

**Subpart B [Reserved]**

**Subpart C—Written Comments, Public Hearings and Conferences During Administrative Proceedings**

**§ 501.30 Purpose and scope.**

This subpart establishes the procedures for requests for and the conduct of public hearings; for submission of written comments; and for requests for and conduct of conferences pursuant to an administrative proceeding before OFE. Hearings shall be convened at the request of any interested person, in accordance with section 701(d) of FUA, and shall be held at a time and place to be decided by the Presiding Officer.

**§ 501.31 Written comments.**

(a) *New facilities.* Except as may be provided elsewhere in these regulations, OFE shall provide a period of at least forty-five (45) days, commencing with publication of the Notice of Acceptance of Petition, of in the case of certification exemptions, Notice of Acceptance and availability of Certification, in the FEDERAL REGISTER in accordance with § 501.63(a), for submission of written comments concerning a petition for an exemption. Written comments shall be made in accordance with § 501.7.

(b) *Existing facilities.* Except as may be provided elsewhere in these regulations, OFE shall provide a period of at least 45 days for submission of written comments concerning a proposed prohibition rule or order or a petition for a permit. In the case of a proposed prohibition rule or order issued to an existing electing powerplant, OFE shall also provide for a period of at least 45 days for submission of written comments concerning a Tentative Staff Analysis. This period shall commence on the day after publication of the Notice of Availability of the Tentative Staff Analysis in the FEDERAL REGISTER. In the case of prohibition order proceedings for certifying powerplants under section 301 of FUA, as amended, OFE shall provide a period of at least 45 days, beginning the day after the Notice of Acceptance of certification is published, for submission of written

comments concerning the certification and OFE's proposed prohibition order, and requests for public hearings. Prohibition order proceedings under section 301, as amended by OBRA, will have only one period of 45 days, since no Tentative Staff Analysis will be prepared. The comment period may be extended by OFE in accordance with § 501.7. See § 501.52(b) of this part for further information with respect to the comment period. Written comments shall be filed in accordance with § 501.7.

(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. 3289 (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]

**§ 501.32 Conferences (other than prepetition conferences).**

(a) At any time following commencement of a proceeding before OFE, an interested person may request a conference with the staff of OFE to discuss a petition, permit or any other issue pending before OFE. The request for a conference should generally be in writing and should indicate the subjects to be covered and should describe the requester's interest in the proceeding. Conferences held after the commencement of an administrative proceeding before OFE shall be convened at the discretion of OFE or the Presiding Officer.

(b) When OFE convenes a conference in accordance with this section, any person invited may present views as to the issue or issues involved. Documentary evidence may be submitted at the conference and such evidence, to the extent that it is not deemed to be confidential, will be included in the administrative record. OFE will not normally have a transcript of the conference prepared but may do so at its discretion.

(c) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal report or findings by OFE unless OFE in its discretion determines that the preparation of a report or findings would be

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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