

## § 4.1305

### § 4.1305 Amendment of petition.

(a) An individual filing a petition may amend it once as a matter of right before receipt by the individual of an answer, motion, or statement of OSM made in accordance with § 4.1304 of this part. Thereafter, a motion for leave to amend the petition shall be filed with the administrative law judge.

(b) OSM shall have 30 days from receipt of a petition amended as a matter of right to file an answer, motion, or statement in accordance with § 4.1304 of this part. If the administrative law judge grants a motion to amend a petition, the time for OSM to file an answer, motion, or statement shall be set forth in the order granting the motion to amend.

### § 4.1306 Notice of hearing.

The administrative law judge shall give notice of the time and place of the hearing to all interested parties. The hearing shall be of record and governed by 5 U.S.C. 554.

### § 4.1307 Elements; burdens of proof.

(a) OSM shall have the burden of going forward with evidence to establish a prima facie case that:

(1) A corporate permittee either violated a condition of a permit or failed or refused to comply with an order issued under section 521 of the Act or an order incorporated in a final decision by the Secretary under the Act (except an order incorporated in a decision issued under sections 518(b) or 703 of the Act or implementing regulations), unless the fact of violation or failure or refusal to comply with an order has been upheld in a final decision in a proceeding under § 4.1150 through 4.1158, § 4.1160 through 4.1171, or § 4.1180 through 4.1187, and § 4.1270 or § 4.1271 of this part, and the individual is one against whom the doctrine of collateral estoppel may be applied to preclude relitigation of fact issues;

(2) The individual, at the time of the violation, failure or refusal, was a director, officer, or agent of the corporation; and

(3) The individual willfully and knowingly authorized, ordered, or carried out the corporate permittee's violation or failure or refusal to comply.

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(b) The individual shall have the ultimate burden of persuasion by a preponderance of the evidence as to the elements set forth in paragraph (a)(1) of this section and as to whether he was a director or officer of the corporation at the time of the violation or refusal.

(c) OSM shall have the ultimate burden of persuasion by a preponderance of the evidence as to whether the individual was an agent of the corporation, as to paragraph (a)(3) of this section, and as to the amount of the individual civil penalty.

### § 4.1308 Decision by administrative law judge.

(a) The administrative law judge shall issue a written decision containing findings of fact and conclusions of law on each of the elements set forth in § 4.1307 of this part.

(b) If the administrative law judge concludes that the individual is liable for an individual civil penalty, he shall order that it be paid in accordance with 30 CFR 724.18 or 846.18, absent the filing of a petition for discretionary review in accordance with § 4.1309 of this part.

### § 4.1309 Petition for discretionary review.

(a) Any party may petition the Board to review an order or decision by an administrative law judge disposing of an individual civil penalty proceeding under § 4.1308 of this part.

(b) A petition under this section shall be filed on or before 30 days from the date of receipt of the order or decision sought to be reviewed, and the time for filing shall not be extended.

(c) A petitioner under this section shall list the alleged errors of the administrative law judge and shall attach a copy of the order or decision sought to be reviewed.

(d) Any party may file with the Board a response to the petition for review within 10 days of receipt of a copy of such petition.

(e) Not later than 30 days from the filing of a petition for review under this section, the Board shall grant or deny the petition in whole or in part.

(f) If the petition for review is granted the rules in §§ 4.1273-4.1276 of this part are applicable. If the petition is

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denied, the decision of the administrative law judge is final for the Department, subject to § 4.5 of this part.

(g) Payment of a penalty is due in accordance with 30 CFR 724.18 or 846.18.

REQUEST FOR HEARING ON A PRELIMINARY FINDING CONCERNING A DEMONSTRATED PATTERN OF WILLFUL VIOLATIONS UNDER SECTION 510(c) OF THE ACT, 30 U.S.C. 1260(c) (FEDERAL PROGRAM; FEDERAL LANDS PROGRAM; FEDERAL PROGRAM FOR INDIAN LANDS)

SOURCE: 52 FR 39526, Oct. 22, 1987, unless otherwise noted.

### § 4.1350 Scope.

These rules set forth the procedures for obtaining review of a preliminary finding by OSM under section 510(c) of the Act and 30 CFR 774.11(c) of an applicant's or operator's permanent permit ineligibility.

[67 FR 61511, Oct. 1, 2002]

### § 4.1351 Preliminary finding by OSM.

(a) If OSM determines that an applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations and the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit, OSM must serve a preliminary finding of permanent permit ineligibility on the applicant or operator.

(b) OSM must serve the preliminary finding by certified mail, or by overnight delivery service if the applicant or operator has agreed to bear the expense for this service. The preliminary finding must specifically state the violations upon which it is based.

[67 FR 61511, Oct. 1, 2002]

### § 4.1352 Who may file; where to file; when to file.

(a) The applicant or operator may file a request for hearing on OSM's preliminary finding of permanent permit ineligibility.

(b) The request for hearing must be filed with the Hearings Division, Office

of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800), within 30 days of receipt of the preliminary finding by the applicant or operator.

(c) Failure to file a timely request constitutes a waiver of the opportunity for a hearing before OSM makes its final finding concerning permanent permit ineligibility. Any untimely request will be denied.

[67 FR 61511, Oct. 1, 2002]

### § 4.1353 Contents of request.

The request for hearing shall include—

(a) A clear statement of the facts entitling the one requesting the hearing to administrative relief;

(b) An explanation of the alleged errors in OSM's preliminary finding; and

(c) Any other relevant information.

### § 4.1354 Determination by the administrative law judge.

The administrative law judge shall promptly set a time and place for and give notice of the hearing to the applicant or operator and shall issue a decision within 60 days of the filing of a request for hearing. The hearing shall be of record and governed by 5 U.S.C. 554.

### § 4.1355 Burden of proof.

OSM shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion as to the existence of a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, its implementing regulations, the regulatory program, or the permit.

[67 FR 61511, Oct. 1, 2002]

### § 4.1356 Appeals.

(a) Any party aggrieved by the decision of the administrative law judge may appeal to the Board under procedures set forth in § 4.1271 et seq. of this subpart, except that the notice of appeal must be filed within 20 days of receipt of the administrative law judge's decision.