

## § 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

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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,

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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