

§ 501.64

§ 501.64 Publication of notice of availability of tentative staff analysis.

OFE will publish in the FEDERAL REGISTER a Notice of the Availability of Tentative Staff Analysis for the non-certification temporary public interest exemption, for noncertification environmental exemptions, and for a cogeneration exemption based on the public interest. OFE will provide a public comment period of at least fourteen (14) days from the date of publication during which interested persons may make written comments and request a public hearing.

§ 501.65 Publication of notice of availability of draft EIS.

A Notice of Availability of any draft EIS will be published in the FEDERAL REGISTER and comments thereon will also be solicited. Interested persons may request a hearing on any draft EIS. Such hearing must be requested within thirty (30) days of publication of the Notice of Availability of the draft EIS.

[54 FR 52893, Dec. 22, 1989]

§ 501.66 OFE evaluation of the record, decision and order.

(a) The administrative record in a proceeding under this part will consist of the proposed prohibition order and/or petition and related documents, all relevant evidence presented at the public hearing, all written comments, and any other information in the possession of OFE and made a part of the public record of the proceeding. OFE will base its determination to issue a rule or order on consideration of the whole record, or those parts thereof cited by a party and supported by reliable, probative, and substantial evidence.

(b) OFE may investigate and corroborate any statement in any petition, document, or public comments submitted to it. OFE also may use any relevant facts it possesses in its evaluation and may request submissions from third persons relevant to the petition or other documents. OFE also may request additional information, data, or analyses following a public hearing, if any, if this information is necessary to resolve disputed issues in the record.

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Any relevant information received by OFE following the hearing that is not declared to be confidential under § 501.7(a)(11) shall be made part of the public record with opportunity provided for rebuttal.

(c) OFE will notify all participants if, after the close of any public hearing or comment period, it receives or obtains any relevant information or evidence. Participants may respond to such information or evidence in writing within fourteen (14) days of such notification. If OFE finds that the additional information or evidence relates to material issues of disputed fact and may significantly influence the outcome of the proceeding, OFE shall reopen the hearing on the issue or issues to which the additional information or evidence relates.

§ 501.67 Petition redesignations.

OFE, with the petitioner's approval, will redesignate an exemption petition if the petitioner qualifies for an exemption other than the one originally requested, even though he may not qualify for the specific exemption originally requested, or be entitled to the full exemption period provided by requested exemption. OFE shall give public notice of any redesignation of an exemption petition, and where a public hearing has been requested notice shall be given at least thirty (30) days prior to such hearing.

§ 501.68 Decision and order.

(a)(1) OFE shall issue an order either granting or denying the petition for an exemption or permit within six (6) months after the end of the period for public comment and hearing applicable to any petition.

(2) OFE may extend the six (6) month period for decision to a date certain by publishing notice in the FEDERAL REGISTER, and stating the reasons for such extension.

(3) OFE will publish a final EIS at least thirty (30) days prior to take issuance of the final order in all cases where an EIS is required.

(b)(1) OFE shall serve a copy of the order granting or denying a petition for exemption to the petitioner and all persons on the service list in cases involving a public hearing.

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(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