

FEDERAL REGISTER: 53 FR 47693 (November 25, 1988)

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 burden of proof as to whether a violation occurred by allocating the ultimate burden of persuasion to the petitioner for review in a civil penalty proceeding under the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: This rule is effective December 27, 1988.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Telephone (703) 235-3750.

SUPPLEMENTARY INFORMATION:

On October 15, 1987, the Office of Hearings and Appeals published a proposed amendment of 43 CFR 4.1155. *52 FR 38246-38247* (October 15, 1987). The amendment proposed to change the allocation of the ultimate burden of persuasion as to the fact of a violation from the Office of Surface Mining Reclamation and Enforcement to the petitioner for review in a proceeding for administrative review of a civil penalty proposed in accordance with section 518(a) of the Surface Mining Control and Reclamation Act of 1977, *30 U.S.C. 1268(a)* (1982), in order to make the allocation of the burden of proof concerning this issue consistent with 43 CFR 4.1171 and with the legislative intent expressed in S. Rep. No. 128, 95th Cong., 1st Sess. 93 (1977).

Interested persons were given until November 16, 1987, to submit comments on the proposed amendment of this rule. No comments were received. The amendment is, therefore, adopted as proposed.

Determination of Effects

Because this rule only amends a procedure involving administrative review, the Department of the Interior has determined that it is not major, as defined by Executive Order 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, *5 U.S.C. 601* et seq.

National Environmental Policy Act

The Department has determined that this rule will not significantly affect the quality of the human environment, on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

This rule contains no information collection requirements requiring Office of Management and Budget approval under *44 U.S.C. 3501* et seq.

Drafting

This rule was drafted by Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals.

LIST OF SUBJECTS IN 43 CFR PART 4

Administrative practice and procedure, Mines, Public lands-mineral resources, Surface mining.

For the reasons set forth above, Section 4.1155 of Subpart L, Part 4 of Title 43 of the Code of Federal Regulations, is revised as set forth below.

Dated: October 7, 1988.
Earl E. Gjelde, Under Secretary.

PART 4 -- [AMENDED]

1. The authority for 43 CFR Part 4, Subpart L, continues to read as follows:

Authority: *30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.*

2. Section 4.1155 is revised to read as follows:

SECTION 4.1155 - BURDENS OF PROOF IN CIVIL PENALTY PROCEEDINGS.

In civil penalty proceedings, OSM shall have the burden of going forward to establish a prima facie case as to the fact of the violation and the amount of the civil penalty and the ultimate burden of persuasion as to the amount of the civil penalty. The person who petitioned for review shall have the ultimate burden of persuasion as to the fact of the violation.

[FR Doc. 88-27236 Filed 11-23-88; 8:45 am]
BILLING CODE 4310-79-M