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advisable. OFE will, however, place in the public file a record of any conference.

§ 501.33 Request for a public hearing.

(a) *New facilities.* In the case of a petition for an exemption under title II of FUA, any interested person may submit a written request that OFE convene a public hearing in accordance with section 701 of FUA no later than forty-five (45) days after publication of either the Notice of Acceptance of a petition, or in the case of a certification exemption, the publication of the Notice of Acceptance of Certification. This time period may be extended at the discretion of OFE.

(b) *Existing powerplants.* In the case of a petition for an exemption from a prohibition imposed by a final rule or order issued by OFE to an electing powerplant under former sections of title III of FUA or a petition for a permit under §504.1, any interested person may submit a written request that OFE convene a public hearing in accordance with section 701 of FUA within 45 days after the notice of the filing of a petition is published in the FEDERAL REGISTER. In the case of a proposed prohibition rule or order issued to an electing powerplant under former section 301, the 45 day period in which to request a public hearing shall commence upon the publication of the Notice of Availability of the Tentative Staff Analysis. In the case of a proposed prohibition order to be issued to certifying powerplants under section 301 of FUA, as amended, the 45 day period in which to request a public hearing commences upon publication of the Notice of Acceptance of Certification. This time limit may be extended at the discretion of OFE in accordance with §501.7.

(c) *Contents of request.* A request for a public hearing must be in writing and must include a description of the requesting party's interest in the proceeding and a statement of the issues involved. The request should, to the extent possible, identify any witnesses that are to be called, summarize the anticipated testimony to be given at

the hearing, and outline questions that are to be posed.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-620, 92 Stat. 3269 (42 U.S.C. 8301 *et seq.*); Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); E.O. 12009, 42 FR 46267, Sept. 15, 1977)

[46 FR 59889, Dec. 7, 1981, as amended at 47 FR 50848, Nov. 10, 1982; 54 FR 52892, Dec. 22, 1989]

§ 501.34 Public hearing.

(a) A public hearing under this subsection is for the purpose of insuring that all issues are fully and properly developed, but is not a formal adjudicatory hearing subject to the provisions of 5 U.S.C. 554 and 556.

(b) *Opportunity to be heard at a public hearing.* (1) Any interested person, may request, and OFE will provide, an opportunity to present oral or written data, views and arguments at a public hearing on any proposed prohibition rule or order, or on any petition for an exemption or permit. An interested person may file a request to be listed as a party to a hearing on the service list prepared by the Presiding Officer pursuant to §501.34(d) of this part.

(2) Participants at the public hearing will have an opportunity to present oral or written data, views and arguments.

(3) A request for a public hearing may be withdrawn by the requestor at any time. If other persons have requested to participate as parties in the public hearing, OFE may cancel the hearing only if all parties agree to cancellation. OFE will give notice, whenever possible, in the FEDERAL REGISTER of the cancellation of any hearings for which there has been prior notice.

(c) *Presiding Officer.* OFE will appoint a Presiding Officer to conduct the public hearing.

(d) *Powers of the Presiding Officer.* The Presiding Officer is responsible for orderly conduct of the hearing and for certification of the record of the public hearing. The Presiding Officer will not prepare any recommended findings, conclusions, or any other recommendations for disposition of a particular

case, except those of a procedural nature. The Presiding Officer has, but is not limited to the following powers:

- (1) Administer oaths, affirmations and protective orders;
- (2) Issue administrative subpoenas and rule on motions to modify or withdraw subpoenas that he has issued;
- (3) Rule on questions as to relevance and materiality of evidence;
- (4) Regulate the course of the public hearing;
- (5) Hold conferences for the simplification of issues by consent of the parties;
- (6) Require submission of evidence in writing where appropriate;
- (7) Establish service lists;
- (8) Dispose of procedural requests and similar matters; and
- (9) Take other actions authorized by these rules.

The Presiding Officer may also limit the number of witnesses to be presented by any party and may impose reasonable time limits for testimony. The Presiding Officer shall establish and maintain a service list that contains the names and addresses of all parties to the OFE proceeding. At the time the Presiding Officer certifies the record, he will provide the staff of OFE with an index of the issues addressed in the record.

(e) *Notice.* OFE will convene a public hearing only after publishing a notice in the FEDERAL REGISTER that states the time, place and nature of the public hearing.

(f) *Opportunity to question at the public hearing.* At any public hearing requested pursuant to paragraph (b) of this section, with respect to disputed issues of material fact, OFE will provide any interested person an opportunity to question:

- (1) Other interested persons who make oral presentations;
- (2) Employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of the petition for an exemption or permit; and
- (3) Experts and consultants who have provided information to any person who makes an oral presentation and

which is contained in or referred to in such presentation.

(g) OFE encourages persons who wish to question Government witnesses to submit their questions at least ten (10) days in advance of the hearing.

(h) The Presiding Officer will allow questions by any interested person to be asked of those making presentations or submitting information, data, analyses or views at the hearing. The Presiding Officer may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of issues pending in the administrative proceeding for which the hearing is being conducted.

(i) The Presiding Officer or OFE may exercise discretion to control a hearing by denying, temporarily or permanently, the privilege of participating in a particular OFE hearing if OFE finds, for example, that a person:

- (1) Has knowingly made false or misleading statements, either orally or in writing;
- (2) Has knowingly filed false affidavits or other writings;
- (3) Lacks the specific authority to represent the person seeking an OFE action; or
- (4) Has disrupted or is disrupting a hearing.

(j) *Evidence.* (1) The Presiding Officer is responsible for orderly submission of information, data, materials, views or other evidence into the record of the public hearing. The Presiding Officer may exclude any evidence that is irrelevant, immaterial or unduly repetitious. Judicial rules of evidence do not apply.

(2) Documentary material must be of a size consistent with ease of handling, transportation and filing, and a reasonable number of copies should be made available at the public hearing for the use of interested persons. An original and fourteen (14) copies shall be furnished to the Presiding Officer and one copy to each party listed on the service list. Large exhibits that are used during the hearing must be provided on no larger than 11½"×14" legal size paper if they are to be submitted into the hearing record.

(k) *Hearing record.* OFE will have a verbatim transcript made of the public

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hearing. The hearing record shall remain open for a period of fourteen (14) days following the public hearing, unless extended by OFE, during which time the participants at the hearing may submit additional written statements which will be made part of the administrative record and will be served by the Presiding Officer upon those parties listed on the service list. OFE may also request additional information, data or analysis following the hearing in order to resolve disputed issues in the record. If OFE receives or obtains any relevant information or evidence that is placed in the record after the close of the public hearing or comment period, it will so notify all participants, and allow an additional fourteen (14) days for submission of evidence in rebuttal. In addition, OFE may, in its discretion, re-open the hearing at the request of a party or participant, to permit further rebuttal of evidence or statements submitted to OFE and made part of the hearing record after the close of the hearing. The transcript, together with any written comments submitted in the course of the proceeding, will be made part of the record available for public inspection and copying at the OFE Public Information Office, as provided in § 501.12.

§ 501.35 Public file.

(a) *Contents.* The public file shall consist of the rule, order, or petition, with supporting data and supplemental information, and all data and information submitted by interested persons. Materials which are claimed by any party to be exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552) shall be excised from the public file provided OFE has made a determination that the material is confidential in accordance with § 501.7(a)(11) of this part.

(b) *Availability.* The public file shall be available for inspection at room 1E190, 1000 Independence Avenue SW., Washington, DC. Photocopies may be made available, on request. The charge for such copies shall be made in accordance with a written schedule.

[46 FR 59889, Dec. 7, 1981, as amended at 54 FR 52892, Dec. 22, 1989]

Subpart D—Subpoenas, Special Report Orders, Oaths and Witnesses

§ 501.40 Issuance.

(a) *Authority.* As authorized by section 711 of FUA and section 645 of the DEOA, the Administrator, his duly authorized agent or a Presiding Officer may, in accordance with 10 CFR 205.8, sign, issue, and serve subpoenas; issue special report orders (SRO); administer oaths and affirmations; take sworn testimony, compel attendance of and sequester witnesses; control the dissemination of any record of testimony taken pursuant to this section; and subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records of tangible evidence including, but not limited to, information retained in computerized or other automated systems in the possession of the subpoenaed person.

(b) *Petition to withdraw or modify.* Prior to the time specified for compliance in the subpoena or SRO, the person to whom the subpoena or SRO is directed may apply for its withdrawal or modification as provided in 10 CFR 205.8, except that if the subpoena or SRO is issued by a duly appointed Presiding Officer, the request to withdraw or modify must be addressed to that Presiding Officer, and its grant or denial will be decided by him.

Subpart E—Prohibition Rules and Orders

§ 501.50 Policy.

Except in conjunction with a prohibition order requested by the intended recipient, OFE shall not propose to prohibit or prohibit by rule or order the use of petroleum or natural gas either as a primary energy source or in amounts in excess of the minimum amount necessary to maintain reliability of operation consistent with reasonable fuel efficiency in an existing installation unless and until OFE adopts rules establishing regulatory requirements governing the issuance of such orders and rules in accordance