

Department of Energy

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§ 1003.13 Public reference room.

A public reference room shall be maintained at the OHA, 950 L'Enfant Plaza, S.W., Washington, DC. In this room, the following information shall be made available for public inspection and copying, during normal business hours:

(a) A list of all persons who have applied for an exception, or filed an appeal or petition, and a digest of each application;

(b) Each Decision and Order, with confidential information deleted, issued in response to an application for an exception, petition or other request, or at the conclusion of an appeal; and

(c) Any other information in the possession of OHA which is required by statute to be made available for public inspection and copying, and any other information that the OHA determines should be made available to the public.

[60 FR 15006, Mar. 21, 1995, as amended at 63 FR 58289, Oct. 30, 1998]

§ 1003.14 Notice of proceedings.

At regular intervals, the OHA shall publish on its Internet World Wide Web site, a digest of the applications, appeals, petitions and other requests filed, and a summary of the Decisions and Orders issued by the OHA, pursuant to proceedings conducted under this part. The OHA's web site is located at <http://www.oha.doe.gov>.

[60 FR 15006, Mar. 21, 1995, as amended at 63 FR 58289, Oct. 30, 1998]

Subpart B—Exceptions

§ 1003.20 Purpose and scope.

(a) This subpart establishes the procedures for applying for an exception or exemption, as provided for in section 504 (42 U.S.C. 7194) of the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), from a rule, regulation or DOE action having the effect of a rule as defined by 5 U.S.C. 551(4), based on an assertion of serious hardship, gross inequity or unfair distribution of burdens, and for consideration of such application by the OHA. The procedures contained in this subpart may be incorporated by reference in another DOE rule or regulation which invokes the adjudicatory authority of the Office of

Hearings and Appeals. The procedures may also be made applicable to proceedings undertaken at the direction of an appropriate DOE official if incorporated by reference in the delegation.

(b) The filing of an application for an exception shall not constitute grounds for noncompliance with the requirements from which an exception is sought, unless a stay has been issued in accordance with subpart D of this part.

[60 FR 15006, Mar. 21, 1995, as amended at 61 FR 35114, July 5, 1996]

§ 1003.21 What to file.

A person seeking relief under this subpart shall file an "Application for Exception," which should be clearly labeled as such both on the application and on the outside of the envelope in which the application is transmitted, and shall be in writing. The general filing requirements stated in §1003.9 shall be complied with in addition to the requirements stated in this subpart.

§ 1003.22 Where to file.

All applications for exception shall be filed with the OHA at the address provided in §1003.11.

§ 1003.23 Notice.

(a) The applicant shall send by United States mail a copy of the application and any subsequent amendments or other documents relating to the application, or a copy from which confidential information has been deleted in accordance with §1003.9(f), to each person who is reasonably ascertainable by the applicant as a person who would be aggrieved by the OHA action sought. The copy of the application shall be accompanied by a statement that the person may submit comments regarding the application within 10 days. The application filed with the OHA shall include certification to the OHA that the applicant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the application was sent.

(b) Notwithstanding the provision of paragraph (a) of this section, if an applicant determines that compliance with paragraph (a) of this section would be impracticable, the applicant shall:

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(1) Comply with the requirements of paragraph (a) of this section with regard to those persons whom it is reasonable and practicable to notify; and

(2) Include with the application a description of the persons or class or classes of persons to whom notice was sent. The OHA may require the applicant to provide additional or alternative notice, may determine that the notice required by paragraph (a) of this section is not impracticable, or may determine that notice should be published in the FEDERAL REGISTER.

(c) The OHA shall serve notice on any other person readily identified by the OHA as one who would be aggrieved by the OHA action sought and may serve notice on any other person that written comments regarding the application will be accepted if filed within 10 days of service of such notice.

(d) Any person submitting written comments to the OHA with respect to an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with §1003.9(f), to the applicant. The person shall certify to the OHA that he has complied with the requirements of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

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(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable); a complete statement of the business or other reasons that justify the act or transaction; a description of the acts or transactions that would be affected by the requested OHA action; and a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the application. Copies of all relevant contracts, agreements, leases, instruments, and other documents shall be submitted with the application.

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(b) The applicant shall state whether he requests or intends to request that there be a conference or hearing regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible. The request and the OHA determination on the request shall be made in accordance with subpart F of this part.

(c) The application shall include a discussion of all relevant authorities, including, but not limited to, DOE rules, regulations, and decisions on appeals and exceptions relied upon to support the particular action sought therein.

(d) The application shall specify the exact nature and extent of the relief requested.

§ 1003.25 OHA evaluation.

(a)(1) OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application, the OHA may consider any other source of information. The OHA on its own initiative may convene a hearing or conference, if, in its discretion, it considers that such hearing or conference will advance its evaluation of the application. The OHA may issue appropriate orders as warranted in the proceeding.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request additional information is not submitted by the applicant, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice. If the applicant fails to provide the notice required by §1003.23, the OHA may dismiss the application without prejudice.

(b)(1) The OHA shall consider an application for an exception only when it determines that a more appropriate proceeding is not provided by DOE regulations.