

Subject: Proposed rulemaking for Appeals of MMS Orders at 64 Fed. Re
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Dear Mr. Guzy:

Administrative Law Judge Nicholas Kuzmack and myself are employed by the Salt Lake City office of the Hearings Division, Office of Hearings and Appeals (OHA), U.S. Department of the Interior. We became aware of the proposed rulemaking today, after the end of the comment period, so I apologize for the tardiness of these comments. Judge Kuzmack concurs with the comments made herein, but I am speaking for him and myself only, as so far today we have been unable to contact persons higher up the chain of command at OHA.

The beginning of proposed 43 C.F.R. ° 4.956(b) should be amended as follows to include the words, "an Administrative Law Judge":

"(b) General Provision. If an Administrative Law Judge, IBLA, or an Assistant Secretary ((or the Secretary or the Director of OHA) does not issue a final decision in an appeal by the date the appeal ends under ° 4.912, "

This amendment is necessary because an Administrative Law Judge may issue a decision under proposed 43 C.F.R. ° 4.945(c)(3)(iii) or proposed 43 C.F.R. ° 4.946(b)(4)(iii) which would be final for the Department absent an appeal to IBLA.

Proposed 43 C.F.R. ° 4.947 should be amended so that the Administrative Law Judge, and not IBLA, is given the authority to establish appropriate deadlines for a certain limited class of matters referred to an Administrative Law Judge under ° 4.945. That limited class is those matters in which the appellant has agreed in writing under ° 4.958 to extend the period in which the Department must issue a final decision under ° 4.956 by the additional amount of time necessary for the Hearings Division to complete any action with respect to the referral request. Thus, the proposed ° 4.947 ought to read along the following lines:

"° 4.947 May IBLA or the Administrative Law Judge establish deadlines for matters referred to Administrative Law Judges?

(a) IBLA may establish appropriate deadlines for any matter referred to an Administrative Law Judge under °° 4.945 or 4.946, except

any matter referred under ° 4.945 for which the appellant has agreed in writing under ° 4.958 to extend the period in which the Department must issue a final decision under ° 4.956, by the additional amount of time necessary for the Hearings Division to complete any action with respect to the referral request.

(b) The Administrative Law Judge may establish appropriate deadlines for any matter referred under ° 4.945 for which the appellant has agreed in writing under ° 4.958 to extend the period in which the Department must issue a final decision under ° 4.956, by the additional amount of time necessary for the Hearings Division to complete any action with respect to the referral request."

This amendment is appropriate because Hearings Division administrative law judges, in contrast to IBLA administrative judges, (1) regularly preside over evidentiary proceedings and are thus experienced in determining the time necessary to complete prehearing, hearing, and posthearing activities, and (2) are properly situated to establish and amend deadlines in light of changing circumstances and developments which occur prehearing, during the hearing, or posthearing. Further, where the appellant agrees to extend the decision deadline by the additional time necessary to complete any action regarding the referral request, IBLA has no competing concern that the administrative law judge will so delay completion of such action that IBLA is left with insufficient time to meet the decision deadline.

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