

Office of the Secretary, Interior

§ 4.1286

any decision or order and shall not affect the finality of any decision or order for purposes of judicial review.

[43 FR 34386, Aug. 3, 1978, as amended at 67 FR 61511, Oct. 1, 2002]

APPEALS TO THE BOARD FROM DECISIONS OF THE OFFICE OF SURFACE MINING

§ 4.1280 Scope.

This section is applicable to appeals from decisions of the Director of OSM concerning small operator exemptions under 30 CFR 710.12(h) and to other appeals which are not required by the Act to be determined by formal adjudication under the procedures set forth in 5 U.S.C. 554.

§ 4.1281 Who may appeal.

Any person who is or may be adversely affected by a written decision of the Director of OSM or his delegate may appeal to the Board where the decision specifically grants such right of appeal.

§ 4.1282 Appeals; how taken.

(a) A person appealing under this section shall file a written notice of appeal with the office of the OSM official whose decision is being appealed and at the same time shall send a copy of the notice to the Board of Land Appeals, 801 North Quincy Street, Arlington, Va. 22203.

(b) The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed within 30 days of the date of the decision.

(c) The notice of appeal shall indicate that an appeal is intended and must identify the decision being appealed. The notice should include the serial number or other identification of the case and the date of the decision. The notice of appeal may include a statement of reasons for the appeal and any arguments the appellant desires to make.

(d) If the notice of appeal did not include a statement of reasons for the appeal, such a statement shall be filed with the Board within 20 days after the notice of appeal was filed. In any case, the appellant shall be permitted to file

with the Board additional statements of reasons and written arguments or briefs within the 20-day period after filing the notice of appeal.

[43 FR 34386, Aug. 3, 1978, as amended at 49 FR 7565, Mar. 1, 1984; 67 FR 4368, Jan. 30, 2002]

§ 4.1283 Service.

(a) The appellant shall serve personally or by certified mail, return receipt requested, a copy of the notice of appeal and a copy of any statement of reasons, written arguments, or other documents on each party within 15 days after filing the document. Proof of service shall be filed with the Board within 15 days after service.

(b) Failure to serve may subject the appeal to summary dismissal pursuant to § 4.1285.

§ 4.1284 Answer.

(a) Any party served with a notice of appeal who wishes to participate in the proceedings on appeal shall file an answer with the Board within 20 days after service of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal.

(b) If additional reasons, written arguments or other documents are filed by the appellant, a party shall have 20 days after service thereof within which to answer. The answer shall state the reasons the party opposes or supports the appeal.

§ 4.1285 Summary dismissal.

An appeal shall be subject to summary dismissal, in the discretion of the Board, for failure to file or serve, upon all persons required to be served, a notice of appeal or a statement of reasons for appeal.

§ 4.1286 Request for hearings.

(a) Any party may request the Board to order a hearing before an administrative law judge in order to present evidence on an issue of fact. Such a request shall be made in writing and filed with the Board within 20 days after the answer is due. Copies of the request shall be served in accordance with § 4.1283.

(b) The allowance of a request for a hearing is within the discretion of the

§ 4.1290

Board, and the Board may, on its own motion, refer any case to an administrative law judge for a hearing on an issue of fact. If a hearing is ordered, the Board shall specify the issues upon which the hearing is to be held.

PETITIONS FOR AWARD OF COSTS AND EXPENSES UNDER SECTION 525(e) OF THE ACT

§ 4.1290 Who may file.

(a) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in—

(1) A final order being issued by an administrative law judge; or

(2) A final order being issued by the Board.

(b) [Reserved]

§ 4.1291 Where to file; time for filing.

The petition for an award of costs and expenses including attorneys' fees must be filed with the administrative law judge who issued the final order, or if the final order was issued by the Board, with the Board, within 45 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

§ 4.1292 Contents of petition.

(a) A petition filed under this section shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition—

(1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(2) Receipts or other evidence of such costs and expenses; and

(3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

(b) [Reserved]

43 CFR Subtitle A (10-1-02 Edition)

§ 4.1293 Answer.

Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

§ 4.1294 Who may receive an award.

Appropriate costs and expenses including attorneys' fees may be awarded—

(a) To any person from the permittee, if—

(1) The person initiates or participates in any administrative proceeding reviewing enforcement actions upon a finding that a violation of the Act, regulations, or permit has occurred, or that an imminent hazard existed, and the administrative law judge or Board determines that the person made a substantial contribution to the full and fair determination of the issues, except that a contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding; or

(2) The person initiates an application for review of alleged discriminatory acts, pursuant to 30 CFR part 830, upon a finding of discriminatory discharge or other acts of discrimination.

(b) From OSM to any person, other than a permittee or his representative, who initiates or participates in any proceeding under the Act, and who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that such person made a substantial contribution to a full and fair determination of the issues.

(c) To a permittee from OSM when the permittee demonstrates that OSM issued an order of cessation, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee; or

(d) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under section 525 of the Act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.