

FEDERAL REGISTER: 45 FR 50752 (July 31, 1980)

DEPARTMENT OF THE INTERIOR

AGENCY: Office of Hearings and Appeals (OHA)

43 CFR Part 4

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

ACTION: Final rule.

SUMMARY: Certain regulations governing adjudicative proceedings under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201-1328 (Supp. I 1977), are being changed to alleviate problems which have arisen because of the present language of those regulations.

EFFECTIVE DATE: July 31, 1980.

FOR FURTHER INFORMATION CONTACT: Bruce R. Harris, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, Virginia 22203, (703) 557-9037.

SUPPLEMENTARY INFORMATION:

The first change, found in 43 CFR 4.1107(f), concerns the filing date for documents which initiate proceedings with the Hearings Division, Office of Hearings and Appeals. The present language explains that the filing date is the date the document is received in the office in Arlington, Virginia. Filing times begin to run when an operator or permittee receives a notice of violation, a cessation order, a civil penalty assessment, or the results of an assessment conference. Mail delays of as much as 8 or 9 days from parts of Kentucky substantially erode the amount of time an operator or permittee has to file. In some cases mail delays have resulted in proceedings being dismissed for lack of filing timely. The change seeks to alleviate the problem caused by such delays by considering an initiating document sent by mail to be filed timely if it is postmarked within the time allowed for filing. It is necessary to retain the requirement that initial filings be directed to Arlington, Virginia, in order to allow the Chief Administrative Law Judge to maintain control over the Hearings Division docket and to prevent certain field offices from being inundated with cases.

The second regulation change, found in 43 CFR 4.1109(c), involves the standard for determining when service of documents is complete. Presently, initiating documents are considered served when they are received, and for any other documents service, if by mail, is complete upon mailing. Mail delays have decreased the time available for parties to respond to documents filed in a proceeding. Changing the service time to date of receipt for all documents eliminates the problem of mail delays.

The third change deals with 43 CFR 4.1267(b). That regulation presently allows a party to a Section 525 review proceeding who is denied temporary relief by an Administrative Law Judge to appeal to the Board or, in one special circumstance, the alternative of seeking direct review of the denial in Federal court. That particular situation is when temporary relief is sought of a cessation order and the party seeking the relief has complied with the requirements of, and the Administrative Law Judge's decision has been rendered pursuant to, 43 CFR 4.1266(b). The change would make the alternative of judicial review available in any situation in which temporary relief was denied by an Administrative Law Judge. The basis for the change is that experience thus far under the Act dictates that any party denied temporary relief in any section 525 review proceeding should have the option of appealing that denial to the Board or of seeking review of the denial in Federal court. This will allow operators or permittees quick access to Federal court when temporary relief has been denied and will ordinarily permit a more rapid response than is available in the administrative setting.

Since these changes are merely procedural in nature, the regulations are being published in final. See 5 U.S.C. 553(b)(A) (1976).

Drafting Information: The principal author of these revisions is Bruce R. Harris, Office of Hearings and Appeals, Department of the Interior.

Note. -- The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Exec. Order No. 12044 and 43 CFR Part 14.

Dated: July 25, 1980.
James A. Joseph, Under Secretary of the Interior.

1. Section 4.1107(f) is revised to read:

SECTION 4.1107 - FILING OF DOCUMENTS.

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(f) The effective filing date for documents initiating proceedings before the Hearings Division, OHA, Arlington, VA, shall be the date of receipt in that office, if filed by hand, or the date such document is postmarked, if filed by mail.

2. Section 4.1109(c) is revised to read:

SECTION 4.1109 - SERVICE.

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(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail, upon receipt.

3. Section 4.1267(b) is revised to read:

SECTION 4.1267 - APPEALS.

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(b) Any party desiring to appeal a decision of an Administrative Law Judge denying temporary relief may appeal to the Board or, in the alternative, may seek judicial review pursuant to section 526(a) of the Act.

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