

**Pt. 1002**

**10 CFR Ch. X (1-1-23 Edition)**

Federal Energy Regulatory Commission.

(Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 567 (42 U.S.C. 7101 *et seq.*); E.O. 12009, 42 FR 46267)

[42 FR 55534, Oct. 17, 1977, as amended at 43 FR 21434, May 18, 1978; 43 FR 21658, May 19, 1978]

**PART 1002—OFFICIAL SEAL AND DISTINGUISHING FLAG**

**Subpart A—General**

Sec.

1002.1 Purpose.

1002.2 Definitions.

1002.3 Custody of official seal and distinguishing flags.

**Subpart B—Official Seal**

1002.11 Description of official seal.

1002.12 Use of replicas, reproductions, and embossing seals.

**Subpart C—Distinguishing Flag**

1002.21 Description of distinguishing flag.

1002.22 Use of distinguishing flag.

**Subpart D—Unauthorized Uses**

1002.31 Unauthorized uses of the seal and flag.

AUTHORITY: 42 U.S.C. 7264.

SOURCE: 43 FR 20782, May 15, 1978, unless otherwise noted.

**Subpart A—General**

**§ 1002.1 Purpose.**

The purpose of this part is to describe the official seal and distinguishing flag of the Department of Energy, and to prescribe rules for their custody and use.

**§ 1002.2 Definitions.**

For purposes of this part—

(a) *DOE* means all organizational units of the Department of Energy.

(b) *Embossing seal* means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

(c) *Official seal* means the original(s) of the seal showing the exact form, content, and colors thereof.

(d) *Replica* means a copy of the official seal displaying the identical form, content, and colors thereof.

(e) *Reproduction* means a copy of the official seal displaying the form and content thereof, reproduced in only one color.

(f) *Secretary* means the Secretary of DOE.

**§ 1002.3 Custody of official seal and distinguishing flags.**

The Secretary or his designee shall:

(a) Have custody of:

(1) The official seal and prototypes thereof, and masters, molds, dies, and all other means of producing replicas, reproductions, and embossing seals; and

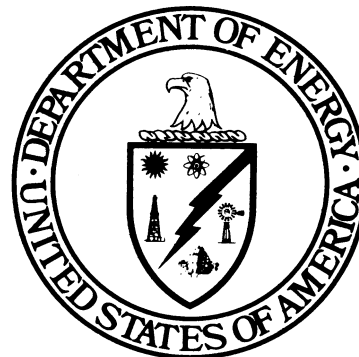
(2) Production, inventory and loan records relating to items specified in paragraph (a)(1) of this section; and

(b) Have custody of distinguishing flags, and be responsible for production, inventory, and loan records thereof.

**Subpart B—Official Seal**

**§ 1002.11 Description of official seal.**

The Department of Energy hereby prescribes as its official seal, of which judicial notice shall be taken pursuant to section 654 of the Department of Energy Organization Act of 1977, 42 U.S.C. 7264, the imprint illustrated below and described as follows:



(a)(1) The official seal includes a green shield bisected by a gold-colored lightning bolt, on which is emblazoned a gold-colored symbolic sun, atom, oil derrick, windmill, and dynamo. It is

## Department of Energy

## § 1002.12

crested by the white head of an eagle, atop a white rope. Both appear on a blue field surrounded by concentric circles in which the name of the agency, in gold, appears on a green background. Detailing is in black.

(2) The colors used in the configuration are dark green, dark blue, gold, black, and white.

(3) The eagle represents the care in planning and the purposefulness of efforts required to respond to the Nation's increasing demands for energy. The sun, atom, oil derrick, windmill, and dynamo serve as representative technologies whose enhanced development can help meet these demands. The rope represents the cohesiveness in the development of the technologies and their link to our future capabilities. The lightning bolt represents the power of the natural forces from which energy is derived and the Nation's challenge in harnessing the forces.

(4) The color scheme is derived from nature, symbolizing both the source of energy and the support of man's existence. The blue field represents air and water, green represents mineral resources and the earth itself, and gold represents the creation of energy in the release of natural forces. By invoking this symbolism, the color scheme represents the Nation's commitment to meet its energy needs in a manner consistent with the preservation of the natural environment.

### **§ 1002.12 Use of replicas, reproductions, and embossing seals.**

(a) The Secretary and his designees are authorized to affix replicas, reproductions, and embossing seals to appropriate documents, certifications, and other material for all purposes as authorized by this section.

(b) Replicas may be used only for:

(1) Display in or adjacent to DOE facilities, in Department auditoriums, presentation rooms, hearing rooms, lobbies, and public document rooms.

(2) Offices of senior officials.

(3) Official DOE distinguishing flags, adopted and utilized pursuant to subpart C.

(4) Official awards, certificates, medals, and plaques.

(5) Motion picture film, video tape and other audiovisual media prepared by or for DOE and attributed thereto.

(6) Official prestige publications which represent the achievements or mission of DOE.

(7) Non-DOE facilities in connection with events and displays sponsored by DOE, and public appearances of the Secretary or other designated senior DOE Officials.

(8) For other such purposes as determined by the Director of the Office of Administrative Services.

(c) Reproductions may be used only on:

(1) DOE letterhead stationery.

(2) Official DOE identification cards and security credentials.

(3) Business cards for DOE employees.

(4) Official DOE signs.

(5) Official publications or graphics issued by and attributed to DOE, or joint statements of DOE with one or more Federal agencies, State or local governments, or foreign governments.

(6) Official awards, certificates, and medals.

(7) Motion picture film, video tape, and other audiovisual media prepared by or for DOE and attributed thereto.

(8) For other such purposes as determined by the Director of the Office of Administrative Services.

(d) Embossing seals may be used only on:

(1) DOE legal documents, including interagency or intergovernmental agreements, agreements with States, foreign patent applications, and similar documents.

(2) For other such purposes as determined by the General Counsel or the Director of Administration.

(e) Any person who uses the official seal, replicas, reproductions, or embossing seals in a manner inconsistent with this part shall be subject to the provisions of 18 U.S.C. 1017, providing penalties for the wrongful use of an official seal, and to other provisions of law as applicable.

(f) The official seal is being registered with the World Intellectual Property Organization through the U.S. Patent and Trademark Office.

**Subpart C—Distinguishing Flag**

**Subpart D—Unauthorized Uses**

**§ 1002.21 Description of distinguishing flag.**

**§ 1002.31 Unauthorized uses of the seal and flag.**

(a) The base or field of the flag shall be white, and a replica of the official seal shall appear on both sides thereof.

The official seal and distinguishing flag shall not be used except as authorized by the Director of Administration in connection with:

(b)(1) The indoor flag shall be of rayon banner, measure 44" on hoist by 56" on the fly, exclusive of heading and hems, and be fringed on three edges with yellow rayon fringe, 2½" wide.

- (a) Contractor-operated facilities.
- (b) Souvenir or novelty items.
- (c) Toys or commercial gifts or premiums.

(2) The outdoor flag shall be of heavy weight nylon, and measure either 3' on the hoist by 5' on the fly or 5' on the hoist by 8' on the fly, exclusive of heading and hems.

(d) Letterhead design, except on official Departmental stationery.

(c) Each flag shall be manufactured in accordance with U.S. Department of Defense Military Specification Mil-F-2692. The official seal shall be screen printed on both sides, and on each side, the lettering shall read from left to right. Headings shall be Type II in accordance with the Institute of Heraldry Drawing No. 5–1–45E.

(e) Matchbook covers, calendars, and similar items.

(f) Civilian clothing or equipment.

(g) Any article which may disparage the seal or flag or reflect unfavorably upon DOE.

(h) Any manner which implies Departmental endorsement of commercial products or services, or of the user's policies or activities.

**§ 1002.22 Use of distinguishing flag.**

(a) DOE distinguishing flags may be used only:

(1) In the offices of the Secretarial of-ficers, Chairman of the Federal Energy Regulatory Commission, and heads of field locations designated below:

- Power Administrations.
- Regional Offices.
- Operations Offices.
- Certain Field Offices and other locations as designated by the Director of Administration.

(2) At official DOE ceremonies.

(3) In Department auditoriums, official presentation rooms, hearing rooms, lobbies, public document rooms, and in non-DOE facilities in connection with events or displays sponsored by DOE, and public appearances of DOE officials.

(4) On or in front of DOE installation buildings.

(5) Other such purposes as determined by the Director of Administration.

**PART 1003—OFFICE OF HEARINGS AND APPEALS PROCEDURAL REGULATIONS**

- Sec.
- 1003.1 Purpose and scope.
- 1003.2 Definitions.
- 1003.3 Appearance before the OHA.
- 1003.4 Computation of time.
- 1003.5 Extension of time.
- 1003.6 Service.
- 1003.7 General filing requirements.
- 1003.8 Effective date of orders.
- 1003.9 Method of submission of petitions, documents, and other materials.
- 1003.10 Public reference room.
- 1003.11 Filing a petition.
- 1003.12 Notice.
- 1003.13 Alternative Dispute Resolution.
- 1003.14 Evaluation of petitions.
- 1003.15 Subpoenas, information requests, oaths, witnesses.
- 1003.16 Dismissal of petitions.
- 1003.17 Standard of review.
- 1003.18 Decision and Order.
- 1003.19 Reconsideration.

AUTHORITY: 15 U.S.C. 761 *et seq.*; 42 U.S.C. 7101 *et seq.*

SOURCE: 84 FR 58008, Oct. 30, 2019, unless otherwise noted.

**§ 1003.1 Purpose and scope.**

(a) This part establishes the procedures to be utilized in certain proceedings before the Office of Hearings

## Department of Energy

## § 1003.2

and Appeals of the Department of Energy, where comprehensive procedures are not to be found in another part of DOE's regulations. These procedures provide standard rules of practice in a variety of informal adjudications when jurisdiction is vested in the Office of Hearings and Appeals, including requests for adjustments from DOE rules, regulations, and orders under the authority of 42 U.S.C. 7194 as well as other requests for relief with respect to final dispositions of DOE. Any or all of the procedures contained in this part may be adopted by reference in another DOE program, statute, rule, regulation, guidance, or DOE delegation of authority that invokes the adjudicatory authority of the Office of Hearings and Appeals. These rules do not apply to proceedings governed by a federal statute or DOE regulation that contains comprehensive procedures specifically applicable to proceedings conducted under the authority of that regulation. (e.g., 10 CFR part 708—DOE Contractor Employee Protection Program; 10 CFR part 710—Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material; 10 CFR part 1004—Freedom of Information Act (FOIA); 10 CFR part 712—Human Reliability Program.)

(b) Wherever another DOE program, statute, rule, regulation, guidance, or DOE delegation of authority references or adopts by reference the procedures set forth in a subpart contained in a previous iteration of this part, regardless of the subpart referenced, the procedures set forth in this part shall be deemed to apply.

### § 1003.2 Definitions.

(a) As used in this part:

*Action* means an affirmative act by DOE that carries the force of law.

*Aggrieved*, with respect to a person, means adversely affected by an action of the DOE.

*Alternative Dispute Resolution* means any technique for resolving disputes and managing conflict without resorting to litigation in either an administrative or judicial forum. Alternative Dispute Resolution techniques include, but are not limited to, mediation, facilitation, and shuttle diplomacy.

*Decision and Order* means the OHA's final decision on a petition brought under this part.

*Director* means the Director of the Office of Hearings and Appeals or duly authorized delegate.

*DOE* means the Department of Energy, created by the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), and the National Nuclear Security Administration (NNSA).

*Duly authorized representative* means a person who has been designated to appear before the Office of Hearings and Appeals in connection with a proceeding on behalf of a person interested in or aggrieved by an action of the DOE. Such appearance may consist of the submission of a written document, a personal appearance, verbal communication, or any other participation in the proceeding.

*Federal legal holiday* means any calendar day designated as a federal holiday by federal statute or Executive order.

*Final disposition of DOE* means a DOE rule, order, or other action in any matter other than:

(i) A rulemaking;

(ii) An internal DOE order or directive issued by the Secretary of Energy or his delegate in the management and administration of departmental elements and functions; or

(iii) Any decision or order issued under 41 U.S.C. 4712 or under part 708, part 710, part 712, or part 1004 of this title.

*OHA* means the Office of Hearings and Appeals of the Department of Energy.

*Participant* means a non-party entity that submits a comment, briefing, or other filing in a proceeding.

*Party* means the petitioner and any adverse entity, which may include the DOE, which assumes the role of defendant or respondent in the proceeding.

*Person* means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, governmental unit or instrumentality thereof, or a charitable, educational or other institution, and includes any officer, director, owner or duly authorized representative thereof.

### § 1003.3

*Petition* means a written submission to the OHA requesting that the OHA grant the petitioner relief.

*Petitioner* means any person filing a petition with the OHA.

*Proceeding* means the process and activity, and any part thereof, instituted by the OHA—either on its own initiative or in response to a petition submitted by a person—that may lead to an action by the OHA.

*Verified email address* means an email address that is publicly published or available upon request, or, if no such address exists, an email address through which the sender has communicated with the recipient in the previous 12 months.

(b) Throughout this part the use of a word or term in the singular includes the plural, and the use of the male pronoun is gender neutral.

#### § 1003.3 Appearance before the OHA.

(a) An interested person may make an appearance, including a personal appearance at the discretion of the OHA, and participate in any proceeding described in this part on his own behalf or by a duly authorized representative. Any document filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative.

(b) The OHA may deny, temporarily or permanently, in whole or in part, the privilege of participating in proceedings, including oral presentation, to any individual who is found by the OHA—

(1) To have made false or misleading statements, either orally or in writing;

(2) To have filed false or materially altered documents, affidavits or other writings;

(3) To lack the specific authority to represent the party or participant; or

(4) To have engaged in or to be engaged in conduct that substantially disrupts a proceeding.

#### § 1003.4 Computation of time.

(a) *Days*. Except as provided in paragraph (b) of this section, in computing any period of time prescribed or allowed by these regulations or by an order of the OHA, the day of the act, event, or default from which the des-

### 10 CFR Ch. X (1–1–23 Edition)

ignated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period runs until the end of the following day that is not a Saturday, Sunday, or a federal legal holiday. Documents received after 5 p.m., Eastern Time, are deemed filed on the following regular business day.

(b) *Hours*. If the period of time prescribed in an order issued by the OHA is stated in hours rather than days, the period of time begins to run upon actual notice of such order, whether by oral or written communication, to the person directly affected, and will run without interruption, unless otherwise provided in the order, or unless the order is stayed, modified, suspended, or rescinded. When a written order is transmitted by oral communication, the written order must be served as soon thereafter as is feasible.

(c) *Additional time after service by mail*. Whenever a person is required to perform an act, to cease and desist therefrom, or to initiate a proceeding under this part within a prescribed period of time after issuance to such person of an order, notice or other document and the order, notice, or other document is served solely by mail, 3 days will be added to the prescribed period.

#### § 1003.5 Extension of time.

When a document is required to be filed within a prescribed time, an extension of time to file may be granted by the OHA upon good cause shown.

#### § 1003.6 Service.

(a) All documents required to be served under this part must be served personally, by first class United States mail, or by verified email address, except as otherwise provided.

(b) Service upon a person's duly authorized representative constitutes service upon that person.

(c) Official United States Postal Service receipts from certified mailing and email delivery receipts constitute evidence of service.

(d) The OHA may, at its discretion, allow for alternate forms of service when it determines that such would be advisable.

**§ 1003.7 General filing requirements.**

(a) *Purpose and scope.* The provisions of this section apply to all documents required or permitted to be filed with the OHA.

(b) *Signing.* Any document that is required to be signed, must be signed by the person filing the document. Any document filed by a duly authorized representative must contain a statement by such person certifying that he is a duly authorized representative. The signature by the filer constitutes a certificate by the signer that the signer has read the document and that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact, warranted under existing law, and submitted in good faith and not for any improper purpose such as to harass or to cause unnecessary delay. If a document is signed in violation of this section, the OHA may impose the sanctions specified in §1003.3 and other sanctions determined to be appropriate.

(c) *Labeling.* A petition must be clearly labeled according to the nature of the action involved both on the petition itself and, where applicable, in the subject line of the email in which the petition is transmitted.

(d) *Obligation to supply information.* A person who files a petition is under a continuing obligation during the proceeding to provide the OHA with any new or newly discovered information that is relevant to that proceeding. Such information includes, but is not limited to, information regarding any other submission that is subsequently filed by that person with any DOE office.

(e) *The same or related matters.* A person who files a petition with the OHA must state whether, to the best knowledge of that person, the same or related action as that which is the subject of the petition has been or presently is being considered or investigated by any other DOE office, other federal agency, department, or instrumentality; or by a state or municipal agency or court; or by any law enforcement agency, including, but not limited to, a consideration or investigation in connection with any proceeding described in this part. In addition, the

person must state whether contact has been made by the person or one acting on his behalf with any person who is employed by the DOE with regard to the same or a related issue, act, or transaction arising out of the same factual situation; the name of the person contacted; whether the contact was oral or in writing; the nature and substance of the contact; and the date or dates of the contact.

(f) *Request for confidential treatment.* (1) If any person filing a document with the OHA claims that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905, or is otherwise exempt by law from public disclosure, and if such person requests the OHA not to disclose such information, such person must file together with the document a copy of the document from which the information for which confidential treatment is being sought has been deleted. The person must indicate in the original document that it is confidential or contains confidential information and must file a statement specifying the justification for non-disclosure of the information for which confidential treatment is claimed. For example, if the person states that the information comes within the exception codified at 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information, such person shall include a statement specifying why such information is privileged or confidential. If the person filing a document does not submit a copy of the document with the confidential information deleted, the OHA may assume that there is no objection to public disclosure of the document in its entirety.

(2) The OHA will make a determination regarding any claim of confidentiality under criteria specified in 10 CFR 1004.11. Notice of the decision by the OHA to deny such claim, in whole or in part, and an opportunity to respond will be given to a person claiming confidentiality of information no less than five days prior to its public disclosure.

(g) *Submitting multiple petitions.* Each petition to the OHA must be submitted

## § 1003.8

as a separate document, even if the petitions deal with the same or a related action or are submitted in connection with the same proceeding.

### § 1003.8 Effective date of orders.

Any order issued under this part is effective as against all persons having actual or constructive notice thereof upon issuance, in accordance with its terms, unless and until it is stayed or suspended. An order is deemed to be issued on the date, as specified in the order, on which it is signed by the Director, unless the order provides otherwise.

### § 1003.9 Method of submission of petitions, documents, and other materials.

Absent exceptional circumstances, all submissions to the OHA, as provided in this part or otherwise, must be filed electronically in accordance with the instructions set forth on the OHA website, found at <https://www.energy.gov/oha/filing-information>. The OHA may grant permission to file via mail or facsimile. Any submissions made in hard copy will not be returned.

### § 1003.10 Public reference room.

The OHA maintains an electronic public reference room at <https://www.energy.gov/oha/decision-summaries>. The following information is included:

- (a) A list of all persons who have filed a petition and a digest of each petition;
- (b) Each Decision and Order, with confidential information deleted, issued in response to a petition; and
- (c) Any other information in the possession of the 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.

### § 1003.11 Filing a petition.

(a) *Who may file.* Any person may file a petition under this part who is aggrieved by a final disposition of DOE or who is so authorized by a program, statute, rule, regulation, guidance, or DOE delegation of authority.

(b) *Form of petition.* The person seeking relief under this part must file a petition. The general filing require-

## 10 CFR Ch. X (1–1–23 Edition)

ments in §1003.7 apply in addition to the requirements stated in this part.

(c) *Elements of a petition.* Petitions to the OHA must include, as applicable:

- (1) A full and complete statement of all relief requested from the OHA;
- (2) A citation to the statute, regulation, delegation, or other authority pursuant to which the OHA has jurisdiction to consider the petition;
- (3) A full and complete statement of all relevant facts pertaining to the action that is the subject of the petition and to the OHA relief sought;
- (4) A statement of the factual and legal justification for the relief requested in the petition;
- (5) A copy of all documents, including, but not limited to, contracts, financial records, communications, plans, analyses, and diagrams related to the petitioner's eligibility for the relief requested in the petition; and,
- (6) A motion for stay, if a stay is sought by the petitioner. The OHA may grant a motion for stay filed after the petition only upon a showing of good cause.

(d) *Service certification.* The petitioner must submit to the OHA a certification that the petitioner has served the notice required pursuant to §1003.12 of this part. The OHA must receive the certification within 15 days of the date on which the OHA received the petition. The OHA may grant an extension of time only upon a showing of good cause. The certification must include the names, addresses, telephone numbers, and email addresses of all potentially aggrieved persons or a statement that such information, in whole or in part, is not reasonably ascertainable.

(e) *Where to file.* A petition must be filed with the OHA in the manner specified in §1003.9.

### § 1003.12 Notice.

(a) The petitioner must serve 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 §1003.7(f), to each person who is reasonably ascertainable by the petitioner as a person who would be aggrieved by the

## Department of Energy

## § 1003.14

OHA relief sought. The copy of the petition must be accompanied by a statement that the person may submit comments regarding the petition to the OHA within 10 days. The OHA may, in its discretion, extend the comment period. The petitioner must file a service certification with the OHA, in accordance with §1003.11(d), stating that the requirements of this paragraph have been complied with and must include the names, addresses, and verified email addresses of each person to whom a copy of the petition was sent. The OHA may require the petitioner to provide additional or alternative notice, may identify additional persons on whom an applicant must serve notice, or may determine that notice should be published in the FEDERAL REGISTER.

(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 must:

(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 certification a description of the persons or class or classes of persons to whom notice was not sent, as well as a brief explanation of why notice to each person or class of person was impracticable.

(c) Any person submitting written comments to the OHA regarding a petition filed under this part must serve a copy of the comments, or a copy from which confidential information has been deleted in accordance with §1003.7(f), to the petitioner. The person must 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.

### §1003.13 Alternative Dispute Resolution.

The DOE encourages the use of Alternative Dispute Resolution (ADR) to resolve disputes and controversies at any stage of the proceedings. Accordingly, parties appearing before the OHA are encouraged to use ADR when practical.

The DOE Alternative Dispute Resolution Office, which employs multiple neutrals trained in mediation and other ADR services, provides ADR services for disputes involving the DOE and its affiliated organizations (*e.g.*, DOE contractors). ADR is voluntary and the OHA will never require parties to engage in settlement negotiations or mediation.

### § 1003.14 Evaluation of petitions.

(a) The OHA will acknowledge receipt of all petitions filed pursuant to this part.

(b) The OHA may request information of a petitioner, including, but not limited to, financial documents, responses to interrogatories, copies of communications, and such other information the OHA determines may inform its evaluation of the petition.

(1) The OHA will provide a petitioner with a period of time within which to provide any information requested by the OHA pursuant to this paragraph and instructions on how to deliver the information to the OHA.

(2) The OHA may extend the period of time for a petitioner to provide information requested by the OHA upon a showing of good cause by the petitioner. Such extensions will generally be for a period of no more than 30 days, and in no case will the OHA grant an extension that would result in the undue delay of its evaluation of a petition.

(c) In evaluating a petition, the OHA may consider relevant information from any source, including information received from a third party, provided that the petitioner is afforded an opportunity to respond to all third-party submissions.

(d) The OHA will complete its evaluation of a petition within 180 days of receipt of the petition. However, the Director may extend the period for the OHA's review for good cause, the reasoning for which must be set forth in the order extending the review period.

(e) In its evaluations, the OHA will use as a guide, but will not be bound by, the Federal Rules of Civil Procedure and Federal Rules of Evidence.

(f) The Director has all of the judicial powers necessary to conduct the proceeding, including, but not limited to,



**§ 1003.15**

**10 CFR Ch. X (1-1-23 Edition)**

grants or denials of motions and entry of interlocutory orders.

(g) The OHA may conduct a hearing with regard to the petition if, in its discretion, it considers that such hearing will materially advance the proceeding. In deciding whether to conduct a hearing, the OHA may consider various factors, including, but not limited to, the number of persons potentially aggrieved by a petition, the extent to which witness testimony will assist the OHA in developing a complete factual record, and the estimated costs of conducting a hearing at a venue reasonably convenient to all parties.

**§ 1003.15 Subpoenas, information requests, oaths, witnesses.**

(a) In accordance with the provisions of this section and as otherwise authorized by law, the Director may sign, issue, and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; and subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in the possession of the subpoenaed person.

(b) The OHA may issue an information request requiring any person subject to the jurisdiction of the OHA to file a report providing information relating to the OHA proceeding, including, but not limited to, written answers to specific questions. The information request may be in addition to any other reports required.

(c) The Director, for good cause shown, may extend the time prescribed for compliance with the subpoena or information request and determine the terms of satisfactory compliance.

(d) Prior to the time specified for compliance, but within 10 days after the date of service of the subpoena or information request, the person upon whom the document was served may file a request for review of the subpoena or information request with the Director. The Director then will pro-

vide notice of receipt to the person requesting review, may extend the time prescribed for compliance with the subpoena or information request, and may determine the terms of satisfactory compliance.

(e) If the subpoena or information request is not modified or rescinded within 10 days of the date of the Director's notice of receipt:

(1) The subpoena or information request will be effective as issued; and

(2) The person upon whom the document was served must comply with the subpoena or information request within 20 days of the date of the Director's notice of receipt, unless otherwise notified in writing by the Director.

(f) A subpoena or information request must be served upon a person named in the document.

(g) If any person upon whom a subpoena or information request is served pursuant to this section refuses or fails to comply with any provision of the subpoena or information request, a proceeding may be commenced in the appropriate United States District Court to enforce the subpoena or information request.

(h) Documents produced in response to a subpoena must be accompanied by the sworn certification, under penalty of perjury, of the person to whom the subpoena was directed or his authorized agent that:

(1) A diligent search has been made for each document responsive to the subpoena; and

(2) To the best of his knowledge, information, and belief each document responsive to the subpoena is being produced.

(i) Any information furnished in response to an information request must be accompanied by the sworn certification, under penalty of perjury, of the person to whom it was directed or his authorized agent who actually provides the information that:

(1) A diligent effort has been made to provide all information required by the information request; and

(2) All information furnished is true, complete, and correct.

(j) If any document responsive to a subpoena is not produced or any information required by an information request is not furnished, the certification

must include a statement setting forth every reason for failing to comply with the subpoena or information request. If a person to whom a subpoena or information request is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (h) or (i) of this section must also submit a written list of the documents or the information withheld indicating a description of each document or piece of information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, and an identification of the person whose privilege is being asserted.

(k) If testimony is taken pursuant to a subpoena, the Director will determine whether the testimony will be recorded and the means by which the testimony is recorded.

(l) A witness whose testimony is recorded may procure a copy of his testimony by making a written request for a copy and paying the appropriate fees.

(m) The Director may sequester any person subpoenaed to furnish documents or give testimony. Unless permitted by the Director, neither a witness nor his attorney is permitted to be present during the examination of any other witnesses.

(n) The Director may require testimony to be given under oath, regardless of the form of the testimony. The oath or affirmation will direct the witness's attention to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(o) The Director may require submissions to the OHA to be accompanied by an oath or affirmation attesting to the truth and accuracy of the submission. The oath or affirmation will direct the submitter's attention to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(p) A witness whose testimony is taken may be accompanied, represented and advised by his attorney as follows:

(1) Upon the initiative of the attorney or witness, the attorney may advise his client, in confidence, with re-

spect to the question asked his client, and if the witness refuses to answer any question, the witness or his attorney is required to briefly state the legal grounds for such refusal; and

(2) If the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination, the witness must assert the privilege personally.

(q) The Director will take all necessary steps to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or language. The OHA may take steps as the circumstances warrant in regard to any instances where any person or attorney refuses to comply with directions or provisions of this section.

#### § 1003.16 Dismissal of petitions.

The Director may issue a Decision and Order dismissing a petition at any time during the course of a proceeding. The Decision and Order shall state whether the dismissal is with prejudice or without prejudice. A Decision and order Dismissing a petition may be the subject of a motion for reconsideration in accordance with § 1003.19 of this part.

(a) *Dismissal with prejudice.* The dismissal of a petition with prejudice by the OHA terminates the OHA's review of the petition and bars the petitioner from submitting any future petition concerning the same, or substantially the same, issues as those in the petition. The OHA may dismiss a petition with prejudice if:

(1) The OHA lacks jurisdiction to consider the petition;

(2) The petitioner has already received a Decision and Order from the Director in response to a previously filed petition that addresses the same issue;

(3) The petitioner provides a false statement under oath or files a false instrument with the OHA, as determined by the OHA;

(4) The petitioner refuses to comply with an order issued by the OHA;

(5) The petition is untimely;

(6) The issues raised in the petition are moot;

(7) The petitioner repeatedly fails to comply with procedural requirements; or,

## § 1003.17

(8) The same or a substantially similar petition was previously dismissed by the OHA without prejudice, and the same basis for dismissal without prejudice exists upon refiling by the same petitioner.

(b) *Dismissal without prejudice.* The dismissal of a petition without prejudice by the OHA terminates the OHA's review of the petition but does not bar the petitioner from resubmitting the petition provided that the facts or circumstances leading to the dismissal have been resolved. In dismissing a petition without prejudice, the OHA may order that the petitioner may not resubmit the petition, or a substantially similar petition, for a period of time not to exceed 180 days. The OHA may dismiss a petition without prejudice if:

(1) The petitioner fails to include any of the required elements of a petition set forth in §1003.11 of this part;

(2) The petitioner fails to provide notice as required by §1003.12 of this part;

(3) The petitioner fails to timely provide documents or information at the request of the OHA pursuant to §1003.14 or §1003.15 of this part;

(4) The petition fails to state a claim upon which the OHA can grant relief; or

(5) The OHA determines that there is insufficient information upon which to base a decision.

## § 1003.17 Standard of review.

(a) The OHA will grant a petition that seeks an adjustment from a DOE rule, regulation or order under the authority of 42 U.S.C. 7194 only if it determines that doing so will alleviate or prevent serious hardship, gross inequity or unfair distribution of burdens.

(b) Except as provided by program, statute, rule, regulation, or DOE delegation of authority, the OHA will grant any other petition filed under this part upon a showing that the DOE acted arbitrarily, capriciously, or in violation of a law, rule, regulation, or delegation with respect to the final disposition of DOE that is the subject of the petition.

(c) Petitions shall be decided in a manner that is, to the extent possible, consistent with the disposition of previous petitions of the same kind.

## 10 CFR Ch. X (1-1-23 Edition)

## § 1003.18 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 and ordering relief as appropriate. The OHA will serve the Decision and Order on the parties to the proceeding and make it available to the public.

(b) The Decision and Order will set forth its legal basis and the relevant facts, state whether it is a final agency action of the DOE, and state what further review, if any, is available.

(c) There is no administrative appeal of a Decision and Order, except as provided by federal statute.

## § 1003.19 Reconsideration.

A participant in the proceeding may submit to the OHA a motion for reconsideration of a Decision and Order. The motion for reconsideration must be filed by the 20th day after the OHA makes the Decision and Order available to the public. The motion must include a statement of the grounds on which the movant believes reconsideration is warranted. Such grounds may include, but are not limited to, procedural, legal, or factual errors in the Decision and Order. A motion for reconsideration may be granted if the Director determines the Decision and Order contains an error that materially impacted the outcome of the proceeding.

## PART 1004—FREEDOM OF INFORMATION ACT (FOIA)

### Sec.

1004.1 Purpose and scope.

1004.2 Definitions.

1004.3 Public inspection in an electronic format and policy on contractor records.

1004.4 Elements of a request.

1004.5 Processing requests for records.

1004.6 Requests for classified records.

1004.7 Responses by authorizing officials: Form and content.

1004.8 Appeals of initial denials.

1004.9 Fees for providing records.

1004.10 Exemptions.

1004.11 Handling information of a private business, foreign government, or an international organization.

1004.12 Computation of time.

1004.13 Critical electric infrastructure information.