

Department of Energy

§ 501.50

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

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with the applicable procedural and substantive requirements of law.

(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)

[47 FR 50848, Nov. 10, 1982]

§ 501.51 Prohibitions by order—electing powerplants.

(a) OFE may prohibit by order the use of petroleum or natural gas 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 electing powerplant, if:

(1) That facility has not been identified as a member of a category subject to a final rule at the time of the issuance of such order; and

(2) The requirements of § 504.6 have been met.

(b) *Notice of order and public participation.* (1) OFE may hold a conference with the proposed order recipient prior to issuing the proposed order.

(2) Pursuant to section 701 of FUA, prior to the issuance of a final order to an electing powerplant, OFE shall publish a proposed order in the FEDERAL REGISTER together with a statement of the reasons for the order. In the case of a proposed order that would prohibit the use of petroleum or natural gas as a primary energy source, the finding required by former section 301(b)(1) of the Act shall be published with such proposed order.

(3) OFE shall provide a period for the submission of written comments of at least three months after the date of the proposed order. During this period, the recipient of the proposed order and any other interested person must submit any evidence that they have determined at that time to support their respective positions as to each of the findings that OFE is required to make under section 301(b) of the Act. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows publication of the Tentative Staff Analysis or prior to the close of the record of any public hear-

ing, whichever occurs later. A request by the proposed order recipient for an extension of the three-month period may be granted at OFE's discretion.

(4) Subsequent to the end of the comment period, OFE will issue a notice of whether OFE intends to proceed with the prohibition order proceeding.

(5) An owner or operator of a facility that may be subject to an order may demonstrate prior to issuance of a final prohibition order that the facility would qualify for an exemption if the prohibition had been established by rule. OFE will not delay the issuance of a final prohibition order or stay the effective date of such an order for the purpose of determining whether a proposed order recipient qualifies for a particular exemption unless the demonstration or qualification is submitted prior to or during the second three-month comment period, commencing after issuance of a notice of intention to proceed, or unless materials submitted after the period (i) could not have been submitted during the period through the exercise of due diligence, (ii) address material changes in fact or law occurring after the close of the period, or (iii) consist of amplification or rebuttal occasioned by the subsequent course of the proceeding. A request by the proposed order recipient for an extension of this time period may be granted at OFE's discretion.

(6) Subsequent to the end of the second three (3) month period, OFE will, if it intends to issue a final prohibition order, prepare and issue a Notice of Availability of a Tentative Staff Analysis. Interested persons wishing a hearing must request a hearing within forty-five (45) day after issuance of the Notice of Availability of the Tentative Staff Analysis. During this forty-five (45) days period, interested persons may also submit written comments on the Tentative Staff Analysis.

(7) If a hearing has been requested, OFE shall provide interested persons with an opportunity to present oral data, views and arguments at a public hearing held in accordance with subpart C of this part. The hearing will consider the findings which OFE must make in order to issue a final prohibition order and any exemption for which the proposed order recipient submitted