

to be in violation of any provision of these regulations, OFE may issue a notice of violation stating, in writing and with reasonable specificity, the nature of the violation. An enforcement proceeding commences with the issuance of a notice of violation.

(b) *Contents of the notice of violation.* OFE will set forth in the notice of violation the nature of the violation, the relevant facts that OFE believes establish the violation and the legal basis for the conclusions reached therein. OFE may also include with the notice of violation a copy of a proposed order. The notice of violation will also state whether or not OFE proposes to assess civil penalties.

(1) If OFE proposes to assess a civil penalty, a notice of violation will be issued to the violator with an opportunity for a hearing before an Administrative Law Judge, as set forth in § 501.166(a)(1) of this part, before any final determination on the violation and penalty are made by OFE. The recipient of the notice will also be informed of his right to elect to have the procedures of § 501.166(a)(2) apply, in lieu of the hearing, with respect to a final determination on the assessment of any civil penalty.

(2) If OFE does not propose to assess a civil penalty, the violator will be provided the opportunity for a conference, as set forth in § 501.166(b), before a final determination on the violation is made by OFE. OFE may, in its discretion, also provide the violator an opportunity for a hearing pursuant to § 501.166(a)(1).

(c) *Service.* OFE will serve the notice of violation in accordance with provisions set forth in § 501.6.

(d) *Rescission.* If, after issuance of a notice of violation and any related investigation, OFE finds no basis for the belief that a violation has occurred, is continuing to occur, or is about to occur, OFE may rescind the notice of violation by giving written notice to that effect to the recipient.

#### § 501.166 Hearings and conferences.

(a) *When a civil penalty is proposed—*  
(1) *Hearing alternative in civil penalty assessment proceedings.* Unless the recipient of a notice of violation elects in writing to have the provisions of para-

graph (a)(2) of this section apply, OFE will commence a proceeding to assess a penalty and, prior to a final determination on the violation and assessment of a penalty, provide an opportunity for a hearing pursuant to 5 U.S.C. 554 before an Administrative Law Judge.

(2) *Election alternative in civil penalty assessment proceedings.* The recipient of a notice of violation in which a civil penalty assessment has been proposed may elect, in writing, within thirty (30) days of receipt of the notice, to waive the administrative proceedings described in paragraph (a)(1) of this section. OFE will make a determination on the proposed civil penalty assessment and issue a final order to that effect within forty-five (45) days after receiving notice of the exercise of this election.

(b) *When a civil penalty is not proposed—opportunity to request a conference.* If a person has received a notice of violation in which a civil penalty has not been proposed, he may, within thirty (30) days after receipt of the notice, request a conference with OFE to discuss the notice. In order to request a conference he must comply with the instructions set forth in the notice.

#### § 501.167 Fuel use order.

(a) *General.* OFE will issue a Fuel Use Order if, after considering all the information received during the proceeding, OFE determines that a person has committed, is committing, or is about to commit a violation of FUA or of an order or rule thereunder.

(b) *Contents.* Any Fuel Use Order issued under this section shall set forth the relevant facts and legal basis for the order and where appropriate, the final penalty assessment and the basis therefor. When an administrative hearing is requested under § 501.166(a) of this part, the Fuel Use Order will include the recommended findings and conclusions of the Administrative Law Judge (ALJ) and the basis for the penalty assessment. OFE will make a final determination as to any penalty assessment or other appropriate remedy based upon the recommended findings and conclusions of the ALJ and other information in the record of the enforcement proceeding. The order will