

CODE OF FEDERAL REGULATIONS

TITLE 43—PUBLIC LANDS: INTERIOR

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Current as of October 1, 2011

Subpart G—Special Rules Applicable to Other Appeals and Hearings

Sec.

4.700 Who may appeal.

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AUTHORITY: 5 U.S.C. 301.

§ 4.700 Who may appeal.

Any party aggrieved by an adjudicatory action or decision of a Departmental official relating to rights or privileges based upon law in any case or proceeding in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision, should direct his appeal to the Director, Office of Hearings and Appeals, if the case is not one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director. No appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official.

§ 4.701 Notice of appeal.

The appellant shall file a written notice of appeal, signed by him or by his attorney or other qualified representative, in the Office of the Director, within 30 days from the date of mailing of the decision from which the appeal is taken. The notice shall contain an identification of the action or decision appealed from and give a concise but complete statement of the facts relied upon and the relief sought. The appellant shall mail a copy of the notice of appeal, any accompanying statement of reasons therefor, and any written arguments or briefs, to each party to the proceedings or whose rights are involved in the case, and to the Departmental official whose action or decision is being appealed. The notice of appeal shall contain a certificate setting forth the names of the parties served, their addresses, and the dates of mailing.

§ 4.702 Transmittal of appeal file.

Within 10 days after receipt of a copy of the notice of appeal, the Departmental official whose action or decision is being appealed shall transmit to the Office of the Director the entire

official file in the matter, including all records, documents, transcripts of testimony, and other information compiled during the proceedings leading to the decision being appealed.

§ 4.703 Pleadings.

If the parties wish to file briefs, they must comply with the following requirements: Appellant shall have 30 days from the date of filing of his notice of appeal within which to file an opening brief, and the opposing parties shall have 30 days from the date of receipt of appellant's brief in which to file an answering brief. Additional or rebuttal briefs may be filed upon permission first obtained from the Director or the Ad Hoc Appeals Board appointed by him to consider and decide the particular appeal. Copies of all briefs shall be served upon all other parties or their attorneys of record or other qualified representatives, and a certificate to that effect shall be filed with said brief.

§ 4.704 Decisions on appeals.

The Director, or an Ad Hoc Appeals Board appointed by the Director to consider and decide the particular appeal, will review the record and take such action as the circumstances call for. The Director or the Ad Hoc Appeals Board may direct a hearing on the entire matter or specified portions thereof, may decide the appeal forthwith upon the record already made, or may make other disposition of the case. Upon request and for good cause shown, the Director or an Ad Hoc Appeals Board may grant an opportunity for oral argument. Any hearing on such appeals shall be conducted by the Ad Hoc Appeals Board or a member or members thereof, or by an administrative law judge of the Office of Hearings and Appeals and shall be governed insofar as practicable by the regulations applicable to other hearings under this part.