

## Department of Energy

## § 1003.34

(2) An application for an exception may be granted to alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.

(3) An application for an exception shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous applications for exception.

### § 1003.26 Decision and Order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the OHA shall issue an order granting or denying the application, in whole or in part.

(b) The Decision and Order shall include a written statement setting forth the relevant facts and the legal basis of the order. The Decision and Order shall provide that any person aggrieved thereby may file an appeal in accordance with §1003.27.

(c) The OHA shall serve a copy of the Decision and Order upon the applicant, any other person who participated in the proceeding, and upon any other person readily identifiable by the OHA as one who is aggrieved by such Decision and Order.

### § 1003.27 Appeal of exception order.

(a) Except as provided in paragraph (b) of this section, any person aggrieved by an order issued by the OHA under this subpart may file an appeal with the OHA in accordance with subpart C of this part. Any appeal filed under this paragraph must be filed within 30 days of service, or constructive service under §1003.14, of the order from which the appeal is taken.

(b) Any person aggrieved or adversely affected by the denial of a request for exception relief filed pursuant to §504 of the Department of Energy Organization Act (42 U.S.C. 7194) may appeal to the Federal Energy Regulatory Commission, in accordance with the Commission's regulations.

## Subpart C—Appeals

### § 1003.30 Purpose and scope.

This subpart establishes the procedures for the filing of an administrative appeal of a DOE order and for the consideration of the appeal by the Of-

fice of Hearings and Appeals. Unless a program rule or regulation or a DOE delegation of authority provides otherwise, a person aggrieved by a DOE order appealable under this subpart has not exhausted his or her administrative remedies until an appeal has been filed under this subpart and an order granting or denying the appeal has been issued. A person filing an appeal must also file an "Application for Stay" under subpart D of this part if the grant of a stay is necessary under Section 10(c) of the Administrative Procedure Act (5 U.S.C. 704) to preclude judicial review pending final action on the appeal.

### § 1003.31 Who may file.

Any person may file an appeal under this subpart who is so authorized by §1003.27, a program rule or regulation, or a DOE delegation of authority.

### § 1003.32 What to file.

A person filing under this subpart shall file an "Appeal of Order" which should be clearly labeled as such both on the appeal and on the outside of the envelope in which the appeal 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.

### § 1003.33 Where to file.

The appeal shall be filed with the OHA at the address provided in §1003.11.

### § 1003.34 Notice.

(a) The appellant shall send by United States mail a copy of the appeal and any subsequent amendments or other documents relating to the appeal, 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 appellant as a person who would be aggrieved by the OHA action sought, including those who participated in the process that led to the issuance of the order from which the appeal has been taken. The copy of the appeal shall be accompanied by a statement that the person may submit comments regarding the appeal to the OHA within 10

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days. The appeal filed with the OHA shall include certification to the OHA that the appellant has complied with the requirements of this paragraph and shall include the names and addresses of each person to whom a copy of the appeal was sent.

(b) Notwithstanding the provisions of paragraph (a) of this section, if any appellant determines that compliance with paragraph (a) of this section would be impracticable, the appellant shall:

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

(2) Include with the appeal a description of the persons or class or classes of persons to whom notice was not sent. The OHA may require the appellant 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 identifiable 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 appeal will be accepted if filed within 10 days of the service of that notice.

(d) Any person submitting written comments to the OHA with respect to an appeal 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 appellant. 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 appeal shall contain a concise statement of grounds upon which it is brought and a description of the relief sought. It 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 appeal. If the appeal includes a request for re-

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lief based on significantly changed circumstances, there shall be a complete description of the events, acts, or transactions that comprise the significantly changed circumstances, and the appellant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the process that led to the issuance of the order from which the appeal has been taken. For purposes of this subpart, the term "significantly changed circumstances" shall mean—

(1) The discovery of material facts that were not known or could not have been known at the time of the process that led to the issuance of the order from which the appeal has been taken;

(2) The discovery of a law, rule, regulation, order or decision on an appeal or any exception that was in effect at the time of the process that led to the issuance of the order from which the appeal has been taken, and which, if such had been made known to DOE, would have been relevant and would have substantially altered the outcome; or

(3) A substantial change in the facts or circumstances upon which an outstanding and continuing order affecting the appellant was issued, which change has occurred during the interval between issuance of the order and the date of the appeal and was caused by forces or circumstances beyond the control of the appellant.

(b) A copy of the order that is the subject of the appeal shall be submitted with the appeal.

(c) The appellant shall state whether he requests or intends to request that there be a conference or hearing regarding the appeal. Any request not made at the time the appeal 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.

**§ 1003.36 OHA evaluation.**

(a)(1) The OHA may initiate an investigation of any statement in an appeal and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept