

§ 501.142

§ 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(a) A ruling may be modified or rescinded by—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for actions taken in reliance upon a ruling, notwithstanding that the ruling is subsequently declared to be invalid or no longer applicable.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than 30 days after it has been rendered invalid pursuant to issuance of a superseding rule by OFE, or after it has been rescinded or modified by DOE.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

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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

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

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

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

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

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

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

§ 501.166 Hearings and conferences.

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

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

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

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

§ 501.167 Fuel use order.

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

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