



## DEPARTMENT OF ENERGY

### 10 CFR Part 1003

[DOE-HQ-2025-0013]

RIN 1910-AA57

### Revisions to the Office of Hearings and Appeals Procedural Regulations

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Direct final rule; delay of effective date; response to comments.

**SUMMARY:** The U.S. Department of Energy (“DOE”) is publishing this document to respond to comments received on the direct final rule “Revisions to the Office of Hearings and Appeals Procedural Regulations,” published on May 16, 2025. As a result, DOE delays the effective date of the direct final rule.

**DATES:** As of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], the effective date of the direct final rule published May 16, 2025, at 90 FR 20774, is delayed until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Novak, U.S. Department of Energy, Office of the General Counsel, GC-1, 1000 Independence Avenue, SW, Washington, DC 20585-0121; (202) 586-5281 or [DOEGeneralCounsel@hq.doe.gov](mailto:DOEGeneralCounsel@hq.doe.gov).

### SUPPLEMENTARY INFORMATION:

#### I. May 2025 Direct Final Rule

On May 16, 2025, DOE published a direct final rule rescinding § 1003.13 of title 10, Code of Federal Regulations (“CFR”). 90 FR 20774 (“May 2025 DFR”) This regulation contains a statement that encourages the use of alternative dispute resolution (“ADR”) for parties appearing before the OHA and advises that participation in ADR is

voluntary. It does not confer any substantive right or obligation on the Agency or any party and is not required by statute.

## II. Response to Comments

DOE received three comments in response to the May 2025 DFR.

**Table II.1 List of Commenters from the May 2025 DFR**

Commenter	Reference in this Rule	Comment No. in the Docket	Commenter Type
Anonymous	Anonymous	2	Individual
Anonymous	Anonymous	3	Individual
Professor Bridget C.E. Dooling	Dooling	4	Individual

### *A. Response to Administrative Procedure Act Procedural Comment*

Dooling stated that the May 2025 DFR did not satisfy the good cause exemption from notice and comment rulemaking under the Administrative Procedure Act (“APA”). (Dooling, No. 4 at p. 3).

In response, DOE notes that the APA requires that agencies provide all interested persons with fair notice and an opportunity to comment on the rulemaking. See 5 U.S.C. 553(b) & (c). The May 2025 DFR provided the public with fair notice of DOE’s changes to its own administrative procedures regarding ADR for parties appearing before the OHA. See 90 FR 20774, 20775 (discussing specific administrative changes encouraging ADR). DOE also requested comments on the May 2025 DFR, and stated, if the Department received significant adverse comments, the Department would withdraw the rule or issue a new final rule which responds to such comments. *Id.* at 90 FR 20774. Thus, DOE provided interested persons with fair notice and an opportunity to comment as required by the APA. As a result, there was no need for a good cause exemption from notice-and-comment rulemaking under 5 U.S.C. 553(b).

Finally, contrary to the comment from Dooling (Dooling, No. 4 at p. 4), Dooling cannot argue commenters were denied fair notice and an opportunity to comment solely

based on how the notice was labeled. See *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 683 (2020) (holding that “[f]ormal labels aside, the [interim final rules] contained all of the elements of a notice of proposed rulemaking as required by the APA”). Irrespective of its title, the May 2025 DFR contained the required elements of a proposed rulemaking under the APA.

#### *B. Response to Other Comments*

DOE received two comments, which stated (1) that parties benefit from ADR and the rescission of this regulation would make parties less aware of this cost-saving service; and (2) that this regulation was required by the Administrative Dispute Resolutions Act (“ADRA”), 5 U.S.C. 573. (Anonymous, No. 3 at p. 1; Anonymous, No. 2 at p. 1) In response to the first point, there is no evidence that parties decide to utilize ADR because of this regulation, and, therefore, there is no evidence that the rescission of this regulation will reduce the use of ADR in any meaningful way. The OHA will continue to advise parties as to the availability of ADR services when appropriate in order to promote cost-efficient methods of problem solving. In response to the second point, ADRA does not require the DOE to maintain specific regulations encouraging the use of ADR; rather it requires generally that agencies “encourage and facilitate agency use of alternative means of dispute resolution.” (5 U.S.C. 573(c)(1)) DOE will continue to encourage and facilitate the use of ADR when appropriate regardless of any specific regulation, and, thus, will adhere to the requirements of ADRA.

### **III. Conclusion**

For the reasons discussed in the preceding sections of this document, DOE is not withdrawing the May 2025 DFR, which rescinds the regulation encouraging the use of ADR by parties appearing before the OHA.

DOE also notes, to the extent that 5 U.S.C. 553 applies to the delay of effective date, it is exempt from notice and comment because it constitutes a rule of procedure

under 5 U.S.C. 553(b)(A) and for which no notice or hearing is required by statute.

Additionally, this action is not a “substantive rule” for which a 30-day delay in effective date is required under 5 U.S.C. 553(d).

### **Signing Authority**

This document of the Department of Energy was signed on July 9, 2025, by Chris Wright, Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on July 10, 2025.

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Treena V. Garrett  
Federal Register Liaison Officer,  
U.S. Department of Energy

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