly designated and authorized for such purposes. Such representatives have the authority to administer oaths and receive affirmations in any matter under investigation by the FEA.

(c) *Notification.* Any person who is under investigation by the FEA in accordance with this section and who is requested to furnish information or documentary evidence shall be notified as to the general purpose for which such information or evidence is sought.

(d) *Termination.* When the facts disclosed by an investigation indicate that further action is unnecessary or unwarranted at that time, the investigative file will be closed without prejudice to further investigation by the FEA at any time that circumstances so warrant.

(e) *Confidentiality.* Information received in an investigation under this section, including the identity of the person investigated and any other person who provides information during the investigation, shall, unless otherwise determined by the FEA, remain confidential to the extent it is covered under the investigatory file exception to public disclosure contained in 5 U.S.C. 522.

§ 303.201 Violations.

Any practice that circumvents or contravenes or results in a circumvention or contravention of the requirements of any provision of Parts 303, 305, or 307 of this chapter or any order issued pursuant thereto is a violation of the FEA regulations stated in such parts and is unlawful.

§ 303.202 Sanctions.

(a) *General.* Any person who violates any provision of Parts 303, 305, or 307 of this chapter or any order issued pursuant thereto shall be subject to penalties and sanctions as provided herein.

(1) The provisions herein for penalties and sanctions shall be deemed cumulative and not mutually exclusive.

(2) Each day that a violation of the provisions of Parts 303, 305, or 307 of this chapter or any order issued pursuant thereto continues shall be deemed to constitute a separate violation within the meaning of the provisions of this part relating to criminal fines and civil penalties.

(b) *Criminal Fines.* Any person who willfully violates any provision of Parts 303, 305, or 307 of this chapter or any order issued pursuant thereto shall be subject to a fine of not more than \$5,000 for each violation. Criminal violations are prosecuted by the Department of Justice upon referral by the FEA.

(c) *Civil Penalties.* (1) Any person who violates any provision of Parts 303, 305, or 307 of this chapter or any order issued pursuant thereto shall be subject to a civil penalty of not more than \$2,500 for each violation. Actions for civil penalties are prosecuted by the Department of Justice upon referral by the FEA.

(2) When the FEA considers it to be appropriate or advisable, the FEA may compromise and settle, and collect civil penalties.

(d) *Other Penalties.* Willful concealment of material facts, or false or fictitious or fraudulent statements or representations, or willful use of any false writing or document containing false,

fictitious or fraudulent statements pertaining to matters within the scope of the ESECA or FEAA by any person shall subject such person to the criminal penalties provided in 18 U.S.C. 1001 (1970).

§ 303.203 Injunctions.

Whenever it appears to the FEA that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any regulation or order issued under Parts 303, 305, or 307 of this chapter, FEA may request the Attorney General to bring a civil action in the appropriate district court of the United States to enjoin such acts or practices and, upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. The relief sought may include a mandatory injunction commanding any person to comply with any provision of such order or regulation, the violation of which is prohibited by section 12(a) of ESECA.

2. Chapter II of 10 Code of Federal Regulations is amended to add Part 305, which reads as follows:

PART 305—COAL UTILIZATION

Sec.

- 305.1 Scope.
- 305.2 Definitions.
- 305.3 Powerplants.
- 305.4 Major fuel burning installations.
- 305.5 Public participation.
- 305.6 Consultation with EPA.
- 305.7 Effective date of prohibition orders.
- 305.8 Modification, rescission and suspension of prohibition orders.
- 305.9 Procedures.

§ 305.1 Scope.

(a) *Applicability.*

This part applies to certain powerplants and major fuel burning installations that FEA is authorized to prohibit from burning natural gas or petroleum products as their primary energy source.

(b) *Purpose.*

This part, together with Part 303 of this chapter, establishes the methods and procedures by which FEA will exercise its powers under section 2 of ESECA to prohibit a powerplant or major fuel burning installation from burning natural gas or petroleum products as its primary energy source.

§ 305.2 Definitions.

For purposes of this part:

— "Action" means a prohibition order, or modification or rescission of such order, issued by FEA pursuant to sections 2 (a) and (b) of ESECA.

"Air pollution requirements" means any emission limitation, schedule or timetable for compliance, or other requirement, which is prescribed under any Federal, State, or local law or regulation, including the Clean Air Act (except for any requirement prescribed under subsections (c) or (d) of section 119, section 110(a) (2) (F) (v), or section 303 of such Act), and which limits stationary source emissions resulting from combustion of fuels (including a prohibition on, or specification of, the use of any fuel or any type, grade, or pollution characteristic).

"Clean Air Act" means the Clean Air Act, as amended, 42 U.S.C. 1857, et seq. (1970), as amended by Pub. L. 93-319, 88 Stat. 246.

"Coal" includes coal derivatives.

"Compliance date extension" means an extension issued by the Administrator of EPA in accordance with section 119(c) of the Clean Air Act as a result of which a powerplant or major fuel burning installation may not, until January 1, 1979, be prohibited, by reason of the application of any air pollution requirement, from burning coal which is available to that source, except as otherwise provided in section 119(d) (3) of that Act.

"EPA" means the Environmental Protection Agency.

"ESECA" means the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

"FEA" means the Federal Energy Administration, including the Administrator of FEA or his delegate.

"Interested person" includes members of the public, as well as any person with an interest sought to be protected under ESECA.

"Major fuel burning installation" means an installation or unit other than a powerplant that has or is a fossil-fuel fired boiler, burner, or other combustor of fuel or any combination thereof at a single site, and includes any person who owns, leases, operates, controls or supervises any such installation or unit.

"Natural gas" includes dry gas and casinghead gas.

"Person" means any association, firm, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government, including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments, and includes any officer, director, owner or duly authorized representative thereof. The FEA may, in regulations and in any forms issued in this part, treat as a person:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a person.

"Petroleum product" means crude oil, residual fuel oil or any refined petroleum product, as that last term is defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973.

"Powerplant" means one or more fossil-fuel fired steam electric generating units that produce electric power for purposes of sale or exchange, and includes any person who owns, leases, operates, controls or supervises any such unit or units.

"Primary energy source" means, with respect to a powerplant or major fuel burning installation that utilizes fossil fuels, the fuel that is or will be used for all purposes except for the minimum amounts required for start-up, testing, flame stabilization and control.

"Proceeding" means the process and activity, and any part thereof, instituted by the FEA, either on its initiative or in response to an application submitted by a powerplant or major fuel burning installation, that may lead to an action by FEA.

"Prohibition order" means a directive issued by FEA pursuant to sections 2 (a) and (b) of ESECA that prohibits a powerplant or major fuel burning installation from burning natural gas or petroleum products as its primary energy source.

"Stationary source fuel or emission limitation" means any emission limitation, schedule or timetable of compliance, or other requirement, which is prescribed under the Clean Air Act (other than sections 119, 111(b), 112, or 303) or contained in an applicable implementation plan (other than a requirement imposed under authority described in section 110(a) (2) (F) (v)), and which limits, or is designed to limit, stationary source emissions resulting from combustion of fuels, including a prohibition on, or specification of, the use of any fuel of any type, grade, or pollution characteristic.

"Temporary Suspension" means a suspension issued to any person by the Administrator of EPA in accordance with section 119(b) of the Clean Air Act that results in the temporary suspension of any stationary source fuel or emission limitation as it applies to such person during any period beginning June 22, 1974, and ending on or before June 30, 1975.

Throughout this part the use of a word or term in the singular shall include the plural and the use of the male gender shall include the female gender.

§ 305.3 Powerplants.

(a) Any powerplant shall be prohibited from using natural gas or petroleum products as its primary energy source, by means of the issuance of a prohibition order to such powerplant, if the findings stated in paragraph (b) of this section are made by FEA. FEA may, at its discretion, make these findings for an individual fossil-fuel fired steam generating unit that produces electric power for sale or exchange or for combinations thereof.

(b) No powerplant shall be prohibited from burning natural gas or petroleum products as its primary energy source unless FEA finds that:

(1) The powerplant on June 22, 1974, had the "capability and necessary plant equipment" to burn coal. For purposes of this finding, "capability and necessary plant equipment" is defined to include, but not be limited to, necessary coal handling facilities and appurtenances—internal and external; adequate facilities for the storage of coal; and other equipment such as a boiler, unloaders, conveyors, crushers, pulverizers, scales, burners, soot blowers, and special coal-burning instrumentation and controls. The absence of any one or combination of these facilities or equipment is not grounds, however, for concluding that

the plant lacked the capability and the necessary plant equipment to burn coal.

(2) The prohibition of the utilization of natural gas or petroleum products is "practicable and consistent with the purposes of ESECA." For purposes of this finding—

(i) The determination of the "practicability" of a prohibition shall include an analysis of the reasonableness of additional costs associated with burning coal, including its cost, costs of equipment for coal burning, and costs of complying with the requirements of section 119 of the Clean Air Act. The analysis shall be based on the facts concerning the requirements of section 119 that are available to FEA prior to the time of issuance of the order. The analysis also will take into account the susceptibility of natural gas and petroleum products to volatile changes in price and to interruptions of supply.

(ii) The prohibition shall be considered to be "consistent with the purposes" of ESECA if it serves to discourage the use of natural gas and petroleum products and to encourage increased or continued use of coal by powerplants.

(3) Coal and coal transportation facilities will be available during the period the prohibition is in effect. For purposes of this finding—

(i) The availability of coal shall be evaluated by determining anticipated demand for coal, the type of coal (which may include, but is not limited to, rank, Btu's, moisture, volatiles, ash and sulphur content) that it is anticipated that the powerplant will be able to utilize, the location of such coal, the practicability of its production, including the possibility of new mines being opened, and State or local laws or policies limiting the extraction or utilization of such coal.

(ii) The availability of coal transportation facilities shall be determined by evaluating the means and ease with which coal is or could be transported to the powerplant, including the availability of rolling stock and tracks, barges, pipelines and other relevant means of transportation.

(4) The prohibition will not "impair the reliability of service" in the area served by the powerplant. For purposes of this finding—

(i) Whether there will be an impairment of the "reliability of service" shall be determined by evaluating the length of time of scheduled outage, if any, associated with any prohibition order in relation to other scheduled outages of electric power generating units that are part of the electric power generation system, and the reserve capacity margins of other systems with which the powerplant is interconnected.

(ii) "Impairment" means unreasonable risk of loss of load.

(c) A powerplant may be prohibited from using natural gas or petroleum products as its primary energy source as a result of FEA action taken on its initiative or at the conclusion of a proceeding initiated by an application.

(d) Prior to issuance of a prohibition order to a powerplant that is applicable

for the period ending prior to or on June 30, 1975, FEA shall take into account the likelihood that such powerplant will be permitted to burn coal after June 30, 1975. FEA may consider, in determining "likelihood," the potentiality that environmental or economic constraints would prevent the powerplant from burning coal after June 30, 1975.

§ 305.4 Major fuel burning installations.

(a) A major fuel burning installation may be prohibited from using natural gas or petroleum products as its primary energy source by means of the issuance of a prohibition order to such installation if the findings stated in paragraph (b) of this section are made by FEA. FEA may, at its discretion, make these findings for an individual fossil-fuel boiler, burner or other combustor of fuel, or for combinations thereof at a single site.

(b) No major fuel burning installation shall be prohibited from burning natural gas or petroleum products as its primary energy source unless FEA finds that:

(1) The major fuel burning installation fires at a rate of 50 million Btu's per hour or greater and on June 22, 1974, had the capability and necessary plant equipment to burn coal. For purposes of this finding, "capability and necessary plant equipment" is defined to include, but not be limited to, necessary coal handling facilities and appurtenances—internal and external; adequate facilities for the storage of coal; and other equipment such as a boiler, unloaders, conveyors, crushers, pulverizers, scales, burners, soot blowers, and special coal-burning instrumentation and controls. The absence of any one or combination of these facilities or equipment is not grounds, however, for concluding that the installation lacked the capability and the necessary plant equipment to burn coal.

(2) The prohibition of the utilization of natural gas and petroleum products is "practicable and consistent with the purposes of ESECA." For purposes of this finding—

(i) The determination of the "practicability" of a prohibition shall include an analysis of the reasonableness of additional costs associated with burning coal, including its cost, costs of equipment for coal burning, and costs of complying with the requirements of section 119 of the Clean Air Act. The analysis shall be based on the facts concerning the requirements of section 119 that are available to FEA prior to the time of issuance of the order. The analysis also will take into account the susceptibility of natural gas and petroleum products to volatile changes in price and to interruptions of supply.

(ii) The prohibition shall be considered to be "consistent with the purposes" of ESECA if it serves to discourage the use of natural gas and petroleum products and to encourage the use of coal as a primary energy source by major fuel burning installations.

(3) Coal and coal transportation facilities will be available during the period the prohibition is in effect. For purposes of this finding—

(i) The availability of coal shall be evaluated by determining the anticipated demand for coal, the type of coal (which may include, but is not limited to, rank, Btu's, moisture, volatiles, ash and sulfur content) that it is anticipated that the major fuel burning installation will be able to utilize, the practicability of its production, including the possibility of new mines being opened during the period the prohibition order is in effect, and State or local laws or policies limiting the extraction or the utilization of such coal.

(ii) The availability of coal transportation facilities shall be determined by evaluating the means and ease with which coal is or could be transported to the major fuel burning installation, including the availability of rolling stock and tracks, barges, pipelines and other relevant means of transportation.

(c) In selecting a major fuel burning installation for an order prohibiting that installation from burning natural gas or petroleum products as its primary energy source, the FEA shall consider, among other factors, the following: the location of the installation, the production or output of the installation, purpose for which coal would be burned, the quantity of natural gas or petroleum product presently burned, the practicability of burning coal given the short-term variation of demand for output by the installation, and the burden a prohibition order would place on existing coal supply and means of delivery.

(d) Prior to issuance of a prohibition order to a major fuel burning installation that is applicable for the period ending prior to or on June 30, 1975, FEA shall take into account the likelihood that such installation will be permitted to burn coal after June 30, 1975. FEA may consider, in determining "likelihood," the potentiality that environmental or economic constraints would prevent the installation from burning coal after June 30, 1975.

(e) A major fuel burning installation may be prohibited from burning natural gas or petroleum products as its primary energy source as a result of FEA action taken on its own initiative or at the conclusion of proceedings initiated by an application.

§ 305.5 Public participation.

(a) *Prohibition orders that are applicable for a period ending prior to or on June 30, 1975.* No powerplant or major fuel burning installation shall be issued an order that is applicable for a period ending prior to or on June 30, 1975, prohibiting that powerplant or installation from burning natural gas or petroleum products as its primary energy source unless prior to issuance of such order there has been published in the FEDERAL REGISTER a notice of FEA's intent to issue a prohibition order and an opportunity given to interested persons to make written presentation of data, views and arguments regarding such order.

(b) *Prohibition orders applicable after June 30, 1975.* No powerplant or major

fuel burning installation shall be issued an order that is applicable after June 30, 1975 (or modification of an order to make it applicable after June 30, 1975), prohibiting that powerplant or installation from burning natural gas or petroleum products as its primary energy source unless prior to issuance of such order there has been published in the FEDERAL REGISTER a notice of FEA's intent to issue a prohibition order and an opportunity given to interested persons to make oral and written presentation of data, views, and arguments.

§ 305.6 Consultation with EPA.

Prior to issuance of a prohibition order to a powerplant or a major fuel burning installation that is applicable for a period ending prior to or on June 30, 1975, the FEA shall consult with the Administrator of EPA.

§ 305.7 Effective date of prohibition orders.

(a) *Prohibition orders that are applicable for a period ending prior to or on June 30, 1975.* A prohibition order issued to a powerplant or major fuel burning installation that is applicable for a period ending prior to or on June 30, 1975, shall not become effective: (1) Until the date that the Administrator of EPA certifies, pursuant to section 119(d) (1)(A) of the Clean Air Act, is the earliest date the powerplant or installation will be able to comply with the air pollution requirements that will be applicable to it; and (2) until FEA has served the affected powerplant or major fuel burning installation a Notice of Effectiveness, as provided in §§ 303.10(b) and 303.37(b) of this chapter. Such order will not be effective for any period certified by the Administrator of EPA pursuant to section 119(d) (3) (B) of such Act.

(b) *Prohibition orders applicable after June 30, 1975.* A prohibition order that is applicable after June 30, 1975 (or modification of an order that is applicable for the period ending prior to or on June 30, 1975, to make it applicable after June 30, 1975), issued to a powerplant or major fuel burning installation shall not become effective: (1) Until either; (i) the Administrator of EPA notifies the FEA, in accordance with section 119(d) (1) (B) of the Clean Air Act, that the powerplant 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, or (ii) if no notification is given, the date that the Administrator of EPA certifies pursuant to section 119(d) (1) (B) of the Clean Air Act is the earliest date that the powerplant or installation will be able to comply with all applicable requirements of section 119 of that Act; and (2) until FEA has served the affected powerplant or major fuel burning installation a Notice of Effectiveness, as provided in §§ 303.10(b) and 303.37(b) of this chapter. Such order (or modification) will not be effective during any period certified by the Administrator of EPA under section 119(d) (3) (B) of such Act.

§ 305.8 Modification, rescission and suspension of prohibition orders.

(a) FEA may modify or rescind any prohibition order at any time up to and including December 31, 1978. A modification or rescission of a prohibition order may be the result of an FEA action taken on its own initiative or at the conclusion of proceedings initiated by an application. A prohibition order shall be rescinded or modified to the extent that FEA determines that the findings set out in §§ 305.3(b) (2)-(4) and 305.4(b) (2) and (3) of this part are no longer supported in fact.

(b) The modification or rescission of any prohibition order (other than the modification of an order that is applicable for a period ending prior to or on June 30, 1975, to make it applicable after June 30, 1975) shall be preceded by an opportunity for interested persons to make written presentation of data, views and arguments.

(c) Upon notification by the Administrator of EPA, in accordance with section 119(d) (3) (B) of the Clean Air Act, FEA shall notify the powerplant or major fuel burning installation affected that the prohibition order applicable to it is suspended for the time period certified by the Administrator of EPA by service of a notice of the suspension of a prohibition order.

§ 305.9 Procedures.

(a) All applications for a prohibition order or modification or rescission thereof shall be filed with the FEA in accordance with Subparts B and J, respectively, of Part 303 of this chapter.

(b) Procedures pertaining to issuance of prohibition orders or the modification or rescission thereof (e.g., notice, hearings, content of order, process of evaluation, appeal) are stated in Subparts B and J, respectively, of Part 303 of this chapter.

3. Chapter II of 10 Code of Federal Regulations is amended to add Part 307, which reads as follows:

PART 307—NEW POWERPLANTS

Sec.	
307.1	Scope.
307.2	Definitions.
307.3	Use of coal as the primary energy source.
307.4	Public participation.
307.5	Identification of powerplants in the early planning process.
307.6	Procedures.

§ 307.1 Scope.

(a) *Applicability.* This part applies to certain powerplants (other than powerplants utilizing a combustion gas turbine or a combined cycle unit) that are in the early planning process.

(b) *Purpose.* This part, together with Part 303 of this chapter, establishes the methods and procedures by which FEA will exercise its powers under section 2 of ESECA to require a powerplant in the early planning process to be designed and constructed to be capable of using coal as its primary energy source.

§ 307.2 Definitions.

For purposes of this part—

"Action" means a construction order, or modification or rescission of such order, issued by FEA pursuant to section 2 of ESECA.

"Clean Air Act" means the Clean Air Act, as amended, 42 U.S.C. 1857, et seq. (1970), as amended by Pub. L. 93-319, 88 Stat. 246.

"Coal" includes coal derivatives.

"Construction order" means a directive issued by FEA pursuant to section 2(c) of ESECA that requires a powerplant in the early planning process to be designed and constructed to be capable of using coal as its primary energy source.

"Early planning process" means a state in the design and construction of a powerplant to be determined in accordance with § 307.3(b) of this part.

"EPA" means the Environmental Protection Agency.

"ESECA" means the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319).

"FEA" means the Federal Energy Administration, including the Administrator of FEA or his delegate.

"Interested person" includes members of the public, as well as any person with an interest sought to be protected under ESECA.

"Natural gas" includes dry gas and casinghead gas.

"Person" means any association, firm, company, corporation, estate, individual, joint-venture, partnership, or sole proprietorship or any other entity however organized including charitable, educational, or other eleemosynary institutions, and the Federal Government including corporations, departments, Federal agencies, and other instrumentalities, and State and local governments, and includes any officer, director, owner or duly authorized representative thereof. The FEA may, in regulations and in any forms issued in this part, treat as a person:

(a) A parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls, (b) a parent and its consolidated entities, (c) an unconsolidated entity, or (d) any part of a person.

"Petroleum product" means crude oil, residual fuel oil or any refined petroleum product, as that last term is defined in section 3(5) of the Emergency Petroleum Allocation Act of 1973.

"Powerplant" means one or more fossil-fuel fired steam electric generating units that produce electric power for purposes of sale or exchange, and includes any person who owns, leases, operates, controls, or supervises any such unit or units.

"Primary energy source" means, with respect to a powerplant that utilizes fossil fuels, the fuel that is or will be used for all purposes except the minimum amounts required for start-up, testing, flame stabilization and control.

"Proceeding" means the process and activity, and any part thereof, instituted

by the FEA, either on its initiative or in response to an application submitted by a powerplant in the early planning process, that may lead to an action by FEA.

Throughout this part the use of a word or term in the singular shall include the plural and the use of the male gender shall include the female gender.

§ 307.3 Use of coal as the primary energy source.

(a) Any powerplant in the early planning process (other than a combustion gas turbine or combined cycle unit) may be required by FEA to be designed and constructed to be capable of using coal as its primary energy source, by means of the issuance of a construction order to such powerplant, subject to the findings stated in paragraphs (b) and (c) of this section. Subject to such findings, FEA may, at its discretion, issue a construction order for an individual fossil-fuel fired steam generating unit that produces electric power for sale or exchange, or for combinations thereof. The requirement that a powerplant be capable of using coal as its primary energy source shall be satisfied if the powerplant is designed and constructed to use only coal as its primary energy source, or to use two or more fuels interchangeably, one of which is coal, as its primary energy source.

(b) A powerplant will not be required to be designed and constructed to be capable of using coal as its primary energy source unless FEA finds that such powerplant is in the early planning process. For purposes of this finding, "early planning process" means either of the following time periods:

(1) Before the formation of a contract, express or implied, for the design of a powerplant or before the commencement of the design of the powerplant, if such design is not to be performed in accordance with a contract; or

(2) After commencement of design of the powerplant, but not later than the commencement of field erection of boiler steel.

(c) No powerplant in the early planning process may be required to be designed and constructed to be capable of using coal as its primary energy source if FEA finds that:

(1) The design or construction of a powerplant with the capability of using coal as its primary energy source is likely to result in an impairment of the reliability or adequacy of service to be provided by such powerplant. For purposes of this finding whether there is likely to be an impairment of the "reliability or adequacy of service" shall be determined by evaluating the length of any delay in the commencement of the sale or exchange of electric power, if any, and the effect of such delay, if any, on reserve capacity margin within the electric power generation system or any combination of such systems to determine if there is an unreasonable risk of loss of load.

(2) An adequate and reliable supply of coal is not reasonably expected to be available. For purposes of this finding—

(i) The availability of an adequate supply of coal shall be determined on the basis of an evaluation of the anticipated demand for coal by the new powerplant, the type of coal (which may include, but is not limited to, rank, Btu's, moisture, volatiles, ash and sulfur content) that it is anticipated the powerplant will be able to utilize, the location of such coal, the practicability of its production including the possibility that new mines will be opened before the powerplant commences the sale or exchange of electric power, and any State or local laws or policies limiting the extraction or the utilization of coal.

(ii) The availability of a reliable supply of coal shall be determined on the basis of an evaluation of the supply's susceptibility to interruption and the nature of the supply contract that the powerplant reasonably could be expected to enter into.

(d) In making the evaluation whether a powerplant in the early planning process should be required to be designed and constructed to be capable of using coal as its primary energy source, FEA shall consider, among other factors—

(1) the existence and effects of any contractual commitment for the construction of such powerplant;

(2) the capability of the powerplant (as defined in § 307.2 to include owner) to recover any increase in projected capital investment required as a result of a construction order;

(3) the potential loss of revenue resulting from a delay in the commencement of the sale or exchange of electric power resulting from a construction order, to the extent that electric power will have to be purchased from another powerplant; and

(4) the relevant regulations or policies of any State or local agency with jurisdiction over the sale or exchange of electric power by powerplants.

(e) A powerplant in the early planning process may be required to be designed and constructed to be capable of using coal as its primary energy source on the basis of FEA action taken on its initiative or at the conclusion of proceedings initiated by an application.

§ 307.4 Public participation.

(a) No powerplant in the early planning process shall be issued a construction order requiring such powerplant to be designed and constructed to be capable of using coal as its primary energy source unless prior to issuance of the order there has been published in the FEDERAL REGISTER a notice of FEA's intent to issue a construction order, and an opportunity has been given to interested persons to make written presentation of data, views and arguments regarding such action.

(b) Before issuance of an order modifying or rescinding a construction order, FEA may publish in the FEDERAL REGISTER a notice of its intention to issue such order. The notice shall provide interested persons with an opportunity to make written presentation of data, views and arguments regarding such action.

§ 307.5 Identification of powerplants in the early planning process.

(a) The identification of powerplants in the early planning process shall be accomplished by requiring that such plants file with FEA, at the address provided in § 303.12 of this chapter, an Identification Report in accordance with paragraph (b) of this section and by a review of information otherwise on file with or provided to the Federal government. FEA will require additional information from a powerplant subsequent to the filing of an Identification Report to determine if such powerplant meets the criteria and other considerations stated in this part pertaining to issuance of a construction order.

(b) (1) An Identification Report shall be filed by each powerplant (defined to

mean a single unit or several units by § 307.2), other than a combustion gas turbine or combined cycle unit, which is in the early planning process either because the—

(1) formation of a contract, express or implied, for the design of a powerplant has not occurred; or the design of the powerplant has not commenced, if such design is not to be performed in accordance with a contract; or

(2) design of the powerplant has commenced, but field erection of boiler steel has not begun.

The initial Report shall be filed within 30 days of the issuance of Part 307 of this chapter. Thereafter, any powerplant that enters the early planning process at any time in a month shall file an Identification Report with the FEA, at the address provided in section 303.12 of this

chapter, by the fifteenth day of the subsequent month.

(2) The Identification Report shall contain the information required by FEA Form ----

§ 307.6 Procedures.

(a) All applications for a construction order or modification or rescission thereof shall be filed with the FEA in accordance with Subparts C and J, respectively, of Part 303 of this chapter.

(b) Procedures pertaining to issuance of construction orders, the modification or rescission thereof, (e.g., notice, hearings, content of order, process of evaluation, appeal) are stated in Subparts C and J respectively, of Part 303 of this chapter.

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