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## DEPARTMENT OF ENERGY

### Office of Fossil Energy

#### 10 CFR Part 515

#### Transitional Facilities

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** As part of an on-going effort to review and streamline its regulations, the Department of Energy has determined that its regulations governing the classification of transitional facilities under the Powerplant and Industrial Fuel Use Act of 1978, as amended, are outdated and serve no useful purpose. Consequently, these obsolete, unnecessary regulations are removed from the Department's regulations in title 10 of the Code of Federal Regulations.

**EFFECTIVE DATE:** July 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell, Office of Fossil Energy, (202) 586-9624.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Today's action is one step in a Department of Energy effort to review and streamline its regulations. The streamlining effort, described in previously published notices of March 1 and November 14, 1994 (59 FR 9682; 59 FR 56421), was begun in response to Executive Order 12866, "Regulatory Planning and Review," published October 4, 1993 (58 FR 51735). The importance of the Department's initiative was underscored on March 4, 1995, when the President issued a memorandum to the heads of all departments and agencies, calling for increased regulatory review and reinvention efforts under Executive Order 12866. One of the specific activities the President directed

departments and agencies to undertake is the systematic review of agency regulations to determine which regulations have become outdated or are otherwise in need of modification.

In the November 14, 1994, notice of inquiry, the Department of Energy identified 13 regulations or regulatory areas that it had targeted for modification or elimination, and the notice invited public comment on the desirability of modifying or eliminating the targeted regulations. First on the list of 13 regulations or regulatory areas was elimination of 10 CFR part 515. Those regulations were promulgated in 1979 to implement provisions of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (42 U.S.C. 8301 et seq.). The Department's notice of inquiry elicited no comments on elimination of 10 CFR part 515.

##### II. Discussion

The Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620 (FUA) was enacted as a means of restraining the use of domestic petroleum and natural gas resources and reducing the Nation's dependence on foreign energy supplies by increasing consumption of coal. Under FUA an electric powerplant or major fuel burning installation (MFBI) was classified as either "new" and subject to the prohibitions of Title II, or "existing" and subject to the prohibitions of Title III. "New" electric powerplants or MFBI were prohibited by FUA from using natural gas or petroleum as a primary energy source unless granted an exemption from the prohibitions. "Existing" units were subject to less stringent prohibitions.

The transitional facility regulations at 10 CFR part 515 applied to the limited number of entities that had generating units not yet operational on April 20, 1977, (the date FUA was initiated) but for which construction or acquisition had begun prior to November 9, 1978, (the date of enactment of FUA). The purpose of these transitional facility regulations was to reduce the likelihood of adversely affecting a facility not operational on April 20, 1977, but for which the construction or acquisition could not be cancelled, rescheduled or modified without causing substantial financial penalty or significant operational detriment.

The classification period for transitional facilities has concluded. During the classification period

applications were received from 112 powerplants and 127 MFBI facilities; 83% of these facilities were classified "existing." There are no additional facilities that could file applications for existing facility status under 10 CFR part 515.

The Department has determined that 10 CFR part 515 serves no useful purpose and, therefore, this final rule repeals and removes those regulations from the Code of Federal Regulations.

##### III. Procedural Requirements

###### A. The Need for Public Comment

Removal of 10 CFR part 515 will have no effect on any transitional facility or any other facility within the Department's jurisdiction under FUA. All transitional facilities that were covered by the classification regulations in part 515 have been classified as either "new" or "existing." Under the circumstances, inviting further public comment on this rulemaking action is "unnecessary" and "contrary to the public interest," as those terms are used in 5 U.S.C. 553(a)(3)(B). In addition, no comments were received from the public regarding removal of 10 CFR part 515 when announced during earlier proceedings. Therefore, the Department has determined that good cause exists for not issuing a notice of proposed rulemaking with an invitation for public comment and for making this rule effective upon publication in the **Federal Register**.

###### B. Review Under Executive Order 12866 and the Paperwork Reduction Act

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735). In addition, this rule does not contain information collection requirements that require approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs with the Office of Management and Budget.

###### C. Review Under the National Environmental Policy Act

The Department has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental