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Each grouping meets one or more of the following criteria:

(1) Existing centrally dispatched pools and hourly power brokers;

(2) Systems with joint planning and construction agreements;

(3) Systems with coordination agreements in the areas of:

(i) Generation reserve and system reliability criteria;

(ii) Capacity and energy exchange policies;

(iii) Maintenance scheduling; and

(iv) Emergency procedures for dealing with capacity or fuel shortages; or

(4) Systems within the same National Electric Reliability Council (NERC) region with historical coordination policies.

(b) The PSA's referred to in the definition of electric regions in paragraph (a) of this section were first defined by the Federal Power Commission in 1936. The most recent reference to them is given in the *1970 National Power Survey*, Vol. 1, Pg. 1–3–16. In cases where a petitioner finds an ambiguity in a regional assignment, he shall consult with DOE for an official determination.

Electric Region Groupings and FERC PSA's:

1. Allegheny Power System (APS)—7, except Duquesne Light Company.
2. American Electric Power System (AEP)—entire AEP System.
3. New England Planning Pool (NEPOOL)—1, 2.
4. New York Planning Pool (NYPP)—3, 4.
5. Pennsylvania—New Jersey—Maryland interconnection (PJM)—5, 6.
6. Commonwealth Edison Company—14.
7. Florida Coordination Group (FCG)—24.
8. Middle South Utilities—25.
9. Southern Company—22, 23.
10. Gulf States Group—35.
11. Tennessee Valley Authority (TVA)—20.
12. Virginia—Carolina Group (VACAR)—18, 21.
13. Central Area Power Coordination Group (CAPCO)—Cleveland Electric Illuminating Company, Toledo Edison Company, Ohio Edison Company, Duquesne Light Company.
14. Cincinnati, Columbus, Dayton Group (CCD)—Cincinnati Gas and Electric Company, Columbus and Southern Ohio Electric Company, Dayton Power and Light Company.
15. Kentucky Group—19.
16. Indiana Group—Indiana Utilities except AEP.
17. Illinois—Missouri Group (ILLMO)—15, 40.
18. Michigan Electric Coordinated Systems (MECS)—11.
19. Wisconsin—Upper Michigan Group (WUMS)—13.
20. Mid-Continent Area Power Pool (MAAP)—16, 17, 26, 27, 28.
21. Missouri—Kansas Group (MOKAN)—24, 29.
22. Oklahoma Group—33, 36.
23. Texas Interconnected Systems (TIS)—37, 38.
24. Rocky Mountain Power Pool (RMPP)—31, 32.
25. Northwest Power Pool (NWPP)—30, 42, 43, 44, 45.
26. Arizona—New Mexico Group—39, 48 within Arizona. in Nevada and California.
27. Southern California—Nevada—47, 48.
28. Northern California—Nevada—46.
29. Alaska (non-interconnected systems to be considered separately)—49.
30. Idaho—Utah Group—41.

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AUTHORITY: 42 U.S.C. 7101 *et seq.;* 42 U.S.C. 8301 *et seq.;* 42 U.S.C. 8701 *et seq.;* E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

SOURCE: 46 FR 59889, Dec. 7, 1981, unless otherwise noted.

(OMB Control No.: 1903–0075. See 46 FR 63209, Dec. 31, 1981.)

Subpart A—General Provisions

§ 501.1 Purpose and scope.

Part 501 establishes the procedures to be used in proceedings before DOE under parts 500–508 of this chapter except as otherwise provided.

§ 501.2 Prepetition conference.

(a) Owners and operators of powerplants may request a prepetition conference with OFE for the purpose of discussing the applicability of 10 CFR parts 503 and 504 to their situations and the scope of any exemption or other petition that OFE would accept as adequate for filing purposes.

(b) The owner or operator who requests a prepetition conference may personally represent himself or may designate a representative to appear on his behalf. A prepetition conference or a request for a prepetition conference does not commence a proceeding before OFE.

(c) If OFE agrees to waive any filing requirements under §501.3(d), a memorandum of record stating this fact will

be furnished to the potential petitioner within thirty (30) days after the conference. Copies of all applicable memoranda of record must be attached to any subsequently-filed petition.

(d) A record of all prepetition conferences will be included in the public file. OFE may provide for the taking of a formal transcript of the conference and the transcript will be included in the public file.

[46 FR 59889, Dec. 7, 1981, as amended at 54 FR 52891, Dec. 22, 1989]

§ 501.3 Petitions.

(a) *Filing of petitions.* Petitions for exemptions are to be filed with OFE at the address given in § 501.11.

(b) *Acceptance of petition.* (1) Upon acceptance (as distinguished from filing) of the petition, OFE shall publish in the FEDERAL REGISTER a Notice of Acceptance of Petition or, in the case of an exemption by certification, a Notice of Acceptance and Availability of Certification, signifying that an exemption proceeding has commenced.

(2) OFE will notify each petitioner in writing within thirty (30) days of receipt of the petition that it has been accepted or rejected and, if rejected, the reasons therefor.

(3) A petition, including supporting documents, will be accepted if the information contained appears to be sufficient to support an OFE determination. Additional information may be requested during the course of the proceeding, and failure to respond to such a request may ultimately result in denial of the requested exemption.

(4) Acceptance of petition does not constitute a determination that the requested exemption will be granted.

(c) *Rejection of petition.* (1) OFE will reject a petition if it does not meet the information of certification requirements established for the relevant exemptions under parts 503 and 504 of this chapter. A written explanation of the reasons for rejection will be furnished with notification of the rejection.

(2) A timely-filed petition rejected as inadequate will not be rendered untimely if resubmitted in amended form within ninety (90) days of the date of rejection.

(3) OFE will, within thirty (30) days of receipt of a petition that is found to be incomplete due to minor deficiencies, notify the petitioner of the deficiencies and allow ninety (90) days from the date of notification to cure the specified deficiencies. The failure to cure the deficiencies during this time may result in denial of the requested exemption.

(d) *Waiver of filing requirements.* Upon its own motion or at the request of a petitioner, OFE may waive some or all of the regulatory requirements if the purposes of FUA would be best achieved by doing so.

§§ 501.4–501.5 [Reserved]

§ 501.6 Service.

(a) DOE will serve all orders, notices interpretations or other documents that it is required to serve, personally or by mail, unless otherwise provided in these regulations.

(b) DOE will consider service upon a petitioner's duly authorized representative to be service upon the petitioner.

(c) Service by mail is effective upon mailing.

[54 FR 52891, Dec. 22, 1989]

§ 501.7 General filing requirements.

Except as indicated otherwise, all documents required or permitted to be filed with OFE or DOE in connection with a proceeding under parts 503 and 504 shall be filed in accordance with the following provisions:

(a) *Filing of documents.* (1) Documents including, but not limited to, applications, requests, complaints, petitions (including petitions for exemption), and other documents submitted in connection therewith, filed with OFE are considered to be filed upon receipt.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, an application for modification or rescission in accordance with subpart G of this part, a reply to a notice of violation, a response to a denial of a claim of confidentiality, or a comment submitted in connection with any proceeding transmitted by registered or certified mail and addressed to the appropriate office is considered to be filed upon mailing.

(3) *Timeliness.* Documents are to be filed with the appropriate DOE or OFE office listed in § 501.11. Documents that

are to be considered filed upon receipt under paragraph (a)(1) of this section and that are received after regular business hours are deemed filed on the next regular business day. Regular business hours are 8 a.m. to 4:30 p.m.

(4) *Computation of time.* In computing any period of time prescribed or allowed by FUA, these regulations or by an order, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a Federal legal holiday.

(5) *Additional time after service by mail.* Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time and the order, notice, interpretation or other document is served by mail, three (3) days shall be added to the prescribed period.

(6) *Extension of time.* When a document is required to be filed within a prescribed time, an extension of time to file may be granted upon good cause shown.

(7) *Signing.* All applications, petitions, requests, comments, and other documents that are required to be signed, shall be signed by the person filing the document or a duly authorized representative. Any application, petition, request, complaint, or other document filed by a duly authorized representative shall contain a statement by such person certifying that he is a duly authorized representative, unless an OFE form otherwise requires. (A false certification is unlawful under the provisions of 18 U.S.C. 1001 (1970).)

(8) *Labeling.* An application, petition, or other request for action by DOE or OFE should be clearly labeled according to the nature of the action involved, e.g., ''Petition for Temporary Exemption;'' ''Petition for Extension (or Renewal) of Temporary Exemption,'' both on the document and on the outside of the envelope in which the document is transmitted.

(9) *Obligation to supply information.* A person who files an application, petition, complaint, or other request for action is under a continuing obligation during the proceeding to provide DOE or OFE with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other application, petition, complaint, or request for action that is subsequently filed by that person with any DOE office or OFE office.

(10) *The same or related matters.* In filing a petition or other document requesting OFE action, the person must state whether, to the best of his knowledge, the same or a related issue, act or transaction has been or presently is being considered or investigated by a DOE office, other Federal agency, department or instrumentality, or a State or municipal agency.

(11) *Request for confidential treatment.* (i) If any person filing a document with DOE or OFE claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552); is information referred to in 18 U.S.C. 1905; or is otherwise exempt by law from public disclosure, and if such person requests DOE or OFE not to disclose such information, such person shall make a filing in accordance with paragraph (b)(2) of this section. The person shall indicate in the original document that it is confidential or contains confidential information and may file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. If the person states that the information comes within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If a document is not so filed, OFE may assume that there is no objection to public disclosure of the document in its entirety, unless the person subsequently files a claim of confidentiality prior to public disclosure of the document.

(ii) DOE or OFE retains the right to make its own determination with regard to any claim of confidentiality.

Notice of the decision by DOE or OFE to deny such claim, in whole or in part, and an opportunity to respond or take other appropriate action to avoid release shall be given to a person claiming confidentiality of information no less than seven (7) days prior to its public disclosure.

(iii) The above provisions in paragraphs (a)(11) (i) and (ii) of this section do not apply to information submitted on OFE forms that contain their own instructions concerning the treatment of confidential information.

(12) *Separate applications, petitions or requests.* Each application, petition, or request for DOE or OFE action shall be submitted as a separate document, even if the applications, petitions, or requests deal with the same or a related issue, act, or transaction, or are submitted in connection with the same proceeding.

(b) *Number of documents to be filed.* (1) A petitioner must file an executed original and fourteen (14) copies of all exemption requests submitted to DOE. For certification requests, an original and three (3) copies shall be submitted.

(2) Where the petitioner requests confidential treatment of some or all of the information submitted, an original and eleven (11) copies of the confidential document and three (3) copies of the document with confidential material deleted must be filed.

[46 FR 59889, Dec. 7, 1981, as amended at 47 FR 15314, Apr. 9, 1982; 54 FR 52891, Dec. 22, 1989]

§ 501.8 [Reserved]

§ 501.9 Effective date of orders or rules.

(a) When OFE issues a rule or order imposing a prohibition or granting an exemption (or permit) under FUA, the rule or order will be effective sixty (60) days after publication in the FEDERAL REGISTER, unless it is stayed, modified, suspended or rescinded.

(b) If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 201 of FUA against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

[54 FR 52891, Dec. 22, 1989]

§ 501.10 Order of precedence.

If there is any conflict or inconsistency between the provisions of this part and any other provisions or parts of this chapter, except for general procedures which are unique to part 515 of this chapter, the provisions of this part will control respect to procedure.

[54 FR 52891, Dec. 22, 1989]

§ 501.11 Address for filing documents.

Send all petitions, self-certifications and written communications to the following address: Office of Fossil Energy, Office of Fuels Programs, Coal and Electricity Division, Mail Code FE–52, 1000 Independence Avenue, SW., Washington, DC 20585.

[54 FR 52891, Dec. 22, 1989]

§ 501.12 Public files.

DOE will make available at the Freedom of Information reading room, room 1E190, 1000 Independence Avenue SW., Washington, DC for public inspection and copying any information required by statute and any information that OFE determines should be made available to the public.

[54 FR 52891, Dec. 22, 1989]

§ 501.13 Appeal.

There is no administrative appeal of any final administrative action to which this part applies.

§ 501.14 Notice to Environmental Protection Agency.

A copy of any proposed rule or order that imposes a prohibition, order that imposes a prohibition, or a petition for an exemption or permit, shall be transmitted for comments, if any, to the Administrator and the appropriate Regional Administrator of the Environmental Protection Agency (EPA). The Administrator of EPA shall be given the same opportunity to comment and question as is given other interested persons.

[54 FR 52891, Dec. 22, 1989]

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

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

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

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 hearing, 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

its demonstration in accordance with paragraph (b)(5) of this section.

(8) Upon request by the recipient of the proposed prohibition order, the combined public comment periods provided for in this section may be reduced to a minimum of forty-five (45) days from the time of publication of the proposed order.

(9) OFE may terminate a prohibition order proceeding at any time prior to the date upon which a final order shall become effective. Should OFE terminate the proceeding, it will notify the proposed order recipient, and publish a notice in the FEDERAL REGISTER.

(c) *Decision to issue a final order.* (1) OFE will base its determination to issue an order on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) OFE shall include in the final order a written statement of the pertinent facts, a statement of the basis upon which the final order is issued, a recitation of the conclusions regarding the required findings and qualifications for exemptions. The final order shall state the effective date of the prohibition contained therein. If it is demonstrated that the facility would have been granted a temporary exemption, the effective date of the prohibition contained in the final order shall be delayed until such time as the temporary exemption would have terminated. If it is demonstrated that a facility will need a period of time to comply with the final order, the effective date of the prohibition contained in the final order may be delayed, in OFE's discretion, so as to allow an order recipient to comply with the final order.

(3) OFE will enclose with a copy of the final order, where appropriate, a schedule of steps that should be taken by a stated date (a compliance schedule) to ensure that the affected facility will be able to comply with the prohibitions stated in the order by the effective date of the prohibition contained in the final order. The compliance schedule may require the affected person to take steps with regard to a unit 60 days after service of the final order.

(4) A copy of the final order and a summary of the basis therefore will be published in the FEDERAL REGISTER. The order will become effective 60 days after publication in the FEDERAL REGISTER.

(d) *Request for order.* (1) A proceeding for issuance of a prohibition order to a specific unit may be commenced by OFE, in its sole discretion, in response to a request for an order filed by the owner or operator of a facility.

(2) A petition requesting OFE to commence a prohibition order proceeding should include the following information for all units to be covered by the prohibition order:

(i) A statement of the reasons the owner or operator is seeking the issuance of a prohibition order; and

(ii) Sufficient information for OFE to make the findings required by section 301(b) of FUA.

(3) If OFE determines to accept the request, OFE shall publish a proposed order in the FEDERAL REGISTER together with a statement of the reasons for the order.

(Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7101 *et seq.*); Energy Supply and Environmental Coordination Act of 1974; Pub. L. 93–319, as amended by Pub. L. 94–163, Pub. L. 95–70, (15 U.S.C. 719 *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 17042, Apr. 21, 1982; 47 FR 50848, Nov. 10, 1982; 54 FR 52892, Dec. 22, 1989]

§ 501.52 Prohibitions by order—certifying 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 maintaining reasonable fuel efficiency in an existing powerplant if the owner or operator of the powerplant certifies, and OFE concurs in such certification in accordance with the requirements of §§ 504.5, 504.6 and 504.8.

(b) *Notice of order and participation.* (1) OFE may hold a conference with the

proposed order recipient, at the recipient's election, prior to issuing the proposed order. The conference may resolve any questions regarding the certification required by section 301 of the Act, as amended, and §§ 504.5, 504.6, and 504.8, and OFE's review and concurrence therein.

(2) Pursuant to section 701(b) of FUA, prior to the issuance of a final order to a certifying powerplant owner or operator, OFE must publish in the FEDERAL REGISTER, a proposed prohibition order stating the reasons for such order. OFE will review all of the information submitted by a proposed order recipient within 60 days after receipt by OFE. If the certification is complete, OFE will, within 30 days after the end of the 60 day review period, publish in the FEDERAL REGISTER a Notice of Acceptance of certification together with a proposed prohibition order stating therein the reasons for such order. This commences the prohibition order proceeding. If OFE does not believe it is able to concur in the certification, OFE shall notify the proposed order recipient and shall publish a Notice of Proposed Non-Concurrence in the FEDERAL REGISTER within 30 days after the end of the 60 day review period. If OFE finds that the certification with compliance schedule is incomplete, OFE will notify the proposed prohibition order recipient as to the deficiencies, and provide an additional period of 30 days for the certification to be amended and resubmitted. If a complete certification is not submitted within this period, the proceeding shall be terminated in accordance with § 501.52(b)(5). OFE will notify the proposed order recipient and other parties to the proceeding of the termination and publish a notice in the FEDERAL REGISTER. OFE, on its own motion, may extend any period of time by publishing a notice to that effect in the FEDERAL REGISTER.

(3) The publication of the Notice of Acceptance or Notice of Proposed Non-Concurrence commences a period of 45 days during which interested persons may submit written comments or request a public hearing. During this period, the recipient of the proposed order and any other interested person may submit any evidence that they have available relating to the proposed order, the certification or the concurrence that OFE must make. A proposed order recipient may submit additional new evidence at any time prior to the close of the public comment period which follows the commencement of the proceeding or prior to the close of the record of any public hearing, whichever occurs later. A request for an extension of the 45 day period may be granted at OFE's discretion. In the case of a Notice of Acceptance, as set forth in § 504.9, no final prohibition order can be issued until any necessary environmental review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C 4321 *et seq.* (NEPA) has been completed. Upon completion of the NEPA review and unless OFE determines on the basis of the record of the proceeding that the certification fails to meet the requirements of §§ 504.5, 504.6, and 504.8, OFE shall publish a final prohibition order, together with the information required by paragraph (c) of this section. In the case of a Notice of Proposed Non-Concurrence, at the end of the 45 day comment period, OFE will notify the proposed order recipient and parties to the proceeding and publish a final Notice of Non-Concurrence in the FEDERAL REGISTER, if OFE determines it cannot concur in the certification based upon additional information submitted during the proceeding. If, at the end of the 45 day period, OFE believes it can concur in the certification, OFE will notify the proposed order recipient and parties to the proceeding and publish a Notice of Acceptance followed by a new 45 day comment period.

(4) 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 may consider, among other matters, the sufficiency of the certification of the owner or operator of the powerplant required by section 301 of FUA, as amended, and §§ 504.5, 504.6, and 504.8 of these regulations.

(5) OFE may terminate a prohibition order proceeding at any time prior to the date upon which a final prohibition order is issued whenever OFE believes,

from any information contained in the record of the proceeding, that the certification does not meet the requirements of section 301 of the Act, as amended, or §§ 504.5, 504.6, and 504.8 of these regulations. If OFE terminates the proceeding or publishes a final Notice of Non-Concurrence, or the proposed order recipient fails to submit a complete certification, OFE will notify the proposed order recipient and other parties to the proceeding and publish a notice in the FEDERAL REGISTER. In such event, the proposed order recipient may submit a new certification under any provision of section 301 of the Act, as amended, at a later date. Specifically, a Notice of Non-Concurrence under either section 301(b) or 301(c) shall not affect a proposed order recipient's ability to make a certification under the other subsection.

(c) *Record and decision to issue a final order.* (1) OFE will base its determination to issue an order on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence.

(2) OFE shall include in the final order a written statement of the basis upon which the final order is issued, and its concurrence in the required certification. A copy of the final order and a summary of the basis therefor will be published in the FEDERAL REGISTER. While the prohibition order is final for purposes of judicial review under section 702 of FUA, the prohibitions contained in the final order shall not become effective for purposes of amendment under section 301(d) of FUA, as amended, and § 501.52(d) of these regulations until the effective date of the prohibitions stated in the order, or, where the order is subject to one or more conditions subsequent listed in the prohibition order compliance schedule, until all its conditions are met.

(d) *Amendment to certifications under §§ 504.5 and 504.6.* The proposed prohibition order recipient may amend its compliance schedule under § 504.5(d), or its certification under section 301 of FUA, as amended, and §§ 504.5, 504.6 and 504.8 of these regulations in order to take into account changes in relevant facts and circumstances at any time prior to the effective date of the prohibitions contained in the final prohibition order.

(e) *Rescission of prohibition orders.* The rescission or modification of final prohibition orders issued to existing electric powerplants will be governed by the procedure in § 501.101 of these regulations.

(Approved by the Office of Management and Budget under control number 1903–0077)

(Department of Energy Organization Act, Pub. L. 95–91, 42 U.S.C. 7101 *et seq.;* Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93–319, as amended by Pub. L. 94–163, Pub. L. 95–70, and Pub. L. 95–620, 15 U.S.C. 719 *et seq.;* Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620, as amended by Pub. L. 97–35, 42 U.S.C. 8301 *et seq.;* Omnibus Budget Reconciliation Act of 1981, (Pub. L. 97–35))

[47 FR 17042, Apr. 21, 1982]

§§ 501.53–501.56 [Reserved]

Subpart F—Exemptions and Certifications

§ 501.60 Purpose and scope.

(a) (1) If the owner or operator plans to construct a new baseload powerplant and the unit will not be in compliance with the prohibition contained in section 201(a) of FUA, this subpart establishes the procedures for filing a petition requesting a temporary or permanent exemption under, respectively, sections 211 and 212 of FUA.

(2) Self-certification alternative. If the owner or operator plans to construct a new baseload powerplant not in compliance with the prohibitions contained in section 201(a) of FUA, this subpart establishes the procedures for the filing of a self-certification under section 201(d) of FUA.

(3) If the petitioner owns, operates or controls a new powerplant, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under sections 211 or 311 of FUA.

(4) If the petitioner owns, operates or controls a new or existing powerplant or MFBI, this subpart provides the procedures for filing a petition requesting extension of a temporary exemption granted under section 211 or section 311 of FUA.

(b) If the petition is for an extension of a temporary exemption, the petitioner must apply for this extension at least (90) days prior to the expiration of the temporary exemption.

(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 50849, Nov. 10, 1982; 54 FR 52892, Dec. 22, 1989]

§ 501.61 Certification contents.

(a) A self-certification filed under section 201(d) of FUA should include the following information:

(1) Owner's name and address.

(2) Operator's name and address.

(3) Plant location and address.

(4) Plant configuration (combined cycle, simple cycle, topping cycle, etc.)

(5) Design capacity in megawatts (MW).

(6) Fuel(s) to be used by the new facility.

(7) Name of utility purchasing electricity from the proposed facility and percent of total output to be sold.

(8) Date unit is expected to be placed in service.

(9) Certification by an officer of the company or his designated representative certifying that the proposed facility:

(i) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(ii) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

(b) A self-certification filed pursuant to § 501.61(a) shall be effective to establish compliance with the requirement of section 201(a) of FUA as of the date filed.

(c) OFE will publish a notice in the FEDERAL REGISTER within fifteen days reciting that the certification has been filed. Publication of this notice does not serve to commence a public comment period.

(d) OFE will notify the owner or operator within 60 days if supporting documentation is needed to verify the certification.

[54 FR 52892, Dec. 22, 1989]

§ 501.62 Petition contents.

(a) A petition for exemption should include the following information:

(1) The name of the petitioner;

(2) The name and location of the unit for which an exemption is being requested;

(3) The specific exemption(s) being requested; and

(4) The name, address, and telephone number of the person who can supply further information.

(b) *Table of contents.* Include only those sections contained in the petition.

(c) *Introduction.* Include the following:

(1) Description of the facility under consideration;

(2) Description of the unit and fuel the petitioner proposes to burn in that unit, including the purpose of and need for the unit; and

(3) Description of the operational requirements for the unit, including size (capacity, input and output in millions of Btu's per hour), output in terms of product or service to be supplied, fuel capability, and operating mode, including capacity factor, utilization factor, and fluctuations in the load.

(d) *General requirements.* The evidence required under part 503 subpart B for each exemption(s) for which the petitioner is applying:

(1) No alternate power supply (§ 503.8):

(2) Use of mixtures (§ 503.9);

(3) Alternative site (§ 503.11);

(4) Compliance Plan (§ 503.12);

(5) Environmental impact analysis (§ 503.13);

(6) Fuels search (§ 503.14).

(e) *Specific evidence.* Evidence required for each exemption, segregated by exemption (part 503 subparts C and D).

(f) *References.* (1) Specify the reports, documents, experts, and other sources consulted in compiling the petition. Cite these sources in accordance with acceptable documentation standards,

and indicate the part of the petition to which they apply. If the source is unusual or little known, briefly describe its contents.

(2) Identify at the end of each section of the petition any information or any statement based, in whole or in part, on information or principles which, to petitioner's knowledge, represent significant innovations to or departures from generally accepted facts or principles.

(g) *Appendices.* Include in the appendices material which the petitioner believes substantiates any analyses fundamental to the petition, materials prepared in connection with it, and any other documents, studies, or analyses which are believed to be relevant to the decision to be made. Also, include in the appendices copies of any forms submitted as part of the petition.

(h) *List of preparers.* List the names with the qualifications and professional credentials of the principal contributors to the preparation of the petition. Indicate the sections or subject matters for which each principal contributor was responsible.

(i) *Incorporation by reference.* Pertinent information may be incorporated into the petition by reference when this can be done without impeding agency and public review. Referenced materials must be specifically identified and their contents briefly described in the petition. To incorporate by reference, the material must be submitted with the petition, or if previously submitted, the office to which it was submitted must be identified in the petition. The petitioner cannot incorporate by reference material based on proprietary data not available to OFE for review.

(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 50849, Nov. 10, 1982]

§ 501.63 Notice of the commencement of an administrative proceeding on an exemption petition.

(a)(1) When a petition is accepted, OFE will publish in the FEDERAL REGISTER a Notice of Acceptance, or, in the case of a certification exemption, a Notice of Acceptance and Availability of Certification, signifying that an exemption proceeding has commenced. The notice will include a summary of the exemption petition, and publication will commence a public comment period of no less than forty-five (45) days during which interested parties may file written comments concerning the petition. In the case of a certification exemption, interested persons may request a public hearing during this period, pursuant to § 501.33.

(2) OFE will notify the appropriate State agency having apparent primary authority to permit or regulate the construction or operation of a powerplant that an exemption proceeding has commenced and will consult with this agency to the maximum extent practicable. Copies of all accepted petitions also will be forwarded to EPA, as provided in § 501.14(a).

(b) In processing an exemption petition, OFE shall comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations, and the DOE guidelines implementing those regulations (45 FR 20694, Mar. 28, 1980). Compliance with NEPA may involve the preparation of (1) an environmental impact statement (EIS) evaluating the grant or denial of an exemption petition, (2) an environmental assessment (EA), or (3) a memorandum to the file finding that the grant of the requested petition would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is required, OFE will publish in the FEDERAL REGISTER a Notice of Intent (NOI) to prepare an EIS as soon as practicable after commencement of the proceeding. A public meeting may be held pursuant to 40 CFR 1501.7 to solicit comments or suggestions on the structure and content of the EIS.

[46 FR 59889, Dec. 7, 1981, as amended at 54 FR 52893, Dec. 22, 1989]

§ 501.64 Publication of notice of availability of tentative staff analysis.

OFE will publish in the FEDERAL REGISTER a Notice of the Availability of Tentative Staff Analysis for the noncertification temporary public interest exemption, for noncertification environmental exemptions, and for a cogeneration exemption based on the public interest. OFE will provide a public comment period of at least fourteen (14) days from the date of publication during which interested persons may make written comments and request a public hearing.

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the FEDERAL REGISTER and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

[54 FR 52893, Dec. 22, 1989]

§ 501.66 OFE evaluation of the record, decision and order.

(a) The administrative record in a proceeding under this part will consist of the proposed prohibition order and/or petition and related documents, all relevant evidence presented at the public hearing, all written comments, and any other information in the possession of OFE and made a part of the public record of the proceeding. OFE will base its determination to issue a rule or order on consideration of the whole record, or those parts thereof cited by a party and supported by reliable, probative, and substantial evidence.

(b) OFE may investigate and corroborate any statement in any petition, document, or public comments submitted to it. OFE also may use any relevant facts it possesses in its evaluation and may request submissions from third persons relevant to the petition or other documents. OFE also may request additional information, data, or analyses following a public hearing, if any, if this information is necessary to resolve disputed issues in the record. Any relevant information received by OFE following the hearing that is not declared to be confidential under § 501.7(a)(11) shall be made part of the public record with opportunity provided for rebuttal.

(c) OFE will notify all participants if, after the close of any public hearing or comment period, it receives or obtains any relevant information or evidence. Participants may respond to such information or evidence in writing within fourteen (14) days of such notification. If OFE finds that the additional information or evidence relates to material issues of disputed fact and may significantly influence the outcome of the proceeding, OFE shall reopen the hearing on the issue or issues to which the additional information or evidence relates.

§ 501.67 Petition redesignations.

OFE, with the petitioner's approval, will redesignate an exemption petition if the petitioner qualifies for an exemption other than the one originally requested, even though he may not qualify for the specific exemption originally requested, or be entitled to the full exemption period provided by requested exemption. OFE shall give public notice of any redesignation of an exemption petition, and where a public hearing has been requested notice shall be given at least thirty (30) days prior to such hearing.

§ 501.68 Decision and order.

(a)(1) OFE shall issue an order either granting or denying the petition for an exemption or permit within six (6) months after the end of the period for public comment and hearing applicable to any petition.

(2) OFE may extend the six (6) month period for decision to a date certain by publishing notice in the FEDERAL REGISTER, and stating the reasons for such extension.

(3) OFE will publish a final EIS at least thirty (30) days prior to take issuance of the final order in all cases where an EIS is required.

(b)(1) OFE shall serve a copy of the order granting or denying a petition for exemption to the petitioner and all persons on the service list in cases involving a public hearing.

(2) OFE shall publish any order granting or denying a petition under this subpart in the FEDERAL REGISTER together with a statement of the reasons for the grant or denial.

(c)(1) Any order granting or denying a petition for exemption shall be based upon consideration of the whole record or those parts thereof cited by a party and supported by, and in accordance with, reliable, probative and substantive evidence.

(2) The denial of a petition for exemption shall be without prejudice to the petitioner's right to submit an amended petition. OFE may, however, reject the amended petition if it is not materially different from the denied petition.

(d) OFE may design any terms and conditions included in any temporary exemption issued or extended under section 211 of FUA, to ensure, among other things, that upon expiration of the exemption the persons and powerplant covered by the exemption will comply with the applicable prohibitions under FUA. For purposes of the provision, the subsequent grant of a permanent exemption to the subject unit shall be deemed compliance with applicable prohibitions.

(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 50849, Nov. 10, 1982; 54 FR 52893, Dec. 22, 1989]

§ 501.69 Judicial review.

Any person aggrieved by any order issued by OFE under this subpart, must file, within sixty (60) days of publication of the final order in the FEDERAL REGISTER, a petition for judicial review in the United States Court of Appeals for the Circuit wherein he resides, or has his principal place of business. Exhaustion of administrative remedies for purposes of judicial review does not require filing a petition pursuant to subpart G for modification or rescission of the order to be reviewed.

Subpart G—Requests for Modification or Rescission of a Rule or Order

§ 501.100 Purpose and scope.

(a) Anyone may request that OFE commence a rulemaking proceeding pursuant to 5 U.S.C. 553(e); however, this subpart provides the procedures to be followed by—

(1) An interested person seeking the modification or rescission of a prohibition by rule applicable to a new facility;

(2) An owner or operator of a facility named in a prohibition by rule requesting the modification or rescission of that rule; or

(3) An owner or operator subject to an exemption order or a specific prohibition imposed by order requesting the modification or a rescission of that order.

(b) OFE also may commence a modification or rescission proceeding on its own initiative.

§ 501.101 Proceedings to modify or rescind a rule or order.

(a) In response to a request duly filed by an interested person, OFE may commence a proceeding to modify or rescind a rule or order. If OFE determines that a request to modify or rescind a rule or order does not warrant commencement of a proceeding, it will deny the request and issue a brief statement of the reason(s) for the denial.

(b) A request for modification or rescission of a rule or order must comply with the requirements of § 501.7 and must be filed at the address set forth in § 501.11.

(c) Notice of the request for modification or rescission of an order must be given by the requester to each party to the original proceeding that resulted in the issuance of the original order for which modification or rescission is sought. If the number of parties to the original proceeding is too large to allow actual notice at a reasonable cost or within a reasonable time, a requester may ask that OFE give notice to the parties by publication in the FEDERAL REGISTER; however, this alternate notice does not bind OFE to

commence a proceeding, if it subsequently determines that the request is not warranted.

(d) If OFE determines to grant a request to commence a proceeding to rescind or modify a rule or order, or OFE on its own initiative, commences a proceeding for the modification or rescission of a rule or order, it will give notice, either by service of a written notice or by oral communication (which communication must be promptly confirmed in writing) to each person upon whom the order was served that OFE proposes to modify or rescind, or, alternatively, by publication of notice in the FEDERAL REGISTER. OFE will give a reasonable period of time for each person notified to file a written response.

(e)(1) A copy of any written comments submitted to OFE under this subpart by a party to the original proceeding must also be sent to the requester. The party submitting such comments must certify to OFE that he has sent a copy of such comments to the requester.

(2) OFE may notify other persons participating in the proceeding of the comments and provide an opportunity for those notified to respond.

(f) A request for modification or rescission of a rule or order must contain a complete statement of all facts relevant to the action sought. The request must also include the names and addresses of all reasonably ascertainable persons who will be affected. Pertinent provisions contained in any documents believed to support a request may be briefly described, however, OFE reserves the right to obtain copies of any significant documents that will assist in making a determination on the merits of a request. The request must identify the specific order or rule for which modification or rescission is sought. A request should also indicate whether an informal conference will facilitate OFE's determination to commence, or not to commence a proceeding, or will assist OFE in making any determinations on material issues raised by the request.

(g) A decision by OFE to commence a proceeding under this subpart does not entitle the requester to a public hearing on the request for modification or rescission. A public hearing may be held, however, if, in its discretion, OFE considers that a public hearing will advance its evaluation of the request.

§ 501.102 OFE evaluation of the record, decision and order for modification or rescission of a rule or order.

(a) OFE will consider the entire administrative record in its evaluation of the decision and order for modification or rescission of a rule or order. OFE may investigate and corroborate any statement in the petition or related documents and may utilize in its evaluation any relevant facts obtained by its investigations. OFE may solicit or accept submissions from third persons relevant to any request under this subpart and all interested persons will be afforded an opportunity to respond to these submissions. OFE may, in its discretion and on its own initiative, convene a conference, if it considers that a conference will advance its evaluation of the request.

(b) *Criteria.* Except where modification or rescission of a rule or order is initiated by OFE, OFE's decision to rescind or modify a rule or order will be based on a determination that there are significantly changed circumstances with respect to the applicability of a particular prohibition or exemption to the requester. OFE believes that there may be ''significantly changed circumstances'', if:

(1) Significant material facts are subsequently discovered which were not known and could not have been known to the petitioner or to OFE at the time of the original proceeding;

(2) A law, regulation, interpretation, ruling, order or decision on appeal that was in effect at the time of the proceeding upon which the rule or order is based and which, if it had been made known to OFE, would have been relevant to the proceeding and would have substantially altered the outcome is subsequently discovered; or

(3) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order was based, which change occurred during the interval between issuance of the order and the date of filing of the request under this subpart,

and was caused by force or circumstances beyond the requester's control.

§ 501.103 OFE decision.

(a) OFE shall issue an appropriate rule or order after considering the request for modification or rescission of a rule or order and other relevant information received during the proceeding.

(b) OFE will either grant or deny the request for modification or rescission and will briefly state the pertinent facts and legal basis for the decision.

(c) OFE will serve the rule or order granting or denying the request for modification or rescission upon the requester, or, if the action was initiated by OFE, upon the owner or operator of the affected powerplant or installation. OFE will publish a notice of the issuance of a rule or order modifying or rescinding a rule or order in the FEDERAL REGISTER.

Subpart H—Requests for Stay

§ 501.120 Purpose and scope.

(a) This subpart sets forth the procedures for the request and issuance of a stay of a rule or order or other requirement issued or imposed by OFE or these regulations but does not apply to the mandatory stays provided for in sections 202(b) and 301(a) of FUA. The application for a stay under this subpart will only be considered incidental to a proceeding on a request for modification or rescission of a final prohibition rule or order.

(b) The petitioner must comply with all final and effective OFE orders, regulations, rulings, and generally applicable requirements unless a petition for a stay is granted or is applicable under FUA.

§ 501.121 Filing and notice of petitions for stays.

(a)(1) The petition for a stay must be in writing and comply with the general filing requirements stated in § 501.7, in addition to any other requirements set forth in this subpart, and must be filed at the address provided in § 501.11.

(2) A claim for confidential treatment of any information contained in the petition for stay and supporting documents must be in accordance with § 501.7(a)(11), and filed at the address provided in § 501.11.

(b) OFE will publish notice of receipt of a petition for a stay under this subpart in the FEDERAL REGISTER.

§ 501.122 Contents.

(a) A petition for a stay shall contain a full and complete statement of all facts believed to be pertinent to the act or transaction for which a stay is sought. The facts shall include, but not be limited to, the criteria listed below in § 501.123(b).

(b) The petitioner may request a conference regarding the application. If the request is not made at the time the application is filed, it must be made as soon thereafter as possible. The request and OFE's determination regarding it will be made in accordance with subpart C of this part.

§ 501.123 Evaluation of the record.

(a) The record in a proceeding on a petition for stay shall consist of the petition and any related documents, evidence submitted at any public proceedings and any other information in the possession of OFE and made part of the record. OFE may investigate and corroborate any statement in the petition or any other document submitted to it and may utilize in its evaluation any relevant facts obtained by its investigations. OFE may solicit or accept submissions from third persons relevant to the petition for stay or other document and any interested person will be afforded an opportunity to respond to these submissions. OFE, on its initiative, may convene a conference, if, in its discretion, it considers that the conference will advance its evaluation of the petition.

(b) *Criteria.* (1) OFE may grant a stay incident to a proceeding on a petition for modification of a rule or order if the petitioner shows:

(i) Irreparable injury will result if the stay is denied;

(ii) There is a strong likelihood of success on the merits;

(iii) The denial of a stay will result in a more immediate hardship or inequity to the petitioner than to other persons affected by the proceeding; and

(iv) It would be desirable for reasons of public policy to grant the stay.

§ 501.124 Decision and order.

(a) OFE will issue an order granting or denying the petition for a stay upon consideration of the request and other relevant information received or obtained during the proceeding.

(b) OFE will include in the order a brief written statement setting forth the relevant facts and the basis of the decision, including any appropriate terms and conditions of the stay.

Subpart I—Requests for Interpretation

§ 501.130 Purpose and scope.

This subpart establishes procedures for filing a formal request for and the issuance of an interpretation of a rule, order or other action by DOE. Any response, whether oral or written, to a general inquiry, or to other than a formal written request for interpretation filed with DOE, is not an interpretation and merely provides general information that may not be relied upon in any proceeding to determine compliance with the applicable requirements of FUA.

§ 501.131 Filing a request for interpretation.

A proceeding to request an interpretation is commenced by the filing of a ''Request for Interpretation (FUA).'' The request must be in writing and must also comply with the general filing requirements stated in § 501.7. Any claims for confidential treatment for any information contained in the request or other related documents must be made pursuant to § 501.7(a)(11). A request for interpretation should be filed with the Assistant General Counsel for Interpretations and Rulings at the address provided in § 501.11.

§ 501.132 Contents of a request for interpretation.

(a) A request for an interpretation must contain a complete statement of all the facts believed to be relevant to the circumstances, acts or transactions that are the subject of the request. The facts must include the names and addresses of all potentially affected persons (if reasonably ascertainable) and a full discussion of the pertinent provisions and relevant facts contained in any documents submitted with the request. Copies of relevant contracts, agreements, leases, instruments, and other documents relating to the request must be submitted if DOE believes they are necessary for determination of any issue pending in the proceeding under this subpart. When the request pertains to only one step in a larger integrated transaction, the requesting party must also submit the facts, circumstances, and other relevant information pertaining to the entire transaction.

(b) The requesting party must include in the request a discussion of all relevant legal authorities, rulings, regulations, interpretations and decisions on appeal relied upon to support the particular interpretation sought.

(c) DOE may refuse to issue an interpretation if it determines that there is insufficient information upon which to base an interpretation.

§ 501.133 DOE evaluation.

(a)(1) The record shall consist of the request for an interpretation and any supporting documents, all relevant evidence presented at any public proceedings, written comments and any information in the possession of DOE that has been made part of the record.

(2) DOE may investigate and corroborate any statement in a request or related documents and may utilize in its evaluation any relevant facts obtained by the investigation. DOE may solicit or accept submissions from third persons relevant to the request for interpretation, or any other document submitted under this subpart, and the person requesting the interpretation will be afforded an opportunity to respond to these submissions.

(3) The General Counsel or his delegate will issue an interpretation on the basis of the information provided in the request, unless that information is supplemented by other information brought to the attention of DOE during the proceeding. DOE's interpretation will, therefore, depend on the accuracy of the factual statements, and the requesting party may rely upon it only

to the extent that the facts of the actual situation correspond to those upon which the interpretation is based.

(b) *Criteria.* (1) DOE will base its FUA interpretations on the DEOA and FUA, as applicable, and the regulations and published rulings of DOE as applied to the specific factual situation presented.

(2) DOE will take into consideration previously issued interpretations dealing with the same or a related issue.

§ 501.134 Issuance and effect of interpretations.

(a) DOE may issue an interpretation after consideration of the request for interpretation and other relevant information received or obtained during the proceeding.

(b) The interpretation will contain a written statement of the information upon which it is based and a legal analysis of and conclusions regarding the application of rulings, regulations and other precedent to the situation presented in the request.

(c) Only those persons to whom an interpretation is specifically addressed, and other persons upon whom the DOE serves the interpretation and who are directly involved in the same transaction or act, are entitled to rely upon it. No person entitled to rely upon an interpretation shall be subject to civil or criminal penalties stated in title VII of FUA for any act taken in reliance upon the interpretation, notwithstanding that the interpretation shall thereafter be declared by judicial or other competent authority to be invalid.

(d) DOE may at any time rescind or modify an interpretation on its own initiative. Rescission or modification shall be made by notifying persons entitled to rely on the interpretation that it is rescinded or modified. This notification will include a statement of the reasons for the rescission or modification and, in the case of a modification, a restatement of the interpretation as modified.

(e) An interpretation is modified by a subsequent amendment to the regulations or ruling to the extent that it is inconsistent with the amended regulation or ruling.

(f) Any person who believes he is directly affected by an interpretation issued by DOE, and who believes that he will be aggrieved by its implementation, may submit a petition for reconsideration of that interpretation to the General Counsel. DOE will acknowledge receipt of all requests for reconsideration; however, this acknowledgement in no way binds DOE to commence any proceeding on the request. If within sixty (60) days of DOE's acknowledgement of the receipt of a request for reconsideration, DOE has not issued either a notice of intent to commence a proceeding to reconsider the interpretation or a modification, revision or rescission of the original interpretation, the request for reconsideration will be deemed denied. DOE may, in its discretion, issue a formal denial of a request for reconsideration if:

(1) The request has not been filed in a timely manner, and good cause therefor has not been shown;

(2) The person requesting reconsideration is not aggrieved or otherwise injured substantially by the interpretation; or

(3) The request is defective because it fails to state and to present facts and legal argument that the interpretation was erroneous in fact or in law, or that it was arbitrary or capricious.

Subpart J—Rulings

§ 501.140 Purpose and scope.

DOE may issue rulings in accordance with the provisions of this subpart. DOE will publish each ruling in the FEDERAL REGISTER and in 10 CFR part 518. A person is entitled to rely upon a ruling to the extent provided in this subpart.

§ 501.141 Criteria for issuance.

(a) The General Counsel may issue a ruling whenever:

(1) There has been a substantial number of inquiries with regard to similar factual situations or a particular section of the regulations; or

(2) It is determined that a ruling will be of assistance to the public in applying the regulations to a specific situation.

§ 501.142 Modification or rescission.

(a) A ruling may be modified or rescinded by—

(1) Publication of the modification or rescission by DOE in the FEDERAL REGISTER and in 10 CFR part 518; or

(2) Adoption of a rule that supersedes or modifies a prior ruling.

(b) A person shall not be subject to the sanctions or penalties stated in these regulations for actions taken in reliance upon a ruling, notwithstanding that the ruling is subsequently declared to be invalid or no longer applicable. A person affected by a ruling may not rely upon it for more than 30 days after it has been rendered invalid pursuant to issuance of a superseding rule by OFE, or after it has been rescinded or modified by DOE.

§ 501.143 Comments.

Any interested person may file a written comment on or objection to a published ruling at any time with the Assistant General Counsel for Interpretations and Rulings at the address provided in § 501.11.

Subpart K—Enforcement

§ 501.160 Purpose and scope.

This subpart provides the procedures by which OFE may initiate enforcement proceedings on its own behalf and by which complaints concerning a violation of the Act or any rule or order thereunder may be filed.

§ 501.161 Filing a complaint.

(a) A complaint under this subpart must be submitted in writing over the signature of the person making the complaint in accordance with the general filing requirements stated in § 501.7. OFE will accept oral complaints that otherwise satisfy the requirements of this subpart, but OFE may request written verification.

(b) A complaint shall be filed at the address provided in § 501.11.

§ 501.162 Contents of a complaint.

A complaint must contain a complete statement of all relevant facts pertaining to the act or transaction that is the subject of the complaint. It must also include the names and addresses of all persons involved (if reasonably ascertainable), a description of the events that led to the complaint, and a statement describing the statutory provision, regulation, ruling, order, rule, or interpretation that allegedly has been violated.

§ 501.163 OFE evaluation.

(a) The record shall consist of the complaint and any supporting documents and all other relevant information developed in the course of any investigations or proceedings related to that complaint. OFE may investigate and corroborate any statement in the complaint or related documents submitted, and may utilize in its evaluation any relevant facts obtained by such investigation or from any other source of information. OFE may solicit or accept submissions from third persons relevant to the complaint or other related documents.

(b) *Confidentiality of information.* OFE will treat as confidential information received in any investigation of a complaint, including the identity of the complainant and the identity of any other persons who provide information to the extent such information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. OFE reserves the right to make disclosures that would be in the public interest.

§ 501.164 Decision to initiate enforcement proceedings.

After investigation of a specific complaint or based on any relevant information received or obtained during an investigation, OFE may issue a notice of violation, determine that no violation has occurred, or take such other actions as it deems appropriate. Prior to issuance of a notice of violation, and before commencement of an enforcement proceeding, OFE may transmit a draft of the notice of violation to the potentially affected person in order to promote an informal resolution of the violation.

§ 501.165 Commencement of enforcement proceedings.

(a) Whenever, on the basis of any information available, OFE determines that a person is in violation or about

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 paragraph (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

be effective upon service, unless otherwise provided therein, or stayed pursuant to § 501.120.

(c) *Service.* OFE will serve a copy of the Fuel Use Order upon any person who was served a copy of the notice of violation and upon all parties to any public proceeding on the notice of violation. OFE will place a copy of each final order on file in the Public Information Office described in § 501.12.

(d) *Judicial review.* Any person against whom a penalty is assessed pursuant to § 501.167(b) after a hearing before an ALJ may, within sixty (60) calendar days after the date of issuance of the order assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with the provisions of section 723 of FUA.

Subpart L—Investigations, Violations, Sanctions and Judicial Actions

§ 501.180 Investigations.

(a) *General.* Pursuant to section 711 of FUA, the DEOA, and in accordance with the provisions of 10 CFR 205.201, OFE may initiate and conduct investigations relating to the scope, nature, and extent of compliance by any person with the rules, regulations, and orders issued by OFE under the authority of the Act, or any order or decree of court relating thereto, or any other agency action. When the circumstances warrant, OFE may issue subpoenas as provided in subpart D of this part. OFE may also conduct investigative conferences in conjunction with any investigation.

(b) Any duly authorized representative of OFE has the authority to conduct an investigation and to take such action as he deems necessary and appropriate to the conduct of the investigation.

(c) *Notification.* If any person is required to furnish information or documentary evidence pursuant to a subpoena or special report order, OFE will, upon written request, inform that person as to the general purposes of the investigation.

(d) *Confidentiality.* OFE shall not disclose any information received during an investigation under this section, including the identities of the person investigated and any other person who provides information, to the extent it is exempt from public disclosure pursuant to 5 U.S.C. 552 and 10 CFR part 1004.

§ 501.181 Sanctions.

(a) *General.* (1) A violation of any provision of the Act (other than section 402 of FUA), or any rule or order thereunder shall be subject to the penalties and sanctions provided in subtitle C of title VII of FUA.

(2) Each day that any provision of the Act (other than section 402), or any rule or order thereunder is violated constitutes a separate violation within the meaning of the provisions of this section relating to civil penalties.

(b) *Criminal penalties.* Any person who willfully violates any provision of the Act (other than section 402), or any rule or order thereunder will be subject to a fine of not more than $50,000, or to imprisonment for not more than 1 year, or both, for each violation.

(c) *Civil Penalties.* (1) Any person who violates any provisions of the Act (other than section 402) or any rule in this subchapter or order under this subchapter or the Act will be subject to the following civil penalty, which may not exceed $117,608 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to $9 for each MCF of natural gas or up to $46 for each barrel of oil used in excess of that authorized in the exemption.

(2) OFE may compromise and settle, and collect civil penalties whenever it considers it to be appropriate or advisable.

(d) *Corporate personnel.* (1) If a director, officer, or agent of a corporation willfully authorizes, orders, or performs any act or practice constituting in whole or in part a violation of the Act, or any rule or order thereunder, he will be subject to the penalties specified in paragraphs (b) and (c) of this section without regard to any penalties to which the corporation may be subject. He will not, however, be subject to imprisonment under paragraph (b) of

this section unless he knew of noncompliance by the corporation, or had received from OFE notice of noncompliance by the corporation.

(2) Purposes of this paragraph:

(i) *Agent* includes any employee or other person acting on behalf of the corporation on either a temporary or permanent basis; and

(ii) *Notice of noncompliance* is a final Fuel Use Order issued under § 501.167 of this part.

[46 FR 59889, Dec. 7, 1981, as amended at 62 FR 46183, Sept. 2, 1997; 74 FR 66032, Dec. 14, 2009; 81 FR 41794, June 28, 2016; 81 FR 96352, Dec. 30, 2016; 83 FR 1292, Jan. 11, 2018; 83 FR 66083, Dec. 26, 2018; 85 FR 830, Jan. 8, 2020; 86 FR 2956, Jan. 14, 2021; 87 FR 1064, Jan. 10, 2022; 88 FR 2193, Jan. 13, 2023; 89 FR 1028, Jan. 9, 2024; 89 FR 105406, Dec. 27, 2024]

§ 501.182 Injunctions.

Whenever it appears to OFE that any person has committed, is committing, or is about to commit a violation of any provision of the Act, or any rule or order thereunder, OFE may, in accordance with section 724 of FUA, bring a civil action in the appropriate United States District Court to enjoin such acts or practices. The relief sought may include a mandatory injunction commanding any person to comply with any provision of such provision, order or rule, the violation of which is prohibited by section 724 of FUA and may also include interim equitable relief.

§ 501.183 Citizen suits.

(a) *General.* A person who believes he is aggrieved by the failure of OFE to perform any nondiscretionary act of duty under the Act may file a Petition for Action for OFE to take such action as he may feel to be proper. This petition must be filed at the address provided in § 501.11. The petition must specify the action requested and set forth the facts and legal arguments that constitute the basis for the request. The filing of a Petition for Action will serve as notice to OFE under FUA section 725(b) for purposes of any citizens suit that may be subsequently filed.

(b) *OFE decision.* Within sixty (60) days of receiving the Petition for Action, OFE will notify the person giving notice under this section that it has instituted the action requested or that other described action is being taken, or that other described action is being taken, or that no action is being taken and the reasons therefor.

Subpart M—Use of Natural Gas or Petroleum for Emergency and Unanticipated Equipment Outage Purposes

§ 501.190 Purpose and scope.

(a) If a person operates a powerplant covered by any of the prohibitions of titles II, III, or IV of FUA, § 501.191 of this subpart establishes procedures to be followed for the use of minimum amounts of natural gas or petroleum under FUA section 103(a)(15)(B) in order to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public health, safety, or welfare that would result from electric power outages.

(b) *Explanatory note:* If a person operates a rental boiler as a powerplant covered by any of the prohibitions of titles II, III, or IV of FUA, he may be able to use the provisions of this subpart for the emergency use of natural gas or petroleum.

[54 FR 52893, Dec. 22, 1989]

§ 501.191 Use of natural gas or petroleum for certain unanticipated equipment outages and emergencies defined in section 103(a)(15)(B) of the act.

(a) In the event of the occurrence or imminent occurrence of an emergency, or of the occurrence or imminent occurrence of an unanticipated equipment outage in the unit, an owner or operator of a powerplant is automatically permitted to use minimum amounts of natural gas or petroleum in the unit or in a substitute unit to prevent or alleviate the outage or to prevent or alleviate the emergency if he complies with procedures contained in paragraph (b) of this section.

(b) If the use of minimum amounts of petroleum or natural gas is required for purposes specified in this section, the owner or operator must notify OFE of such use by telegram or telephone

within 24 hours after the commencement of such use. Immediately thereafter a written confirmation must be submitted to OFE, describing, to the best estimate of the owner or operator, (1) the nature of the emergency and (2) how long petroleum or natural gas use is likely to be required.

(c) For purposes of this section only:

(1) An *emergency* is the occurrence or threat of imminent occurrence of a condition which results or would result from an electric power outage and directly effects or would directly effect the public health, safety or welfare;

(2) *Unanticipated equipment outage* shall mean an unexpected outage due to equipment failure.

(3) *Minimum amounts required to alleviate or prevent* shall mean:

(i) For powerplants, the amounts of natural gas or petroleum required to prevent curtailment of electric supply where the operating utility has, to the maximum extent possible, utilized alternate fuel-fired capacity to prevent such curtailment. Note—A utility operating hydroelectric facilities may take into account seasonal fluctuations in storage capacity and shall be permitted to prevent depletion of stored power-producing capacity as deemed necessary by the utility; and

(ii) For installations, the amounts of natural gas or petroleum required to meet plant protection or human health and safety needs, including services to hospitals, public transportation facilities, sanitation, or water supply and pumping.

[46 FR 59889, Dec. 7, 1981, as amended at 54 FR 52893, Dec. 22, 1989]

§ 501.192 [Reserved]

PART 503—NEW FACILITIES

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503.39–503.44 [Reserved]

AUTHORITY: 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.*); Energy Security Act, Pub. L. 96–294, 94 Stat. 611 (42 U.S.C. 8701 *et seq.*); E.O. 1209, 42 FR 46267, September 15, 1977.

SOURCE: 46 FR 59903, Dec. 7, 1981, unless otherwise noted.

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