

Administration Act of 1974, Section 21 (15 U.S.C. 780), apart from or in addition to the other proceedings described in this part. This subpart may also apply if cross referenced in another DOE rule or regulation, or in a DOE delegation of authority. Petitions under this subpart shall include those seeking special assistance based on an assertion that DOE is not complying with its rules, regulations, or orders.

§ 1003.71 Who may file.

Any person may file a petition under this subpart who is adversely affected by any DOE rule, regulation or order subject to 15 U.S.C. 780 or who is so authorized by a program rule or regulation or a DOE delegation of authority.

§ 1003.72 What to file.

The person seeking relief under this subpart shall file a "Petition for Special Redress or Other Relief," which shall be clearly labeled as such both on the petition and on the outside of the envelope in which it 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.

§ 1003.73 Where to file.

A petition shall be filed with the OHA at the address provided in § 1003.11.

§ 1003.74 Notice.

(a) The person filing the petition, except a petition that asserts that the DOE is not complying with agency rules, regulations, or orders, shall send by United States mail a copy of the petition and any subsequent amendments or other documents relating to the petition, 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 petitioner as a person who would be aggrieved by the OHA action sought. The copy of the petition shall be accompanied by a statement that the person may submit comments regarding the petition to the OHA within 10 days. The copy filed with the OHA shall include certification that the requirements of this paragraph have been complied with and shall include the names and addresses of each person to whom a copy of the petition was sent.

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

(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 petition a description of the persons or class or classes of persons to whom notice was not sent.

(3) The OHA may require the petitioner to provide additional or alternative notice, or 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 petition will be accepted if filed within 10 days of service of that notice.

(d) Any person submitting written comments to the OHA regarding a petition filed under his 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 petitioner. 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.

§ 1003.75 Contents.

The petition shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the petition and to the OHA action sought. Such facts shall include, but not be limited to, 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, if applicable; a description of the act or transaction, if applicable; a description of the acts or transactions that would be affected by the requested action; a full discussion of the pertinent provisions and relevant facts contained in the documents submitted with the petition, and an explanation of how the petitioner is aggrieved by DOE's position. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the petition shall be submitted to the OHA upon its request.

§ 1003.76 OHA evaluation of request.

(a) (1) The OHA may initiate an investigation of any statement in a petition 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 petition provided that the petitioner is afforded an opportunity to respond to all third person submissions. In evaluating a petition, the OHA may consider any other source of information. The OHA on its own initiative may convene a conference, if, in its discretion, it considers that such will advance its evaluation of the petition.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the OHA may dismiss the petition without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the petition with prejudice. If the petitioner fails to provide the notice required by § 1003.74, the OHA may dismiss the petition without prejudice.

(b) (1) The OHA will dismiss without prejudice a "Petition for Special Redress or Other Relief" if it determines that another more appropriate proceeding is provided by this part.

(2) The OHA will dismiss with prejudice a "Petition for Special Redress or Other Relief" filed by a person who has exhausted his administrative remedies with respect to any proceeding provided by this part, and received a final order therefrom that addresses the same issue or transaction.

§ 1003.77 Decision and Order.

(a) Upon consideration of the petition and other relevant information received or obtained during the proceeding, the OHA will issue a Decision and Order granting or denying the petition.

(b) The Decision and Order denying or granting the petition shall include a written statement setting forth the relevant facts and legal basis for the Decision and Order. Such Decision and Order shall state that it is a final order of the DOE of which the petitioner may seek judicial review.

[FR Doc. 95-6797 Filed 3-20-95; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Parts 430, 765, and 766

Payments Equal to Taxes Provisions of the Nuclear Waste Policy Act of 1982, As Amended, Interpretation and Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Final rule; technical amendments.

SUMMARY: The Department is amending four rules which provide for adjudications by the Office of Hearings and Appeals (OHA), in order to conform them to OHA procedural regulations contained in a new part 1003 of chapter X, being published elsewhere in this issue of the **Federal Register**. This change of procedural references will not substantively affect the remedies provided under those rules. The Department is also amending certain rules to make clear its original intent that an appeal must be taken with OHA in order to exhaust administrative remedies.

EFFECTIVE DATE: These rules become effective April 20, 1995.

FOR FURTHER INFORMATION CONTACT: Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-586-2383, Internet: roger.klurfeld@hq.doe.gov.

SUPPLEMENTARY INFORMATION: OHA is a quasi-judicial body reporting to the Secretary of Energy. It is responsible for conducting most informal adjudicative proceedings of DOE where there is provision for separation of functions, other than those which are subject to the jurisdiction of the Federal Energy Regulatory Commission. Until today, procedural regulations governing OHA practice appeared mainly in part 205 of title 10 of the Code of Federal Regulations. Part 205, however, was designed to apply to matters involving the former oil price and allocation control regulations which were in effect during the period 1973 through January 1981. Because those oil-related proceedings are winding down, and the OHA is conducting a variety of other informal adjudications for the Department, the OHA procedural regulations have been organized as a new part 1003 within chapter X of title 10, which contains the general provisions of DOE regulations. Part 205 will continue to be used only to adjudicate matters which relate specifically to the federal oil regulations, while new part 1003 will be used for adjudicating most other matters within OHA's jurisdiction.

The procedures codified in part 1003 become applicable where program rules specifically reference them and state that a member of the public can make a request for relief under these rules. Four program rules or regulations currently reference part 205 procedures where the new part 1003 procedures would be more appropriate. Accordingly, DOE hereby is updating

those references as follows. Until today, the program regulations that the Department promulgated in the Energy Conservation Program for Consumer Products, 10 CFR part 430, have stated that any person receiving an order may file an appeal with OHA using that office's appellate rules provided in 10 CFR part 205, subpart H. See 10 CFR 430.27(n). This provision is updated to reference the new appeals procedure in 10 CFR part 1003, subpart C. The same change is made in program regulations contained in 10 CFR part 765 (Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites) and 10 CFR part 766 (Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities). See 10 CFR 765.22(b) and 10 CFR 766.104(d). Finally, the Department stated in implementing the Payments-Equal-to-Taxes (PETT) provisions of the Nuclear Waste Policy Act of 1982, as amended, that an entity may file an appeal with OHA of a DOE PETT determination using the OHA's 10 CFR part 205, subpart H appellate rules. See Payments-Equal-To-Taxes Provisions of the Nuclear Waste Policy Act of 1982, as Amended, Interpretation and Procedures, as published in the **Federal Register** on August 27, 1991 (56 FR 42314). The reference on page 42319, column 2, of that notice to "10 CFR part 205 subpart H" is hereby changed to "10 CFR part 1003, subpart C." Therefore, persons following procedures for the PETT provisions should now refer to 10 CFR part 1003, subpart C.

The procedural rules contained in the new 10 CFR part 1003, subpart C, correspond to nearly identical procedural rules contained in previously applicable 10 CFR part 205, subpart H. Thus, the foregoing conforming amendments adopted today merely change the procedural references and do not substantively affect the remedies available to aggrieved parties under the affected program rules.

It has always been the intent of DOE to require parties to pursue an administrative appeal prior to seeking judicial review. The Supreme Court has interpreted section 10(c) of the Administrative Procedure Act (APA) (5 U.S.C. 704) to provide that, with respect to actions brought under the APA, an administrative appeal is a prerequisite to judicial review only when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review. *Darby v. Cisneros*, 113 S. Ct. 2539, 125 L. Ed. 2d 113 (1993). Accordingly, the Department is also amending two

program rules to make clear its original intent that a person who receives an order from program officials must file an appeal with OHA and await the issuance of an order granting or denying the appeal in order to exhaust administrative remedies. The two programs are 10 CFR part 430 regarding consumer products and PETT determinations under the Nuclear Waste Policy Act of 1982. With respect to the rule on PETT determinations, as published in the **Federal Register** on August 27, 1991 (56 FR 42314), the phrase on page 42319, column 2, that "Appeals may be filed with the Office of Hearings and Appeals (OHA)" is modified to read "In order to exhaust administrative remedies, appeals must be filed with the Office of Hearings and Appeals (OHA)".¹ The specific changes to part 430 are set forth later in this notice.

Finally, a slight, nonsubstantive stylistic change is made in part 765.

List of Subjects

10 CFR Part 430

Administrative Practice and Procedure, Energy Conservation, Household Appliances.

10 CFR Part 765

Radioactive materials, Reclamation, Reporting and recordkeeping requirements, Uranium.

10 CFR Part 766

Confidential Business Information, Electric Power Rates, Electric Utilities, Nuclear Materials, Radioactive Materials, Reclamation, Reporting and Recordkeeping Requirements, Uranium, Waste Treatment and Disposal.

Issued in Washington, DC on March 14, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

For the reasons set forth in the preamble, 10 CFR parts 430, 765 and 766 are amended as set forth below:

¹ The affected provision in the PETT rule, with all changes made today, now reads:

D. Appeals Process

An appeals process is available for those jurisdictions which are challenging the original DOE determination related to PETT. In order to exhaust administrative remedies, appeals must be filed with the Office of Hearings and Appeals (OHA), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The appeal must be filed within 45 days from the date of issuance of an original DOE determination related to PETT. Appeals will be governed by procedures set forth in 10 CFR part 1003, subpart C. [56 FR at 42319.]

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

§ 430.27 [Amended]

2. Section 430.27(n) is amended by adding at the beginning of the paragraph the phrase “In order to exhaust administrative remedies,” by revising the word “may” to read “must”, and by revising the reference to “10 CFR part 205, subpart H” to read “10 CFR part 1003, subpart C”.

PART 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

3. The authority citation for part 765 continues to read as follows:

Authority: Sections 1001–1004 of Pub. L. No. 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*)

4. Section 765.22(b) (third sentence) is revised to read as follows:

§ 765.22 Appeals procedures.

(a) * * *

(b) * * * Appeals must comply with the procedures set forth in 10 CFR part 1003, subpart C. * * *

PART 766—URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND; PROCEDURES FOR SPECIAL ASSESSMENT OF DOMESTIC UTILITIES

5. The authority citation for part 766 continues to read as follows:

Authority: 42 U.S.C. 2201, 2297g, 2297g–1, 2297g–2, 7254.

§ 766.104 [Amended]

6. Section 766.104(d) (second sentence) is amended by revising “10 CFR part 205, subpart H” to read “10 CFR part 1003, subpart C”.

[FR Doc. 95–6798 Filed 3–20–95; 8:45 am]

BILLING CODE 6450–01–P