

§4.1387

filed with the Board, the Board shall issue an expedited briefing schedule and shall decide the appeal expeditiously.

[59 FR 54363, Oct. 28, 1994, as amended at 67 FR 4368, Jan. 30, 2002]

§4.1387 Petition for discretionary review of initial decisions.

(a) Any party may file a petition for discretionary review of an initial decision of an administrative law judge issued under §4.1385 with the Board within 30 days of receipt of the decision. An untimely petition shall be dismissed.

(b) The petition for discretionary review shall set forth specifically the alleged errors in the initial decision, with supporting argument, and shall attach a copy of the decision.

(c) Any party may file a response to the petition for discretionary review within 30 days of its service.

(d) The Board shall issue a decision denying the petition or granting the petition and deciding the merits within 60 days of the deadline for filing responses.

REQUEST FOR REVIEW OF OSM DETERMINATIONS OF ISSUES UNDER 30 CFR PART 761 (FEDERAL PROGRAM; FEDERAL LANDS PROGRAM; FEDERAL PROGRAM FOR INDIAN LANDS)

SOURCE: 52 FR 39530, Oct. 22, 1987, unless otherwise noted.

§4.1390 Scope.

Sections 4.1391 through 4.1394 set forth the procedures for obtaining review of an OSM determination under 30 CFR 761.16 that a person does or does not have valid existing rights.

[67 FR 61512, Oct. 1, 2002]

§4.1391 Who may file; where to file; when to file; filing of administrative record.

(a) The person who requested a determination under 30 CFR 761.16 or any person with an interest that is or may be adversely affected by a determination that a person does or does not have valid existing rights may file a request for review of the determination with the office of the OSM official whose determination is being reviewed

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and at the same time shall send a copy of the request to the Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203 (telephone 703-235-3750). OSM shall file the complete administrative record of the determination under review with the Board as soon as practicable.

(b) OSM must provide notice of the valid existing rights determination to the person who requested that determination by certified mail, or by overnight delivery service if the person has agreed to bear the expense of this service.

(1) When the determination is made independently of a decision on an application for a permit or for a permit boundary revision, a request for review shall be filed within 30 days of receipt of the determination by a person who has received a copy of it by certified mail or overnight delivery service. The request for review shall be filed within 30 days of the date of publication of the determination in a newspaper of general circulation or in the FEDERAL REGISTER, whichever is later, by any person who has not received a copy of it by certified mail or overnight delivery service.

(2) When the determination is made in conjunction with a decision on an application for a permit or for a permit boundary revision, the request for review must be filed in accordance with §4.1362.

(c) Failure to file a request for review within the time specified in paragraph (b) of this section shall constitute a waiver of the right to review and the request shall be dismissed.

[56 FR 2145, Jan. 22, 1991, as amended at 67 FR 4368, Jan. 30, 2002; 67 FR 61512, Oct. 1, 2002]

§4.1392 Contents of request; amendment of request; responses.

(a) The request for review shall include—

- (1) A clear statement of the reasons for appeal;
- (2) A request for specific relief;
- (3) A copy of the decision appealed from; and
- (4) Any other relevant information.

(b) All interested parties shall file an answer or motion in response to a request for review or a statement that no answer or motion will be filed within 15 days of receipt specifically admitting or denying facts or alleged errors stated in the request and setting forth any other matters to be considered on review.

(c) A request for review may be amended once as a matter of right prior to receipt of an answer or motion or statement filed in accordance with paragraph (b) of this section. Thereafter, a motion for leave to amend the request shall be filed with the Board.

(d) An interested party shall have 10 days from receipt of a request for review that is amended as a matter of right or the time remaining for response to the original request to file an answer, motion, or statement in accordance with paragraph (b) of this section, whichever is longer. If the Board grants a motion to amend a request for review, the time for an interested party to file an answer, motion, or statement shall be set forth in the order granting the motion.

§ 4.1393 Status of decision pending administrative review.

43 CFR 4.21(a) applies to determinations of the Office of Surface Mining under 30 U.S.C. 1272(e).

§ 4.1394 Burden of proof.

(a) If the person who requested the determination is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the person who requested the determination shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the person who requested the determination does or does not have valid existing rights.

[67 FR 61512, Oct. 1, 2002]

Subpart M—Special Procedural Rules Applicable to Appeals of Decisions Made Under OMB Circular A-76

AUTHORITY: 5 U.S.C. 301.

SOURCE: 45 FR 75213, Nov. 14, 1980. Redesignated at 52 FR 39525, Oct. 22, 1987.

§ 4.1600 Purpose and nature of the appeal process.

(a) This appeals procedure embodies an informal administrative review of agency decisions made under OMB Circular A-76, and is intended to assure that such decisions are fair, equitable, and in compliance with the provisions of the Circular. This procedure provides affected parties an opportunity to request that such decisions be objectively reviewed by a party independent of the A-76 decision process.

(b) This appeals procedure is administrative rather than judicial in nature, and does not provide for a judicial review or for further levels of appeal. The decisions of the appeals official are final.

(c) This procedure is intended to protect the rights of all affected parties and, therefore, neither the procedure nor agency determinations may be subject to negotiation, arbitration, or agreements with any one of the parties.

§ 4.1601 Basis for appeal.

(a) An appeal may be based only on a specific alleged material deviation (or deviations) by the agency from the provisions of OMB Circular A-76 or Supplement No. 1 thereto, the "Cost Comparison Handbook." Appeals may not be based on other factors, such as the economic impact of the agency's decision on a community, or other socio-economic issues.

(b) This appeals procedure shall be used only to resolve questions of the determination between contract and in-house performance of a commercial or industrial type requirement, and shall not apply to questions concerning