

Department of Energy

§ 501.101

(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

§ 501.102

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

10 CFR Ch. II (1-1-05 Edition)

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,