

under § 4.1180, OSM shall have the burden of going forward to establish a prima facie case as to the validity of the notice, order, or modification, vacation, or termination thereof.

(b) The ultimate burden of persuasion shall rest with the applicant for review.

EXPEDITED REVIEW OF SECTION 521(a)(2)  
OR 521(a)(3) ORDERS OF CESSATION

**§ 4.1180 Purpose.**

The purpose of §§ 4.1180–4.1187 is to govern applications filed under section 525(b) of the act for expedited review of orders of cessation for which temporary relief has not been granted under section 525(c) or section 526(c) of the act. If a person is qualified to receive a 30-day decision under these regulations, he may waive that right and file an application under § 4.1164, and the procedures in § 4.1160 *et seq.* shall apply. If there is a waiver as set forth in § 4.1186, the final administrative decision shall be issued within 120 days of the filing of the application.

**§ 4.1181 Who may file.**

(a) An application for review of an order of cessation may be filed under this section, whenever temporary relief has not been granted under section 525(c) or section 526(c) of the act, by—

(1) A permittee who has been issued an order of cessation under section 521(a)(2) or section 521(a)(3) of the act; or

(2) Any person having an interest which is or may be adversely affected by the issuance of an order of cessation under section 521(a)(2) or section 521(a)(3) of the act.

(b) A permittee or any person having an interest which is or may be adversely affected by a section 521(a)(2) or section 521(a)(3) order of cessation waives his right to expedited review upon being granted temporary relief pursuant to section 525(c) or section 526(c) of the act.

**§ 4.1182 Where to file.**

The application shall be filed in the Hearings Division, 801 North Quincy Street, OHA, Arlington, Va. 22203.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 4368, Jan. 30, 2002]

**§ 4.1183 Time for filing.**

(a) Any person intending to file an application for expedited review under section 525(b) of the act shall notify the field solicitor, Department of the Interior, for the region in which the mine site is located, within 15 days of receipt of the order. Any person not served with a copy of the order shall file notice of intention to file an application for review within 20 days of the date of issuance of the order.

(b) Any person filing an application for review under § 4.1184 shall file the application within 30 days of receipt of the order. Any person not served with a copy of the order shall file an application for review within 40 days of the date of issuance of the order.

**§ 4.1184 Contents of application.**

(a) Any person filing an application for expedited review under section 525(b) of the act shall incorporate in that application regarding each claim for relief—

(1) A statement of facts entitling that person to administrative relief;

(2) A request for specific relief;

(3) A specific statement which delineates each issue to be addressed by the applicant during the expedited proceeding;

(4) A copy of the order sought to be reviewed;

(5) A list identifying each of applicant's witnesses by name, address, and place of employment, including expert witnesses and the area of expertise to which they will address themselves at the hearing, and a detailed summary of their testimony;

(6) Copies of all exhibits and other documentary evidence that the applicant intends to introduce as evidence at the hearing and descriptions of all physical exhibits and evidence which is not capable of being copied or attached; and

(7) Any other relevant information.

(b) If any applicant fails to comply with all the requirements of § 4.1184(a), the administrative law judge may find that the applicant has waived the 30-day decision requirement or the administrative law judge shall order that the application be perfected and the application shall not be considered filed for purposes of the 30-day decision until

#### § 4.1185

perfected. Failure to timely comply with the administrative law judge's order shall constitute a waiver of the 30-day decision.

#### § 4.1185 Computation of time for decision.

In computing the 30-day time period for administrative decision, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

#### § 4.1186 Waiver of the 30-day decision requirement.

(a) Any person qualified to receive a 30-day decision may waive that right—

(1) By filing an application pursuant to § 4.1160-71;

(2) By failing to comply with all the requirements of § 4.1184(a); or

(3) In accordance with § 4.1187(j).

(b) Any person qualified to receive a 30-day decision shall waive that right—

(1) By obtaining temporary relief pursuant to section 525(c) or section 526(c) of the act;

(2) By failing to perfect an application pursuant to § 4.1184(b); or

(3) In accordance with § 4.1187(i).

#### § 4.1187 Procedure if 30-day decision requirement is not waived.

If the applicant does not waive the 30-day decision requirement of section 525(b) of the act, the following special rules shall apply—

(a) The applicant shall serve all known parties with a copy of the application simultaneously with the filing of the application with OHA. If service is accomplished by mail, the applicant shall inform all known parties by telephone at the time of mailing that an application is being filed and shall inform the administrative law judge by telephone that such notice has been given. However, no ex parte communication as to the merits of the proceeding may be conducted with the administrative law judge.

(b) Any party desiring to file a response to the application for review shall file a written response within 5 working days of service of the application.

(c) If the applicant has requested a hearing, the administrative law judge

#### 43 CFR Subtitle A (10-1-03 Edition)

shall act immediately upon receipt of the application to notify the parties of the time and place of the hearing at least 5 working days prior to the hearing date.

(d) The administrative law judge may require the parties to submit proposed findings of fact and conclusions of law at the hearing which may be orally supplemented on the record at the hearing or, where proposed findings of fact and conclusions of law have not been submitted at the hearing, they may be orally presented for the record at the hearing.

(e) The administrative law judge shall make an initial decision. He shall either rule from the bench on the application, orally stating the reasons for his decision or he shall issue a written decision. If the administrative law judge makes an oral ruling, his approval of the record of the hearing shall constitute his written decision. The decision of the administrative law judge must be issued within 15 days of the filing of the perfected application under § 4.1184.

(f) If any party desires to appeal to the Board, such party shall—

(1) If the administrative law judge makes an oral ruling, make an oral statement, within a time period as directed by the administrative law judge, that the decision is being appealed and request that the administrative law judge certify the record to the Board; or

(2) If the administrative law judge issues a written decision after the close of the hearing, file a notice of appeal with the administrative law judge and with the Board within 2 working days of receipt of the administrative law judge's decision.

(g) If the decision of the administrative law judge is appealed, the Board shall act immediately to issue an expedited briefing schedule, and the Board shall act expeditiously to review the record and issue its decision. The decision of the Board must be issued within 30 days of the date the perfected application is filed with OHA pursuant to § 4.1184.

(h) If all parties waive the opportunity for a hearing and the administrative law judge determines that a