

District RO's discretion, may extend the time period for making the final decision to 30 days beyond the date of receipt of additional information submitted by the appellant, unless conditions as described in paragraph (a)(1)(ii) of this section exist.

(2) *Division level appeal.* The Division RO, or designated Corps official, will make a final decision on the merits of the appeal within 60 days of receipt of the RFA.

(b) *Permit denials.* The Division Engineer will make a final decision on the merits of the appeal within 90 days of receipt of the RFA, or the revised RFA.

§ 331.9 Final appeals decisions.

(a) In accordance with the authorities contained in § 331.3(b), the Corps appeal decision will either:

(1) determine that the appeal has no merit;

(2) determine that the appeal has merit; or

(3) for jurisdictional determinations only, at the District level the RO, or designated Corps official, may determine that the appeal has merit and revise the jurisdictional determination.

(b) The Corps will document the appeal decision, addressing the conclusions reached on the merits of the appellant's appeal. If the Corps determines that the appeal has merit (paragraph (b)(2) above), the RO will notify the district of further analysis and evaluation needed before the district can make a final agency decision. The RO will notify the appellant and the appropriate Corps office of the final appeal decision on the merits of the appeal in writing. The appellant will be notified by certified mail.

(c) The final appeal decision of the Division RO, the designated Corps official, or the Division Engineer, as appropriate, concludes the administrative appeal process and will be included in the administrative records. There is no further administrative appeal of the appealable action.

§ 331.10 Final agency decisions.

(a) *Jurisdictional Determinations.* The final agency decision on a jurisdictional determination that has been appealed will be made by one of the following methods:

(1) If the Division RO, or designated Corps official, determines that the

appeal has no merit, then the final agency decision is the original jurisdiction determination or a District RO, or designated Corps official, corrected jurisdiction determination, as appropriate; or

(2) If the Division RO, or designated Corps official, determines that the appeal has merit, the Division RO, or designated Corps official, will provide direction to the original decision-maker or the District RO, as appropriate, to complete the administrative record and/or further analyze or evaluate specific issues. Subsequently, the final agency decision is the final jurisdictional determination made pursuant to the Division RO's, or designated Corps official's appeal decision; or

(3) If the appellant accepts the agency decision based on the District RO's, or designated Corps official's appeal decision (see § 331.9) or does not appeal to the Division Engineer, then that decision becomes the final agency decision. However, in such cases, the appellant has acted without exhausting all the administrative remedies under this rule. (See § 331.12).

(b) *Permit denials.* The final agency decision on a permit denial that has been appealed will be made by one of the following methods:

(1) If the Division Engineer determines that the appeal has no merit, the final agency decision is the District Engineer's denial decision; or

(2) If the Division Engineer determines that the appeal has merit, the Division Engineer will provide direction to the District Engineer to complete the administrative record and/or further analyze or evaluate specific issues. Subsequently, the final agency decision is the District Engineer's final decision made pursuant to the Division Engineer's appeal decision.

§ 331.11 Unauthorized activities.

Jurisdictional determinations and permit denials associated with after-the-fact permit applications are appealable actions for the purposes of these regulations. If the Corps accepts an after-the-fact permit application, an administrative appeal of a jurisdictional determination and/or a permit denial may be filed and processed in accordance with these regulations subject to the provisions of paragraphs (a), (b), and (c) of this section. An appeal of jurisdictional determinations associated with unauthorized activities

will normally not be accepted unless the Corps accepts an after-the-fact permit application. However, in rare cases, the District Engineer may accept an appeal of such a jurisdictional determination, if the District Engineer determines that the interests of justice, fairness, and administrative efficiency would be served thereby.

(a) *Initial corrective measures.* If the District Engineer determines that initial corrective measures are necessary pursuant to 33 CFR 326.3(d), an RFA for an appealable action will not be accepted by the Corps, until the initial corrective measures have been completed.

(b) *Penalties.* If an affected party requests, under this Section, an administrative appeal of an appealable action prior to the resolution of the unauthorized activity and the RO determines that the appeal has no merit, the responsible party remains subject to any civil, criminal, and administrative penalties as provided by law. Any penalty imposed, as determined in the appropriate forum by the appropriate decision-maker, may also include in the calculation of penalty the time period involving the appeal process.

(c) *Tolling of statute of limitations.* The RFA associated with unauthorized activities must include a signed statute of limitations tolling agreement. (See 33 CFR 326.3(e)(1)(v).) No administrative appeal will be accepted until such agreement is furnished to the district engineer.

§ 331.12 Exhaustion of administrative remedies.

Applicants or landowners may not file a legal action in Federal District Court challenging a jurisdiction determination or a permit denial until after a final agency decision has been made on the permit application (i.e., permit issuance or denial) and the appellant has exhausted all applicable administrative remedies under this Part. If an appellant is challenging a permit denial, the appellant exhausts all administrative remedies when a final agency decision is made in accordance with § 331.10(b).

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