

Department of Energy

§ 824.13

Title 5, U.S.C., to serve as Hearing Officer.

§ 824.9 Hearing Counsel.

The Hearing Counsel:

- (a) Represents DOE;
- (b) Consults with the person or the person's counsel prior to the hearing;
- (c) Examines and cross-examines witnesses during the hearing; and
- (d) Enters into a settlement of the enforcement proceeding at any time if settlement is consistent with the objectives of the Act and DOE security requirements.

§ 824.10 Hearing Officer.

The Hearing Officer:

- (a) Is responsible for the administrative preparations for the hearing;
- (b) Convenes the hearing as soon as is reasonable;
- (c) Administers oaths and affirmations;
- (d) Issues subpoenas, at the request of either party or on the Hearing Officer's motion;
- (e) Rules on offers of proof and receives relevant evidence;
- (f) Takes depositions or has depositions taken when the ends of justice would be served;
- (g) Conducts the hearing in a manner which is fair and impartial;
- (h) Holds conferences for the settlement or simplification of the issues by consent of the parties;
- (i) Disposes of procedural requests or similar matters;
- (j) Requires production of documents; and
- (k) Makes an initial decision under § 824.13.

§ 824.11 Rights of the person at the hearing.

The person may:

- (a) Testify or present evidence through witnesses or by documents;
- (b) Cross-examine witnesses and rebut records or other physical evidence, except as provided in § 824.12(d);
- (c) Be present during the entire hearing, except as provided in § 824.12(d); and
- (d) Be accompanied, represented and advised by counsel of the person's choosing.

§ 824.12 Conduct of the hearing.

- (a) DOE shall make a transcript of the hearing;
- (b) Except as provided in paragraph (d) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial or unduly repetitious evidence;
- (c) Witnesses shall testify under oath and are subject to cross-examination, except as provided in paragraph (d) of this section;
- (d) The Hearing Officer must use procedures appropriate to safeguard and prevent unauthorized disclosure of classified information or any other information protected from public disclosure by law or regulation, with minimum impairment of rights and obligations under this part. The classified or otherwise protected status of any information shall not, however, preclude its being introduced into evidence. The Hearing Officer may issue such orders as may be necessary to consider such evidence *in camera* including the preparation of a supplemental initial decision to address issues of law or fact that arise out of that portion of the evidence that is classified or otherwise protected.
- (e) DOE has the burden of going forward with and of proving by a preponderance of the evidence that the violation occurred as set forth in the final notice of violation and that the proposed civil penalty is appropriate. The person to whom the final notice of violation has been addressed shall have the burden of presenting and of going forward with any defense to the allegations set forth in the final notice of violation. Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.

§ 824.13 Initial decision.

- (a) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact and conclusions regarding all material issues of law, as well as reasons therefor. If the Hearing Officer determines that a violation has occurred and that a civil