

FEDERAL REGISTER: 46 FR 6942 (January 22, 1981)

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: This final rule changes the effective date of filing legal documents in adjudicative proceedings under the Surface Mining Control and Reclamation Act of 1977. This action is necessary so that delays in the mail will not cause parties to lose their legal rights. It permits filing to be effective upon mailing the document rather than on receipt of the document.

EFFECTIVE DATE: January 22, 1981.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

43 CFR 4.1107(g) concerns the effective filing date for documents filed with an administrative law judge, other than a document initiating a proceeding, and for all documents filed with the Board of Surface Mining and Reclamation Appeals. Presently, the regulation provides that the filing date is the date the document is received by the administrative law judge or the Board. Mail delays have resulted in the dismissal of several appeals by the Board for late filing. To alleviate this problem, 43 CFR 4.1107(g) is changed to make the effective filing date the date of mailing for a notice of appeal or petition for discretionary review filed with the Board, rather than the date of receipt. However, the date of receipt is retained for cases in which the Board has a regulatory deadline for issuing a decision -- 30 days from the filing of a perfected application under 43 CFR 4.1187(h) and within 60 days of the date the hearing record is closed by the administrative law judge under 43 CFR 4.1196. Language is added to place the burden of establishing the date of mailing on the person filing the document. A postmark will suffice as evidence of mailing; however, occasionally mail is delivered with an illegible postmark or no postmark at all. Therefore, filing parties are cautioned that the best evidence of the date of mailing is a certificate of mailing issued by the post office. In addition, a postage meter postmark will not be considered evidence of mailing since such meters may be adjusted to show a date other than the actual date of mailing. Proof that a document was properly addressed would also be required to establish the date of mailing; this can also be accomplished by obtaining a certificate of mailing.

Since 43 CFR 4.1107(g), as changed, relates only to notices of appeal and petitions for discretionary review filed with the Board, 43 CFR 4.1107(h) is added to establish the effective filing date for all other documents filed with the Board and for all documents, other than an initiating document, filed with an administrative law judge. The effective filing date for those documents is the date of mailing. The burden of establishing the date of mailing is on the person filing the document. The discussion above concerning establishing the date of mailing is applicable to this regulation also.

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.

Because these rules are not significant and are rules of Departmental procedure, they need not be and were not published in proposed form for public comment. 5 U.S.C. 553(b)(A), 43 CFR 14.5(d)(2). They shall be effective on the date of their publication because they do not substantially modify earlier procedures. 43 CFR 14.5(d)(4).

Dated: January 16, 1981.

Cecil D. Andrus, Secretary of the Interior.

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

SECTION 4.1107 - FILING OF DOCUMENTS.

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(g) The effective filing date for a notice of appeal or a petition for discretionary review filed with the Board shall be the date of mailing or the date of personal delivery, except the effective filing date for a notice of appeal from a decision in an expedited review of a cessation order proceeding or from a decision in a suspension or revocation proceeding shall be the date of receipt of the document by the Board. The burden of establishing the date of mailing shall be on the person filing the document.

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2. Section 4.1107(h) is added:

SECTION 4.1107 - FILING OF DOCUMENTS.

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(h) The effective filing date for all other documents filed with an administrative law judge or with the Board shall be the date of mailing or personal delivery. The burden of establishing the date of mailing shall be on the person filing the document.

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