

§ 1241.7

§ 1241.7 How do I request a hearing on the record on a Notice?

You may request a hearing on the record before an ALJ on a Notice by filing a request within 30 days of the date of service of the Notice with the DCHD, at the address indicated in your Notice. The 30 day-period to request a hearing on the record will not be extended for any reason.

§ 1241.8 How will DCHD conduct the hearing on the record?

If you request a hearing on the record under §1241.7, an ALJ will conduct the hearing under the provisions of 43 CFR 4.420 through 4.438, except when the provisions are inconsistent with the provisions of this part. We have the burden of proving, by a preponderance of the evidence, the fact of the violation and the basis for the amount of the civil penalty. Upon completion of the hearing, the ALJ will issue a decision according to the evidence presented and the applicable law.

§ 1241.9 May I appeal the ALJ's decision?

If you are adversely affected by the ALJ's decision, you may appeal that decision to the IBLA under 43 CFR part 4, subpart E.

§ 1241.10 May I seek judicial review of the IBLA decision?

You may seek judicial review of the IBLA decision under 30 U.S.C. 1719(j) in Federal District Court. You must file a suit for judicial review in Federal District Court within 90 days after the final IBLA decision.

§ 1241.11 Does my hearing request affect a penalty?

(a) If you do not correct the violation identified in a Notice, any penalty will continue to accrue, even if you request a hearing, except as provided in paragraph (b) of this section.

(b) *Standards and procedures for obtaining a stay.* If you request in a timely manner a hearing on a Notice, you may petition the DCHD to stay the as-

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essment or accrual of penalties pending the hearing on the record and a decision by the ALJ under §1241.8.

(1) You must file your petition for stay within 45 calendar days after you receive a Notice.

(2) You must file your petition for stay under 43 CFR 4.21(b), in which event:

(i) We may file a response to your petition within 30 days after service.

(ii) The 45-day requirement set out in 43 CFR 4.21(b)(4) for the ALJ to grant or deny the petition does not apply.

(3) If the ALJ determines that a stay is warranted, the ALJ will issue an order granting your petition, subject to your satisfaction of the following condition: within 10 days of your receipt of the order, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 1243, subpart B; or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 1243, subpart C, for any specified, unpaid principal amount that is the subject of the Notice, any interest accrued on the principal, and the amount of any penalty set out in a Notice accrued up to the date of the ALJ order conditionally granting your petition.

(4)(i) If you satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, the accrual of penalties will be stayed effective on the date of the ALJ's order conditionally granting your petition.

(ii) If you fail to satisfy the condition to post a bond or surety instrument or demonstrate financial solvency under paragraph (b)(3) of this section, penalties will continue to accrue.

(5) Notwithstanding paragraphs (b)(1), (2), (3), and (4) of this section, if the ALJ determines that your defense to a Notice is frivolous, and a civil penalty is owed, you will forfeit the benefit of the stay, and penalties will be calculated as if no stay had been granted.