

Office of the Secretary, Interior

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4.1394 Burden of proof.

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

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AUTHORITY: 5 U.S.C. 301, 503-504; 25 U.S.C. 9, 372-74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457; Pub. L. 99-264, 100 Stat. 61, as amended.

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 deciding matters within the jurisdiction of the Department involving hearings, appeals, and other review functions of the Secretary. The Office may hear, consider, and decide those matters as fully and finally as might the Secretary, subject to any limitations on its authority imposed by the Secretary. Principal components of the Office include:

(a) One or more Hearings Divisions consisting of administrative law judges who are authorized to conduct hearings in cases required by law to be conducted under 5 U.S.C. 554, and other deciding officials who are authorized to conduct hearings in cases arising under statutes and regulations of the Department; 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 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) Decisions and orders of administrative law judges and Indian probate 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.

(2) *Board of Land Appeals.* The Board decides finally for the Department appeals to the head of the Department from decisions rendered by Departmental 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;

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special procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 are contained in subpart L of this part.

(3) *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; 75 FR 64663, Oct. 20, 2010]

§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 whom is designated as Chief Administrative Judge, the Director as an ex officio member, and alternate members who may serve, when necessary, in place of or in addition to regular members. The Chief Administrative Judge of an Appeals Board may direct that an appeal may be decided by a panel of any two Administrative Judges of the Board, but if they are unable to agree upon a decision, the Chief Administrative Judge may assign one or more additional Administrative Judges of the Board to consider the appeal. The concurrence of a majority of the Board Ad-

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ministrative Judges who consider an appeal shall be sufficient for a decision.

(b) Decisions of the Board must be in writing and signed by not less than a majority of the Administrative Judges who considered the appeal. The Director, being an ex officio member, may participate in the consideration of any appeal and sign the resulting decision.

(c) The Chief Administrative Judge of an Appeals Board shall be responsible for the internal management and administration of the Board, and the Chief Administrative Judge is authorized to act on behalf of the Board in conducting correspondence and in carrying out such other duties as may be necessary in the conduct of routine business of the Board.

[39 FR 7931, Mar. 1, 1974]

§4.3 Representation before appeals boards.

(a) *Appearances generally.* Representation of parties in proceedings before Appeals Boards of the Office of Hearings and Appeals is governed by Part 1 of this subtitle, which regulates practice before the Department of the Interior.

(b) *Representation of the Government.* Department counsel designated by the Solicitor of the Department to represent agencies, bureaus, and offices of the Department of the Interior in proceedings before the Office of Hearings and Appeals, and Government counsel for other agencies, bureaus or offices of the Federal Government involved in any proceeding before the Office of Hearings and Appeals, shall represent the Government agency in the same manner as a private advocate represents a client.

(c) *Appearances as amicus curiae.* Any person desiring to appear as amicus curiae in any proceeding shall make timely request stating the grounds for such request. Permission to appear, if granted, will be for such purposes as established by the Director or the Appeals Board in the proceeding.

§4.4 Public records; locations of field offices.

Part 2 of this subtitle prescribes the rules governing availability of the public records of the Office of Hearings and Appeals. It includes a list of the field