

appealable under the appeals process being proposed today.

The proposed administrative appeal process for a final Corps jurisdictional determination is a two-level process. The initial appeal is to an independent jurisdictional expert within a Corps District Office. The second level appeal would be to a regulatory expert within a Corps Division Office. Depending on the specific issues raised the individuals responsible for the appeal process may consult technical experts from other Corps offices. The proposed administrative appeal process for permit denials is a one-level process. The appeal would be to the Corps Division Office. The appeal process would be conducted by a Review Officer in the Division Regulatory Office and the final appeal decision would be made by the Division Engineer. In cases where an applicant refuses a proffered permit because of objectionable conditions, the District Engineer will review the case and will deny the permit, issue the permit without the condition, or offer the applicant a permit with different conditions, which if refused would be denied. In those cases where such proffered permits are denied the applicant may appeal the denial to the Division Engineer.

Filing of a jurisdictional determination appeal under this rule will be limited to the permit applicant or the landowner (i.e., and individual who has an identifiable and substantial legal interest in the property.) The authorized agent of the permit applicant or the landowner may also file the appeal.

Most Corps districts currently have an informal consultation procedure wherein disagreements on jurisdictional determinations or permit decisions are discussed between the Corps Project Manager/supervisor and the landowner/agent/consultant. Based upon additional information or differing interpretations of the data or issues, the preliminary jurisdictional determination or permit decision may be revised or conditioned to the mutual satisfaction of the parties. The Corps encourages the continued use of the informal consultation process as the most efficient and responsive means of resolving jurisdictional and permit issues. If informal consultation proves fruitless, the proposed administrative appeals process provides a formal administrative course of action.

Corps districts also respond to jurisdictional queries by providing an "office" jurisdictional determination, based on a review of wetland inventory maps, State or local wetland maps, topographic maps, soils maps, aerial photography, and land-use plans or

studies. These office or preliminary jurisdictional determinations are advisory in nature and provided primarily for planning purposes and may not be appealed.

To ensure compliance with national policies and procedures, and consistency among the administrative appeals officers within Division and District regulatory offices, the administrative appeals program will be monitored by the office of the Chief of Engineers. Implementing guidance will be provided when deemed appropriate.

As discussed in further detail below, additional manpower and funding would be necessary for the Corps to implement an administrative appeals process for its regulatory program. The President has included \$6 million for the administrative appeals process in the FY 96 budget submitted to Congress. Additionally, training will be necessary for the additional personnel hired to hear the appeal cases and some organizational adjustments may be needed to accommodate an appeals process. Given these considerations, we anticipate that implementation of an administrative appeals process could be accomplished no later than 6 months after the effective date of a final rule. Review officers at Divisions and Districts may begin hearing cases before the projected implementation date if funding, staffing, and training are completed.

II. Proposed Rule Organization

The proposed administrative appeals process rule is organized into the following sections:

Section 331.1, *Purpose and Policy*, describes the basic purpose of the proposed rule and the Corps of Engineers policies regarding the appeals process.

Section 331.2, *Definitions*, contains the definitions of important terms that are used throughout the proposed rule. The following terms are defined in this section: Wetland delineation, jurisdictional determination, permit denial, appealable action, affected party, appellant, review officer, notification of appeals process, and request for appeal.

Section 331.3, *Review Officers*, describes the independence, authority and organizational location of the review officers (ROs). ROs for jurisdictional determinations would be located in District and Division regulatory offices and the ROs for permit denials would be located in Division regulatory offices.

Section 331.4, *Notification of Appealable Actions*, would require that the Corps district office send notification of each appealable action to

the affected party in writing. Each notification would contain additional information on the administrative appeals process and provide a form that the affected party must use to request an appeal.

Section 331.5, *Criteria*, describes the criteria which must be met for an action to qualify for the appeals process and also lists specific situations which would preclude an action from qualifying for the appeals process.

Section 331.6, *Filing Appeals*, provides 60 days from the date on the letter of notification of the appealable action, for the affected party to submit a request for appeal to the Corps. In filing the appeal, the affected party must also grant the Corps the right of entry onto the property in order to conduct appropriate field testing and data collection.

Section 331.7, *Review Procedures*, describes the procedures for reviewing a request for appeal (RFA). First, the RFA must be complete and meet the established criteria for appeal. If requested, or determined to be necessary, the RO also has the discretion to conduct a review meeting with the appellant for jurisdictional determinations. For permit denials, an appeal review conference will be held within 60 days after receipt of the RFA. Procedures for conducting the conference are included.

Section 331.8, *Timeframes for Final Appeals Decisions*, establishes the maximum time limits for Corps final appeals decisions.

Section 331.9, *Final Appeals Decisions*, describes the potential outcomes of an appeal process for an appealable action and concludes the administrative appeals process. Additionally, this section discusses the timeframes for the ROs, District Engineers and Division Engineers to reach a final decision on the merits of the appeal.

Section 331.10, *Final Agency Decisions*, describes when a final agency decision has been made for an action that has been appealed.

Section 331.11, *Unauthorized Activities*, discusses the policies and procedures for administrative appeals of appealable actions involving unauthorized activities.

Finally, section 331.12, *Exhaustion of Administrative Remedies*, describes the administrative process and remedies that an appellant must exhaust before he can seek further review or relief from an adverse action through a judicial action in Federal District Court.