

certified mail. Issuance of the order under this subparagraph constitutes final Corps action for purposes of judicial review.

(7) The DE shall provide written notice of the issuance, modification and issuance, or withdrawal of the proposed order to every person who submitted written comments on the proposed order.

(8) The notice shall include a statement of the right to judicial review and of the procedures and deadlines for obtaining judicial review. The notice shall also note the right of a commenter to petition for a hearing pursuant to 33 CFR 326.6(c)(3) if no hearing was previously held.

(k) *Effective date of order.* (1) Any final order issued under this subpart shall become effective 30 calendar days following its issuance unless an appeal is taken pursuant to section 309(g)(8) of the Clean Water Act, or in the case where no hearing was held prior to the final order, and a petition for hearing is filed by a prior commenter.

(2) If a petition for hearing is received within 30 days after the final order is issued, the DE shall:

(i) Review the evidence presented by the petitioner.

(ii) If the evidence is material and was not considered in the issuance of the order, the DE shall immediately set aside the final order and schedule a hearing. In that case, a hearing will be held, a new recommendation will be made by the Presiding Officer to the DE and a new final decision issued by the DE.

(iii) If the DE denies a hearing under this subparagraph, the DE shall provide to the petitioner, and publish in the FEDERAL REGISTER, notice of, and the reasons for, such denial.

(1) *Judicial review.* (1) Any permittee against whom a final order assessing a civil penalty under these regulations or any person who provided written comments on a proposed order may obtain judicial review of the final order.

(2) In order to obtain judicial review, the permittee or commenter must file a notice of appeal in the United States District Court for either the District of Columbia, or the district in which the violation was alleged to have occurred,

within 30 calendar days after the date of issuance of the final order.

(3) Simultaneously with the filing of the notice of appeal, the permittee or commenter must send a copy of such notice by certified mail to the DE and the Attorney General.

[54 FR 50709, Dec. 8, 1989, as amended at 69 FR 35518, June 25, 2004]

PART 327—PUBLIC HEARINGS

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AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 51 FR 41249, Nov. 13, 1986, unless otherwise noted.

§327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed DA permit action or Federal project as defined in §327.3 of this part including those held pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344) and section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§327.2 Applicability.

This regulation is applicable to all divisions and districts responsible for the conduct of public hearings.

§327.3 Definitions.

(a) *Public hearing* means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action, or Federal project, and which affords the public an opportunity to present their views, opinions, and information on such permit actions or Federal projects.