

§ 4.1

REQUEST FOR REVIEW OF APPROVAL OR DISAPPROVAL OF APPLICATIONS FOR NEW PERMITS, PERMIT REVISIONS, PERMIT RENEWALS, THE TRANSFER, ASSIGNMENT OR SALE OF RIGHTS GRANTED UNDER PERMIT (FEDERAL PROGRAM; FEDERAL LANDS PROGRAM; FEDERAL PROGRAM FOR INDIAN LANDS) AND FOR COAL EXPLORATION PERMITS (FEDERAL PROGRAM)

- 4.1360 Scope.
- 4.1361 Who may file.
- 4.1362 Where to file; when to file.
- 4.1363 Contents of request; amendment of request; responses.
- 4.1364 Time for hearing; notice of hearing; extension of time for hearing.
- 4.1365 Status of decision pending administrative review.
- 4.1366 Burdens of proof.
- 4.1367 Request for temporary relief.
- 4.1368 Determination by the Administrative Law Judge.
- 4.1369 Petition for discretionary review; judicial review.

REVIEW OF OSM DECISIONS PROPOSING TO SUSPEND OR RESCIND OR SUSPENDING OR RESCINDING IMPROVIDENTLY ISSUED PERMITS

- 4.1370 Scope.
- 4.1371 Who may file, where to file, when to file.
- 4.1372 Contents of request for review, response to request, amendment of request.
- 4.1373 Hearing.
- 4.1374 Burdens of proof.
- 4.1375 Time for initial decision.
- 4.1376 Petition for temporary relief from notice of proposed suspension or rescission or notice of suspension or rescission; appeals from decisions granting or denying temporary relief.
- 4.1377 Petition for discretionary review of initial decision.

REVIEW OF OFFICE OF SURFACE MINING WRITTEN DECISIONS CONCERNING OWNERSHIP OR CONTROL CHALLENGES

- 4.1380 Scope.
- 4.1381 Who may file; when to file; where to file.
- 4.1382 Contents of request for review; response to request; amendment of request.
- 4.1383 Hearing.
- 4.1384 Burdens of proof.
- 4.1385 Time for initial decision.
- 4.1386 Petition for temporary relief from decision; appeals from decisions granting or denying temporary relief.
- 4.1387 Petition for discretionary review of initial decisions.

43 CFR Subtitle A (10–1–05 Edition)

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

- 4.1390 Scope.
- 4.1391 Who may file; where to file; when to file; filing of administrative record.
- 4.1392 Contents of request; amendment of request; responses.
- 4.1393 Status of decision pending administrative review.
- 4.1394 Burden of proof.

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

- 4.1600 Purpose and nature of the appeal process.
- 4.1601 Basis for appeal.
- 4.1602 Who may appeal under this procedure.
- 4.1603 Appeal period.
- 4.1604 Method of filing an appeal.
- 4.1605 Action by the Office of Hearings and Appeals.
- 4.1606 Department representation.
- 4.1607 Processing the appeal.
- 4.1608 Oral presentations.
- 4.1609 Multiple appeals.
- 4.1610 Decision of the appeals official.

AUTHORITY: 5 U.S.C. 301; 43 U.S.C. 1201.

SOURCE: 36 FR 7186, Apr. 15, 1971, unless otherwise noted.

Subpart A—General; Office of Hearings and Appeals

§ 4.1 Scope of authority; applicable regulations.

The Office of Hearings and Appeals, headed by a Director, is an authorized representative of the Secretary for the purpose of hearing, considering and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings, and appeals and other review functions of the Secretary. Principal components of the Office include:

- (a) A Hearings Division comprised of administrative law judges who are authorized to conduct hearings in cases required by law to be conducted pursuant to 5 U.S.C. 554, and hearings in other cases arising under statutes and regulations of the Department, including rule making hearings, and
- (b) Appeals Boards, shown below, with administrative jurisdiction and special procedural rules as indicated.

General rules applicable to all types of proceedings are set forth in subpart B of this part. Therefore, for information as to applicable rules, reference should be made to the special rules in the subpart relating to the particular type of proceeding, as indicated, and to the general rules in subpart B of this part. Wherever there is any conflict between one of the general rules in subpart B of this part and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern. Reference should be made also to the governing laws, substantive regulations and policies of the Department relating to the proceeding. In addition, reference should be made to part 1 of this subtitle which regulates practice before the Department of the Interior.

(1) *Board of Contract Appeals.* The Board considers and decides finally for the Department appeals to the head of the Department from findings of fact or decisions by contracting officers of any bureau or office of the Department, wherever situated, or any field installation thereof, and orders and conducts hearings as necessary. Special regulations applicable to proceedings before the Board are contained in subpart C of this part.

(2) *Board of Indian Appeals.* The Board decides finally for the Department appeals to the head of the Department pertaining to:

(i) Administrative actions of officials of the Bureau of Indian Affairs, issued under 25 CFR chapter I, except as limited in 25 CFR chapter I or § 4.330 of this part, and

(ii) Orders and decisions of Administrative Law Judges in Indian probate matters other than those involving estates of the Five Civilized Tribes of Indians. The Board also decides such other matters pertaining to Indians as are referred to it by the Secretary, the Director of the Office of Hearings and Appeals, or the Assistant Secretary-Indian Affairs for exercise of review authority of the Secretary. Special regulations applicable to proceedings before the Board are contained in subpart D of this part.

(3) *Board of Land Appeals.* The Board decides finally for the Department appeals to the head of the Department from decisions rendered by Depart-

mental officials relating to: (i) The use and disposition of public lands and their resources, including land selections arising under the Alaska Native Claims Settlement Act, as amended; (ii) the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf; and (iii) the conduct of surface coal mining under the Surface Mining Control and Reclamation Act of 1977. Special procedures for hearings, appeals and contests in public land cases are contained in subpart E of this part; special procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 are contained in subpart L of this part.

(4) *Ad Hoc Board of Appeals.* Appeals to the head of the Department which do not lie within the appellate review jurisdiction of an established Appeals Board and which are not specifically excepted in the general delegation of authority to the Director may be considered and ruled upon by the Director or by Ad Hoc Boards of Appeals appointed by the Director to consider the particular appeals and to issue decisions thereon, deciding finally for the Department all questions of fact and law necessary for the complete adjudication of the issues. Jurisdiction of the Boards would include, but not be limited to, the appellate and review authority of the Secretary referred to in parts 13, 21, and 230 of this title, and in 36 CFR parts 8 and 20. Special regulations applicable to proceedings in such cases are contained in subpart G of this part.

(Sec. 525, Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1275, and sec. 301, Administrative Procedure Act, 5 U.S.C. 301)

[36 FR 7186, Apr. 15, 1971, as amended at 40 FR 33172, Aug. 6, 1975; 47 FR 26392, June 18, 1982; 49 FR 7565, Mar. 1, 1984; 54 FR 6485, Feb. 10, 1989; 61 FR 47434, Sept. 9, 1996; 61 FR 49976, Sept. 24, 1996]

§ 4.2 Membership of appeals boards; decisions, functions of Chief Judges.

(a) The Appeals Boards consist of regular members, who are hereby designated Administrative Judges, one of