the final order or final order upon reconsideration is vacated, the proceeding shall be remanded to the appropriate administrative judge for reconsideration and/or rehearing.

[56 FR 61383, Dec. 3, 1991, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.357 Guardians for minors and incompetents.

Persons less than 18 years of age and other legal incompetents who are parties in interest may be represented at all hearings by legally appointed guardians or by guardians *ad litem* appointed by the administrative judge.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

AUTHORITY: Sections 4.470 to 4.480 are also issued under authority of 43 U.S.C. 315a.

CROSS REFERENCE: See subpart A for the authority, jurisdiction and membership of the Board of Land Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Land Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see subpart B.

APPEALS PROCEDURES

APPEALS PROCEDURES; GENERAL

§ 4.400 Definitions.

As used in this subpart:

Administrative law judge means an administrative law judge in the Office of Hearings and Appeals, appointed under 5 U.S.C. 3105.

BIA means the Bureau of Indian Affairs.

BLM means the Bureau of Land Management.

Board means the Interior Board of Land Appeals in the Office of Hearings and Appeals. The address of the Board is 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203. The telephone number is 703–235–3750, and the facsimile number is 703–235–8349.

BOEMRE means the Bureau of Ocean Energy Management, Regulation and Enforcement.

Bureau or Office means BIA, BLM, BOEMRE, ONRR, the Deputy Assistant Secretary—Natural Resources Revenue, or any successor organization, as appropriate.

Last address of record means the address in a person's most recent filing in an appeal or, if there has not been any filing, the person's address as provided in the Bureau or Office decision under appeal.

ONRR means the Office of Natural Resources Revenue.

Office or *officer* includes ''administrative law judge'' or ''Board'' where the context so requires.

Party includes a party's representative(s) where the context so requires.

Secretary means the Secretary of the Interior or an authorized representative.

[75 FR 64663, Oct. 20, 2010; 75 FR 68704, Nov. 9, 2010]

§ 4.401 Documents.

(a) *Grace period for filing*. Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed.

(b) *Transferees and encumbrancers*. Transferees and encumbrancers of land the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(c) *Service of documents.* (1) A party that files any document under this subpart must serve a copy of it concurrently as follows:

(i) On the appropriate official of the Office of the Solicitor under §4.413(c) and (d);

(ii) For a notice of appeal and statement of reasons, on each person named in the decision under appeal; and

(iii) For all other documents, on each party to the appeal (including intervenors).

(2) Service on a person or party known to be represented by counsel or other designated representative must be made on the representative.

(3) Service must be made at the last address of record of the person or party (if unrepresented) or the representative, unless the person, party, or representative has notified the serving party of a subsequent change of address.

(4) Service may be made as shown in the following table:

If the document is . . .	Service may be made by . . .
(i) A notice of appeal	(A) Personal delivery; (B) Registered or certified mail, return receipt requested; (C) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or (D) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing.
(ii) Not a notice of appeal	(A) Personal delivery; (B) Mail; (C) Delivery service, if the last address of record is not a post office box; or (D) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing.

(5) At the conclusion of any document that a party must serve under the regulations in this subpart, the party must sign a written statement that:

(i) Certifies that service has been or will be made in accordance with the applicable rules; and

(ii) Specifies the date and manner of service.

(6) Service that complies with paragraphs (c)(2) through (4) of this section is complete as shown in the following table:

If service is made by . . .	Service is complete when the document is . . .
(i) Personal delivery	Delivered to the party.
(ii) Mail or delivery service	Delivered to the party.
(iii) Electronic means	Transmitted to the party, unless the serving party learns that it did not reach the party to be served.

(7) In the absence of evidence to the contrary, delivery under paragraph (c)(6)(ii) of this section is deemed to take place 5 business days after the document was sent. A document is considered sent when it is given to the U.S. Postal Service (or deposited in one of its mailboxes), properly addressed and with proper postage affixed, or when it is given to a delivery service (or deposited in one of its receptacles), properly addressed and with the delivery cost prepaid.

(d) *Document format.* (1) The format requirements in paragraph (d)(2) of this section apply to any pleading, motion, brief, or other document filed in a case under this subpart, other than an exhibit or attachment or the administrative record.

(i) An exhibit or attachment must be 8½ by 11 inches in size or, if larger, folded to 8½ by 11 inches and attached to the document.

(ii) Any document that does not comply with the requirements in this paragraph (d) may be rejected.

(2) A document filed in a case must:

(i) Be 8½ by 11 inches in size;

(ii) Be printed on just one side of the page;

(iii) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(iv) Use 11 point font size or larger;

(v) Be double-spaced except for the case caption, argument headings, long quotations, and footnotes, which may be single-spaced;

(vi) Have margins of at least 1 inch;

(vii) Be numbered sequentially, starting on the second page; and

(vii) Be stapled in the upper left-hand corner, if stapled, or bound on the left side, if bound.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 68 FR 33803, June 5, 2003; 75 FR 64664, Oct. 20, 2010]

§ 4.402 Summary dismissal.

An appeal to the Board will be subject to summary dismissal by the Board for any of the following causes:

(a) If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;

(b) If the notice of appeal is not served upon adverse parties within the time required; and

(c) If the statement of reasons, if not contained in the notice of appeal, is not served upon adverse parties within the time required.

(d) If the statement of standing required by § 4.412(b) is not filed with the Board or is not served upon adverse parties within the time required.

[36 FR 7186, Apr. 15, 1971, as amended at 47 FR 26392, June 18, 1982]

§ 4.403 Finality of decision; reconsideration.

(a) The Board's decision is final agency action and is effective on the date it is issued, unless the decision itself provides otherwise.

(b) The Board may reconsider its decision in extraordinary circumstances.

(1) A party that wishes to request reconsideration of a Board decision must file a motion for reconsideration with the Board within 60 days after the date of the decision.

(2) The motion may include a request that the Board stay the effectiveness of its decision.

(3) Any other party to the original appeal may file a response to a motion for reconsideration with the Board within 21 days after service of the motion, unless the Board orders otherwise.

(4) A motion for reconsideration will not stay the effectiveness or affect the finality of the Board's decision unless so ordered by the Board for good cause.

(5) A party does not need to file a motion for reconsideration in order to exhaust its administrative remedies.

(c) A motion for reconsideration must:

(1) Specifically describe the extraordinary circumstances that warrant reconsideration; and

(2) Include all arguments and supporting documents.

(d) Extraordinary circumstances that may warrant granting reconsideration include, but are not limited to:

(1) Error in the Board's interpretation of material facts;

(2) Recent judicial development;

(3) Change in Departmental policy; or

(4) Evidence that was not before the Board at the time the Board's decision was issued and that demonstrates error in the decision.

(e) If the motion cites extraordinary circumstances under paragraph (d)(4) of this section, it must explain why the evidence was not provided to the Board during the course of the original appeal.

(f) The Board will not grant a motion for reconsideration that:

(1) Merely repeats arguments made in the original appeal, except in cases of demonstrable error; or

(2) Seeks relief from the legally binding consequences of a statute or regulation.

[75 FR 64664, Oct. 20, 2010]

§ 4.404 Consolidation.

If the facts or legal issues in two or more appeals pending before the Board are the same or similar, the Board may consolidate the appeals, either on motion by a party or at the initiative of the Board.

[75 FR 64665, Oct. 20, 2010]

§ 4.405 Extensions of time.

(a) If a document other than a notice of appeal is required to be filed or served within a definite time, a party may seek additional time by filing with the Board a motion requesting an extension of time.

(b) A motion requesting an extension must be filed no later than the day before the date the document is due, absent compelling circumstances. The motion may be filed and served by facsimile. Section 4.401(a) does not apply to a motion requesting an extension of time.

(c) Except as provided in paragraph (f) of this section, before filing a motion requesting an extension of time, the moving party must make reasonable efforts to contact each other party to determine whether the party opposes the motion. The moving party must state in its motion:

(1) Whether any party it reached opposes the motion; and

(2) What steps it took to contact any party it was unable to reach.

(d) Except as provided in paragraph (f) of this section, the party must support its motion requesting an extension of time by showing there is good cause to grant it.

(e) A Board order granting or denying a motion requesting an extension will state when the document must be filed. Except as provided in paragraph (f) of this section, if the Board does not act on a motion before the document is due, the document must be filed no later than 15 days after the original due date, unless the Board orders otherwise.

(f) A party seeking additional time to file an answer may have one automatic extension, not to exceed 30 days, of the deadline in § 4.414(a) by filing a motion for such extension under paragraphs (a) and (b) of this section.

[75 FR 64665, Oct. 20, 2010]

§ 4.406 Intervention; amicus curiae.

(a) A person who wishes to intervene in an appeal must file a motion to intervene within 30 days after the person knew or should have known that the decision had been appealed to the Board.

(b) A motion to intervene must set forth the basis for the proposed intervention, including:

(1) Whether the person had a right to appeal the decision under § 4.410 or would be adversely affected if the Board reversed, vacated, set aside, or modified the decision; and

(2) How and when the person learned of the appeal.

(c) The Board may:

(1) Grant the motion to intervene;

(2) Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or

(3) Grant the motion to intervene but limit the person's participation in the appeal.

(d) A person may file a motion at any time to file a brief as an amicus curiae.

(1) The motion must state the person's interest in the appeal and how its brief will be relevant to the issues involved.

(2) The Board may grant or deny the motion in its discretion. The Board may also allow a person to file a brief as amicus curiae if it denies the person's motion to intervene.

(e) A person granted full or limited intervenor status is a party to the appeal, while an amicus curiae is not. A person granted amicus curiae status must serve its brief on the parties to the appeal.

[75 FR 64665, Oct. 20, 2010]

§ 4.407 Motions.

(a) Any motion filed with the Board must provide a concise statement of the reasons supporting the motion.

(b) When a person or party files a motion, other than a motion for an extension of time under § 4.405, any party has 15 days after service of the motion to file a written response, unless a provision of this subpart or the Board by order provides otherwise.

(c) The Board will rule on any motion as expeditiously as possible.

(d) The requirements of § 4.401(d) apply to a motion.

[75 FR 64665, Oct. 20, 2010]

APPEALS TO THE BOARD OF LAND APPEALS

§ 4.410 Who may appeal.

(a) Any party to a case who is adversely affected by a decision of the Bureau or Office or an administrative law judge has the right to appeal to the Board, except:

(1) As otherwise provided in Group 2400 of chapter II of this title,

(2) To the extent that decisions of Bureau of Land Management officers must first be appealed to an administrative law judge under § 4.470 and part 4100 of this title,

(3) Where a decision has been approved by the Secretary, and

(4) As provided in paragraph (e) of this section.

(b) A party to a case, as set forth in paragraph (a) of this section, is one who has taken action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

(c) Where the Bureau or Office provided an opportunity for participation in its decisionmaking process, a party to the case, as set forth in paragraph (a) of this section, may raise on appeal only those issues:

(1) Raised by the party in its prior participation; or

(2) That arose after the close of the opportunity for such participation.

(d) A party to a case is adversely affected, as set forth in paragraph (a) of this section, when that party has a legally cognizable interest, and the decision on appeal has caused or is substantially likely to cause injury to that interest.

(e) For decisions rendered by Departmental officials relating to land selections under the Alaska Native Claims Settlement Act, as amended, any party who claims a property interest in land affected by the decision, an agency of the Federal Government or a regional corporation shall have a right to appeal to the Board.

[47 FR 26392, June 18, 1982, as amended at 68 FR 33803, June 5, 2003; 75 FR 64665, Oct. 20, 2010]

§ 4.411 Appeal; how taken, mandatory time limit.

(a) A person who wishes to appeal to the Board must file a notice that the person wishes to appeal.

(1) The notice of appeal must be filed in the office of the officer who made the decision (not the Board).

(2) Except as otherwise provided by law:

(i) A person served with the decision being appealed must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of service of the decision; and

(ii) If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of publication.

(b) The notice of appeal must give the serial number or other identification of the case. The notice of appeal may include a statement of reasons for the appeal, and a statement of standing if required by § 4.412(b).

(c) No extension of time will be granted for filing the notice of appeal. If a notice of appeal is filed after the grace period provided in § 4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the notice of appeal is filed during the grace period provided in § 4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

(d) After receiving a timely notice of appeal, the office of the officer who made the decision must promptly forward to the Board:

(1) The notice of appeal;

(2) Any statement of reasons, statement of standing, and other documents included with the notice of appeal; and

(3) The complete administrative record compiled during the officer's consideration of the matter leading to the decision being appealed.

(R.S. 2478, as amended, 43 U.S.C. 1201; sec. 25, Alaska Native Claims Settlement Act, as amended, 43 U.S.C. 1601–1628; and the Administrative Procedure Act, 5 U.S.C. 551, et seq.)

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 49 FR 6373, Feb. 21, 1984; 75 FR 64665, Oct. 20, 2010]

§4.412 Statement of reasons; statement of standing; reply briefs.

(a) An appellant must file a statement of reasons for appeal with the Board no later than 30 days after the notice of appeal was filed. Unless the Board orders otherwise upon motion for good cause shown, the text of a statement of reasons may not exceed 30 pages, excluding exhibits, declarations, or other attachments.

(b) Where the decision being appealed relates to land selections under the Alaska Native Claims Settlement Act, as amended, the appellant also shall file with the Board a statement of facts upon which the appellant relies for standing under §4.410(b) within 30 days after filing of the notice of appeal. The statement may be included with the notice of appeal filed pursuant to §4.411 or the statement of reasons filed pursuant to paragraph (a) of this section or may be filed as a separate document.

(c) Failure to file the statement of reasons and statement of standing within the time required will subject the appeal to summary dismissal as provided in §4.402, unless the delay in filing is waived as provided in §4.401(a).

(d) The filing of a reply brief is discouraged. However, an appellant who wishes to file a reply brief may do so within 15 days after service of an answer under §4.414.

(1) The reply brief is limited to the issues raised in the answer.

(2) Unless the Board orders otherwise upon motion for good cause shown, the text of a reply brief may not exceed 20 pages, excluding exhibits, declarations, or other attachments.

(e) The requirements of §4.401(d) apply to a statement of reasons and a reply brief.

[47 FR 26392, June 18, 1982, as amended at 67 FR 4368, Jan. 30, 2002; 75 FR 64666, Oct. 20, 2010]

§4.413 Service of notice of appeal.

(a) The appellant must serve a copy of the notice of appeal on each person named in the decision from which the appeal is taken and on the Office of the Solicitor as identified in paragraphs (c) and (d) of this section. Service must be accomplished and certified as prescribed in §4.401(c).

(b) Failure to serve a notice of appeal will subject the appeal to summary dismissal as provided in §4.402.

(c) The appellant must serve a copy of the notice of appeal on the Office of the Solicitor as shown in the following table.

If the appeal is taken from a decision of . . .	Then the appellant must serve the notice on . . .
(1) ONRR, the Deputy Assistant Secretary—Natural Resources Revenue, or BIA concerning royalties.	Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.
(2) BOEMRE	Associate Solicitor, Division of Mineral Resources, U.S. Department of the Interior, Washington, DC 20240.
(3) The Director, BLM	(i) If the decision concerns use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended: Associate Solicitor, Division of Land and Water Resources, U.S. Department of the Interior, Washington, DC 20240; or (ii) If the decision concerns use and disposition of mineral resources: Associate Solicitor, Division of Mineral Resources, U.S. Department of the Interior, Washington, DC 20240.
(4) A BLM State Office (including all District, Field, and Area Offices within that State Office's jurisdiction).	The appropriate office identified in paragraph (d) of this section.
(5) An Administrative Law Judge	The persons identified in paragraph (e) of this section.

(d) This paragraph applies to any appeal taken from a decision of a BLM State Office, including all District, Field, and Area Offices within that State Office's jurisdiction. The appellant must serve documents on the Office of the Solicitor in accordance with the following table, unless the decision identifies a different official:

BLM state office	Mailing address
(1) Alaska	Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, AK 99508–4626.

BLM state office	Mailing address
(2) Arizona	Field Solicitor, U.S. Department of the Interior, U.S. Courthouse, Suite 404, 401 W. Washington St. SPC 44, Phoenix, AZ 85003.
(3) California	Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–1712, Sacramento, CA 95825–1890.
(4) Colorado	Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.
(5) Eastern States	(i) For decisions involving Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, or Wisconsin: Regional Solicitor, Northeast Region, U.S. Department of the Interior, One Gateway Center, Suite 612, Newton, MA 02458.
	(ii) For decisions involving Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, or Tennessee: Regional Solicitor, Southeast Region, U.S. Department of the Interior, 75 Spring Street, SW., Suite 304, Atlanta, Georgia 30303.
(6) Idaho	Field Solicitor, U.S. Department of the Interior, University Plaza, 960 Broadway Avenue, Suite 400, Boise, ID 83706.
(7) Montana (covers the states of Montana, North Dakota, and South Dakota).	(i) Deliveries by U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107–1394.
	(ii) All other deliveries: Field Solicitor, U.S. Department of the Interior, 316 North 26th Street, Room 3005, Billings, MT 59101.
(8) Nevada	Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–1712, Sacramento, CA 95825–1890.
(9) New Mexico (covers the states of New Mexico, Kansas, Oklahoma, and Texas).	Regional Solicitor, Southwest Region, U.S. Department of the Interior, 505 Marquette Ave., NW., Suite 1800, Albuquerque, NM 87102.
(10) Oregon (covers the states of Oregon and Washington).	Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 805 SW. Broadway, Suite 600, Portland, OR 97205.
(11) Utah	Regional Solicitor, Intermountain Region, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138–1180.
(12) Wyoming (covers the states of Wyoming and Nebraska).	Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.

(e) This paragraph applies to any appeal taken from a decision of an administrative law judge.

(1) Except as provided in paragraph (e)(2) of this section, the appellant must serve either:

(i) The attorney from the Office of the Solicitor who represented the Bureau or Office at the hearing; or

(ii) If there was no hearing, the attorney who was served with a copy of the decision by the administrative law judge.

(2) If the decision involved a mining claim on national forest land, the appellant must serve either:

(i) The attorney from the Office of General Counsel, U.S. Department of Agriculture, who represented the U.S. Forest Service at the hearing; or

(ii) If there was no hearing, the attorney who was served with a copy of the decision by the administrative law judge.

(f) Parties must serve the Office of the Solicitor as required by this section until a particular attorney of the Office of the Solicitor files and serves a Notice of Appearance or Substitution of Counsel. Thereafter, parties must serve the Office of the Solicitor as indicated by the Notice of Appearance or Substitution of Counsel.

(g) The appellant must certify service as provided in § 4.401(c)(5).

[75 FR 64666, Oct. 20, 2010]

§ 4.414 Answers.

(a) Any person served with a notice of appeal who wishes to participate in the appeal must file an answer or appropriate motion with the Board within 30 days after service of the statement of reasons for appeal. The answer must respond to the statement of reasons for appeal.

(b) Unless the Board orders otherwise upon motion for good cause shown:

(1) The text of the answer or motion may not exceed 30 pages, excluding exhibits, declarations, or other attachments; and

(2) The party may not file any further pleading.

(c) Failure to file an answer or motion will not result in a default. If an answer or motion is filed or served after the time required, the Board may

disregard it in deciding the appeal, unless the delay in filing is waived as provided in §4.401(a).

(d) The requirements of §4.401(d) apply to an answer or motion.

[75 FR 64666, Oct. 20, 2010]

§4.415 Motion for a hearing on an appeal involving questions of fact.

(a) Any party may file a motion that the Board refer a case to an administrative law judge for a hearing. The motion must state:

(1) What specific issues of material fact require a hearing;

(2) What evidence concerning these issues must be presented by oral testimony, or be subject to cross-examination;

(3) What witnesses need to be examined; and

(4) What documentary evidence requires explanation, if any.

(b) In response to a motion under paragraph (a) of this section or on its own initiative, the Board may order a hearing if there are:

(1) Any issues of material fact which, if proved, would alter the disposition of the appeal; or

(2) Significant factual or legal issues remaining to be decided, and the record without a hearing would be insufficient for resolving them.

(c) If the Board orders a hearing, it must:

(1) Specify the issues of fact upon which the hearing is to be held; and

(2) Request the administrative law judge to issue:

(i) Proposed findings of fact on the issues presented at the hearing;

(ii) A recommended decision that includes findings of fact and conclusions of law; or

(iii) A decision that will be final for the Department unless a notice of appeal is filed in accordance with §4.411.

(d) If the Board orders a hearing, it may do one or more of the following:

(1) Suspend the effectiveness of the decision under review pending a final Departmental decision on the appeal if it finds good cause to do so;

(2) Authorize the administrative law judge to specify additional issues; or

(3) Authorize the parties to agree to additional issues that are material, with the approval of the administrative law judge.

(e) The hearing will be conducted under §§4.430 to 4.438 and the general rules in subpart B of this part. Unless the Board orders otherwise, the administrative law judge may consider other relevant issues and evidence identified after referral of the case for a hearing.

[75 FR 64666, Oct. 20, 2010]

§4.416 Appeals of wildfire management decisions.

The Board must decide appeals from decisions under §4190.1 and §5003.1(b) of this title within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed.

[68 FR 33803, June 5, 2003]

HEARINGS PROCEDURES

Hearings procedures; general

§4.420 Applicability of general rules.

To the extent they are not inconsistent with these special rules, the general rules of the Office of Hearings and Appeals in subpart B of this part are also applicable to hearings, procedures.

§4.421 Definitions.

In addition to the definitions in §4.400, as used in this subpart:

Director means the Director of BLM or a BLM Deputy Director or Assistant Director.

Manager means the BLM official with direct jurisdiction over the public lands that are pertinent to the decision or contest.

Person named in the decision means any of the following persons identified in a final BLM grazing decision: An affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in §4100.0–5 of this title.

State Director means the supervising BLM officer for the State in which a particular range lies, or an authorized representative.

[75 FR 64667, Oct. 20, 2010]

§ 4.422 Documents.

(a) *Grace period for filing.* Whenever a document is required under this subpart to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph does not apply to requests for postponement of hearings under §§ 4.452–1 and 4.452–2.

(b) *Transferees and encumbrancers.* Transferees and encumbrancers of land, the title to which is claimed or is in the process of acquisition under any public land law shall, upon filing notice of the transfer or encumbrance in the proper land office, become entitled to receive and be given the same notice of any contest, appeal, or other proceeding thereafter initiated affecting such interest which is required to be given to a party to the proceeding. Every such notice of a transfer or encumbrance will be noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(c) *Service of documents.* (1) A party that files any document under this subpart must serve a copy of it concurrently as follows:

(i) On the appropriate official of the Office of the Solicitor under § 4.413(c) and (d);

(ii) For a notice of appeal and statement of reasons, on each person named in the decision under appeal; and

(iii) For all other documents, on each party to the appeal.

(2) Service on a party known to be represented by counsel or other designated representative must be made on the representative.

(3) Service must be made at the last address of record of the party (if unrepresented) or the representative, unless the party or representative has notified the serving party of a subsequent change of address.

(4) Service may be made as shown in the following table:

If the document is . . .	Service may be made by . . .
(i) An appeal under § 4.470	(A) Personal delivery; (B) Registered or certified mail, return receipt requested; (C) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or (D) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means of service in writing.
(ii) A complaint under § 4.450–4 or 4.451–2.	(A) Any of the methods specified in paragraph (c)(4)(i) of this paragraph; or (B) Publication as specified in § 4.450–5.
(iii) Neither an appeal nor a complaint.	(A) Personal delivery; (B) Mail; (C) Delivery service, if the last address of record is not a post office box; or (D) Electronic means, such as electronic mail or facsimile, if the person to be served has consented to that means in writing.

(5) At the conclusion of any document that a party must serve under the regulations in this subpart, the party must sign a written statement that:

(i) Certifies that service has been or will be made in accordance with the applicable rules; and

(ii) Specifies the date and manner of service.

(6) Service that complies with paragraphs (c)(2) through (4) of this section is complete as shown in the following table:

If service is made by . . .	Service is complete when . . .
(i) Personal delivery	The document is delivered to the party.

If service is made by . . .	Service is complete when . . .
(ii) Mail or delivery service	The document is delivered to the party.
(iii) Electronic means	The document is transmitted to the party, unless the serving party learns that it did not reach the party to be served.
(iv) Publication	The final notice is published under §4.450–5(b)(3).

(7) In the absence of evidence to the contrary, delivery under paragraph (c)(6)(ii) of this section is deemed to take place 5 business days after the document was sent.

(d) The manager or administrative law judge, as the case may be, may extend the time for filing or serving any document in a contest, other than a notice of appeal under §4.452–9.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 68 FR 33803, June 5, 2003; 75 FR 64667, Oct. 20, 2010]

§4.423 Subpoena power and witness provisions.

The administrative law judge is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers, for the purpose of taking testimony but not for discovery. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the Act of January 31, 1903 (43 U.S.C. 102–106), and 28 U.S.C. 1821.

HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT

§4.430 Prehearing conferences.

(a) The administrative law judge may, in his discretion, on his own motion or motion of one of the parties or of the Bureau or Office direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings.

(b) The administrative law judge shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the administrative law judge unless modified for good cause, by subsequent order.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64668, Oct. 20, 2010]

§4.431 Fixing of place and date for hearing; notice.

The administrative law judge shall fix a place and date for the hearing and notify all parties and the Bureau or Office. All hearings held in connection with land selection appeals arising under the Alaska Native Claims Settlement Act, as amended, shall be conducted within the State of Alaska, unless the parties agree otherwise.

[47 FR 26392, June 18, 1982, as amended at 75 FR 64668, Oct. 20, 2010]

§4.432 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau or Office except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the administrative law judge at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the

testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64668, Oct. 20, 2010]

§ 4.433 Authority of the administrative law judge.

(a) The administrative law judge has general authority to conduct the hearing in an orderly and judicial manner, including authority to:

(1) Administer oaths;

(2) Call and question witnesses;

(3) Subpoena witnesses as specified in paragraph (b) of this section;

(4) Issue findings and decisions as specified in paragraph (c) of this section; and

(5) Take any other actions that the Board may prescribe in referring the case for hearing.

(b) The administrative law judge has authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery. This authority must be exercised in accordance with the Act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102 through 106).

(c) The administrative law judge has authority to issue any of the following, as specified by the Board under § 4.415(c)(2):

(1) Proposed findings of fact on the issues presented at the hearing;

(2) A recommended decision that includes findings of fact and conclusions of law; or

(3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411 within 30 days of receipt of the decision.

(d) The issuance of subpoenas, the attendance of witnesses, and the taking of depositions are governed by §§ 4.423 and 4.26.

[75 FR 64668, Oct. 20, 2010]

§ 4.434 Conduct of hearing.

(a) The administrative law judge may seek to obtain stipulations as to material facts.

(b) Unless the administrative law judge directs otherwise:

(1) The appellant will first present its evidence on the facts at issue; and

(2) The other parties and the Bureau or Office will then present their evidence on such issues.

[75 FR 64668, Oct. 20, 2010]

§ 4.435 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The administrative law judge may question any witnesses. Documentary evidence may be received if pertinent to any issue. The administrative law judge will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the administrative law judge. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an administrative law judge sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 4.436 Reporter's fees.

Reporter's fees shall be borne by the Bureau or Office.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64668, Oct. 20, 2010]

§ 4.437 Copies of transcript.

Each party must pay for any copies of the transcript that the party requests. The Bureau or Office will file

the original transcript with the case record.

[75 FR 64668, Oct. 20, 2010]

§ 4.438 Action by administrative law judge.

(a) Upon completion of the hearing and the incorporation of the transcript in the record, the administrative law judge will issue and serve on the parties, as specified by the Board under § 4.415(c)(2):

(1) Proposed findings of fact on the issues presented at the hearing;

(2) A recommended decision that includes findings of fact and conclusions of law and that advises the parties of their right to file exceptions under paragraph (c) of this section; or

(3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(b) The administrative law judge will promptly send to the Board the record and:

(1) The proposed findings;

(2) The recommended decision; or

(3) The final decision if a timely notice of appeal is filed.

(c) The parties will have 30 days from service of proposed findings or a recommended decision to file exceptions with the Board.

[75 FR 64668, Oct. 20, 2010]

CONTEST AND PROTEST PROCEEDINGS

§ 4.450 Private contests and protests.

§ 4.450–1 By whom private contest may be initiated.

Any person who claims title to or an interest in land adverse to any other person claiming title to or an interest in such land or who seeks to acquire a preference right pursuant to the Act of May 14, 1880, as amended (43 U.S.C. 185), or the Act of March 3, 1891 (43 U.S.C. 329), may initiate proceedings to have the claim of title or interest adverse to his claim invalidated for any reason not shown by the records of the Bureau of Land Management. Such a proceeding will constitute a private contest and will be governed by the regulations herein.

§ 4.450–2 Protests.

Where the elements of a contest are not present, any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest and such action thereon will be taken as is deemed to be appropriate in the circumstances.

§ 4.450–3 Initiation of contest.

Any person desiring to initiate a private contest must file a complaint in the proper land office (see § 1821.2–1 of chapter II of this title). The contestant must serve a copy of the complaint on the contestee not later than 30 days after filing the complaint and must file proof of such service, as required by § 4.422(c), in the office where the complaint was filed within 30 days after service.

§ 4.450–4 Complaints.

(a) *Contents of complaint*. The complaint shall contain the following information, under oath:

(1) The name and address of each party interested;

(2) A legal description of the land involved;

(3) A reference, so far as known to the contestant, to any proceedings pending for the acquisition of title to, or an interest, in such land:

(4) A statement in clear and concise language of the facts constituting the grounds of contest;

(5) A statement of the law under which contestant claims or intends to acquire title to, or an interest in, the land and of the facts showing that he is qualified to do so;

(6) A statement that the proceeding is not collusive or speculative but is insitituted and will be diligently pursued in good faith;

(7) A request that the contestant be allowed to prove his allegations and that the adverse interest be invalidated;

(8) The office in which the complaint is filed and the address to which papers shall be sent for service on the contestant; and

(9) A notice that unless the contestee files an answer to the complaint in such office within 30 days after service

of the notice, the allegations of the complaint will be taken as confessed.

(b) *Amendment of complaint.* Except insofar as the manager, administrative law judge, Director, Board or Secretary may raise issues in connection with deciding a contest, issues not raised in a complaint may not be raised later by the contestant unless the administrative law judge permits the complaint to be amended after due notice to the other parties and an opportunity to object.

(c) *Corroboration required.* All allegations of fact in the complaint which are not matters of official record or capable of being judicially noticed and which, if proved, would invalidate the adverse interest must be corroborated under oath by the statement of witnesses. Each such allegation of fact must be corroborated by the statement of at least one witness having personal knowledge of the alleged fact and such fact must be set forth in the statement. All statements by witnesses shall be attached to the complaint.

(d) *Filing fee.* Each complaint must be accompanied by a filing fee of $10 and a deposit of $20 toward reporter's fees. Any complaint which is not accompanied by the required fee and deposit will not be accepted for filing.

(e) *Waiver of issues.* Any issue not raised by a private contestant in accordance with the provisions of paragraph (b) of this section, which was known to him, or could have been known to him by the exercise of reasonable diligence, shall be deemed to have been waived by him, and he shall thereafter be forever barred from raising such issue.

§ 4.450–5 Service.

The complaint must be served upon every contestee in the manner provided in § 4.422(c)(1). Proof of service must be made in the manner provided in § 4.422(c)(2). In certain circumstances, service may be made by publication as provided in paragraph (b)(1) of this section. When the contest is against the heirs of a deceased entryman, the notice must be served on each heir. If the person to be personally served is an infant or a person who has been legally adjudged incompetent, service of notice must be made by delivering a copy of the notice to the legal guardian or committee, if there is one, of such infant or incompetent person. If there is no guardian or committee, then service must be by delivering a copy of the notice to the person having the infant or incompetent person in charge.

(a) *Summary dismissal; waiver of defect in service.* If a complaint when filed does not meet all the requirements of § 4.450–4(a) and (c), or if the complaint is not served upon each contestee as required by this section, the complaint will be summarily dismissed by the manager and no answer need be filed. However, where prior to the summary dismissal of a complaint a contestee answers without questioning the service or proof of service of the complaint, any defect in service will be deemed waived as to such answering contestee.

(b) *Service by publication*—(1) *When service may be made by publication.* When the contestant has made diligent search and inquiry to locate the contestee, and cannot locate him, the contestant may proceed with service by publication after first filing with the manager an affidavit which shall:

(i) State that the contestee could not be located after diligent search and inquiry made within 15 days prior to the filing of the affidavit;

(ii) Be corroborated by the affidavits of two persons who live in the vicinity of the land which state that they have no knowledge of the contestee's whereabouts or which give his last known address;

(iii) State the last known address of the contestee; and

(iv) State in detail the efforts and inquiries made to locate the party sought to be served.

(2) *Contents of published notice.* The published notice must give the names of the parties to the contest, legal description of the land involved, the substance of the charges contained in the complaint, the office in which the contest is pending, and a statement that upon failure to file an answer in such office within 30 days after the completion of publication of such notice, the allegations of the complaint will be taken as confessed. The published notice shall also contain a statement of the dates of publication.

(3) *Publication, mailing and posting of notice.* (i) Notice by publication shall be made by publishing notice at least once a week for 5 successive weeks in some newspaper of general circulation in the county in which the land in contest lies.

(ii) Within 15 days after the first publication of a notice, the contestant shall send a copy of the notice and the complaint by registered or certified mail, return receipt requested, to the contestee at his last known address and also to the contestee in care of the post office nearest the land. The return receipts shall be filed in the office in which the contest is pending.

(iii) A copy of the notice as published shall be posted in the office where the contest is pending and also in a conspicuous place upon the land involved. Such postings shall be made within 15 days after the first publication of the notice.

(c) *Proof of service.* (1) Proof of publication of the notice shall be made by filing in the office where the contest is pending a copy of the notice as published and the affidavit of the publisher or foreman of the newspaper publishing the same showing the publication of the notice in accordance with paragraph (b)(3) of this section.

(2) Proof of posting of the notice shall be by affidavit of the person who posted the notice on the land and by the certificate of the manager or the Director of the Bureau of Land Management as to posting in his office.

(3) Proof of the mailing of notice shall be by affidavit of the person who mailed the notice to which shall be attached the return receipt.

[36 FR 7186, Apr. 15, 1971, as amended at 68 FR 33803, June 5, 2003]

§ 4.450–6 Answer to complaint.

Within 30 days after service of the complaint or after the last publication of the notice, the contestee must file in the office where the contest is pending an answer specifically meeting and responding to the allegations of the complaint, together with proof of service of a copy of the answer upon a contestant as provided in § 4.450–5(b)(3). The answer shall contain or be accompanied by the address to which all notices or other papers shall be sent for service upon contestee.

§ 4.450–7 Action by manager.

(a) If an answer is not filed as required, the allegations of the complaint will be taken as admitted by the contestee and the manager will decide the case without a hearing.

(b) If an answer is filed and unless all parties waive a hearing, the manager will refer the case to an administrative law judge upon determining that the elements of a private contest appear to have been established.

§ 4.450–8 Amendment of answer.

At the hearing, any allegation not denied by the answer will be considered admitted. The administrative law judge may permit the answer to be amended after due notice to other parties and an opportunity to object.

§ 4.451 Government contests.

§ 4.451–1 How initiated.

The Government may initiate contests for any cause affecting the legality or validity of any entry or settlement or mining claim.

§ 4.451–2 Proceedings in Government contests.

The proceedings in Government contests shall be governed by the rules relating to proceedings in private contests with the following exceptions:

(a) No corroboration shall be required of a Government complaint and the complaint need not be under oath.

(b) A Government contest complaint will not be insufficient and subject to dismissal for failure to name all parties interested, or for failure to serve every party who has been named.

(c) No filing fee or deposit toward reporter's fee shall be required of the Government.

(d) Any action required of the contestant may be taken by any authorized Government employee.

(e) The statements required by § 4.450–4(a) (5) and (6) need not be included in the complaint.

(f) No posting of notice of publication on the land in issue shall be required of the Government.

(g) Where service is by publication, the affidavits required by § 4.450–5(b)(1) need not be filed. The contestant shall file with the manager a statement of diligent search which shall state that the contestee could not be located after diligent search and inquiry, the last known address of the contestee and the detail of efforts and inquiries made to locate the party sought to be served. The diligent search shall be concluded not more than 15 days prior to the filing of the statement.

(h) In lieu of the requirements of § 4.450–5(b)(3)(ii) the contestant shall, as part of the diligent search before the publication or within 15 days after the first publication send a copy of the complaint by certified mail, return receipt requested, to the contestee at the last address of record. The return receipts shall be filed in the office in which the contest is pending.

(i) The affidavit required by § 4.450–5(c)(3) need not be filed.

(j) The provisions of paragraph (e) of § 4.450–4(e) shall be inapplicable.

§ 4.452 Proceedings before the administrative law judge.

§ 4.452–1 Prehearing conferences.

(a) The administrative law judge may in his discretion, on his own motion or on motion of one of the parties, or of the Bureau, direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider:

(1) The simplification of the issues,

(2) The necessity of amendments to the pleadings,

(3) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents,

(4) The limitation of the number of expert witnesses, and

(5) Such other matters as may aid in the disposition of the proceedings.

(b) The administrative law judge shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admission or agreements. Such order shall control the subsequent course of the proceedings before the administrative law judge unless modified for good cause, by subsequent order.

§ 4.452–2 Notice of hearing.

The administrative law judge shall fix a place and date for the hearing and notify all parties and the Bureau at least 30 days in advance of the date set, unless the parties and the Bureau request or consent to an earlier date. The notice shall include (a) the time, place, and nature of the hearing, (b) the legal authority and jurisdiction under which the hearing is to be held, and (c) the matters of fact and law asserted. All hearings held in connection with land selection appeals arising under the Alaska Native Claims Settlement Act, as amended, shall be conducted within the state of Alaska, unless the parties agree otherwise.

[47 FR 26392, June 18, 1982]

§ 4.452–3 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the administrative law judge at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the administrative law judge within 5 days after the service of the request a statement admitting that the

witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

§ 4.452–4 Authority of administrative law judge.

The administrative law judge is vested with general authority to conduct the hearing in an orderly and judicial manner, including authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of tasking testimony but not for discovery in accordance with the act of January 31, 1903 (43 U.S.C. 102–106), to administer oaths, to call and question witnesses, and to make a decision. The issuance of subpoenas, the attendance of witnesses and the taking of depositions shall be governed by §§ 4.423 and 4.26 of the general rules in subpart B of this part.

§ 4.452–5 Conduct of hearing.

So far as not inconsistent with a prehearing order, the administrative law judge may seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he may wish to have evidence presented. He may exclude irrelevant issues. The contestant will then present his case following which the other parties (and in private contests the Bureau, if it intervenes) will present their cases.

§ 4.452–6 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The administrative law judge may question any witness. Documentary evidence may be received if pertinent to any issue. The administrative law judge will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the administrative law judge. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an administrative law judge sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence, and the objecting party may then make an offer of proof in rebuttal.

§ 4.452–7 Reporter's fees.

(a) The Government agency initiating the proceedings will pay all reporting fees in hearings in Government contest proceedings, in hearings under the Surface Resources Act of 1955, as amended, in hearings under the Multiple Mineral Development Act of 1954, as amended, where the United States is a party, and in hearings under the Mining Claims Rights Restoration Act of 1955, regardless of which party is ultimately successful.

(b) In the case of a private contest, each party will be required to pay the reporter's fees covering the party's direct evidence and cross-examination of witnesses, except that if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(c) Each party to a private contest shall be required by the administrative law judge to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits shall be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (b) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's fee. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

§ 4.452–8 Findings and conclusions; decision by administrative law judge.

(a) At the conclusion of the testimony the parties at the hearing shall be given a reasonable time by the administrative law judge, considering the number and complexity of the issues and the amount of testimony, to submit to the administrative law judge proposed findings of fact and conclusions of law and reasons in support thereof or to stipulate to a waiver of such findings and conclusions.

(b) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the administrative law judge shall make findings of fact and conclusions of law (unless waiver has been stipulated), giving the reasons therefor, upon all the material issues of fact, law, or discretion presented on the record. The administrative law judge may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each proposed finding and conclusion submitted by the parties and such ruling shall be shown in the record. The administrative law judge will render a written decision in the case which shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, and his rulings upon the findings and conclusions proposed by the parties if such rulings do not appear elsewhere in the record. A copy of the decision will be served upon all parties to the case.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64669, Oct. 20, 2010]

§ 4.452–9 Appeal to Board.

Any party, including the Government, adversely affected by the decision of the administrative law judge may appeal to the Board as provided in § 4.410, and the general rules in Subpart B of this part. No further hearing will be allowed in connection with the appeal to the Board but the Board, after considering the evidence, may remand any case for further hearing if it considers such action necessary to develop the facts.

GRAZING PROCEDURES (INSIDE AND OUTSIDE GRAZING DISTRICTS)

SOURCE: 44 FR 41790, July 18, 1979, unless otherwise noted.

§ 4.470 How to appeal a final BLM grazing decision to an administrative law judge.

(a) Any applicant, permittee, lessee, or other person whose interest is adversely affected by a final BLM grazing decision may appeal the decision to an administrative law judge within 30 days after receiving it or within 30 days after a proposed decision becomes final as provided in § 4160.3(a) of this title. To do so, the person must file an appeal with the BLM field office that issued the decision and serve a copy of the appeal on any person named in the decision.

(b) The appeal must state clearly and concisely the reasons why the appellant thinks the BLM grazing decision is wrong.

(c) Any ground for appeal not included in the appeal is waived. The appellant may not present a waived ground for appeal at the hearing unless permitted or ordered to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM grazing decision within the period provided in paragraph (a) of this section may not later challenge the matters adjudicated in the final BLM decision.

(e) Filing an appeal does not by itself stay the effectiveness of the final BLM decision. To request a stay of the final BLM decision pending appeal, *see* § 4.471.

[68 FR 68770, Dec. 10, 2003]

§ 4.471 How to petition for a stay of a final BLM grazing decision.

(a) An appellant under § 4.470 may petition for a stay of the final BLM grazing decision pending appeal by filing a petition for a stay together with the appeal under § 4.470 with the BLM field office that issued the decision.

(b) Within 15 days after filing the appeal and petition for a stay, the appellant must serve copies on—

(1) Any other person named in the decision from which the appeal is taken; and

(2) The appropriate office of the Office of the Solicitor, in accordance with §4.413(a) and (c).

(c) A petition for a stay of a final BLM grazing decision pending appeal under paragraph (a) of this section must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

(d) The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

[68 FR 68770, Dec. 10, 2003]

§4.472 Action on an appeal and petition for a stay.

(a) BLM must transmit any documents received under §§4.470 and 4.471, within 10 days after receipt, to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah. If a petition for a stay has been filed, the transmittal must also include any response BLM wishes to file to a petition for a stay and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under §4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay. BLM must serve a copy of any such response on the appellant and any other person named in the decision from which the appeal is taken.

(b) Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the appropriate office of the Office of the Solicitor in accordance with §4.413(a) and (c), and any other person named in the decision.

(c) If a petition for a stay has not been filed, BLM must promptly transmit the following documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under §4160.2; and the final BLM grazing decision.

(d) Within 45 days after the expiration of the time for filing a notice of appeal, an administrative law judge must grant or deny—

(1) A petition for a stay filed under §4.471(a), in whole or in part; and

(2) A motion to intervene filed with a response to the petition under paragraph (b) of this section.

(e) Any final BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the administrative law judge denies a petition for a stay or fails to act on the petition within the time set forth in paragraph (d) of this section.

(f) At any appropriate time, any party may file with the Hearings Division a motion to dismiss the appeal or other appropriate motion. The appellant and any other party may file a response to the motion within 30 days after receiving a copy.

(g) Within 15 days after filing a motion or response under paragraph (f) of this section, any moving or responding party must serve a copy on every other party. Service on BLM must be made on the appropriate office of the Office of the Solicitor in accordance with §4.413(a) and (c).

[68 FR 68770, Dec. 10, 2003]

§4.473 Time and place of hearing; notice; intervenors.

At least 30 days before the date set by the administrative law judge the authorized officer will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the

authorized officer may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the administrative law judge as an intervenor in the appeal.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

§ 4.474 Authority of administrative law judge.

(a) The administrative law judge is vested with the duty and general authority to conduct the hearing in an orderly, impartial, and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The administrative law judge shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 4.26 of the general rules in Subpart B of this part, to the extent such regulations are applicable.

(b) The administrative law judge also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 4.452–3.

(c) The administrative law judge may consider and rule on all motions and petitions, including a petition for a stay of a final BLM grazing decision.

(d) An administrative law judge may consolidate two or more appeals for purposes of hearing and decision when they involve a common issue or issues.

[44 FR 41790, July 18, 1979. Redesignated and amended at 68 FR 68770, 68771, Dec. 10, 2003]

§ 4.475 Service.

Service of notice or other documents required under this subpart shall be governed by §§ 4.413 and 4.422. Proof of such service shall be filed in the same office where the notice or document was filed within 15 days after such service, unless filed with the notice or document.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

§ 4.476 Conduct of hearing; reporter's fees; transcript.

(a) The appellant, the State Director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The administrative law judge will state any other issues on which he may wish to have evidence presented. Issues which appear to the administrative law judge to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State Director or his representative, unless the administrative law judge rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the administrative law judge and of the other parties.

(b) Unless the administrative law judge orders otherwise, the State Director or his representative will then make the opening statement, setting forth the facts leading to the appeal. Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. (In the case of a show cause, the State Director shall set forth the facts leading to the issuance of the show cause notice and shall present his case following the opening statement.) Following the appellant's presentation, or upon his failure to make such presentation, the administrative law judge, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper

and warranted. An appeal may be had from such order as well as from any other final determination made by the administrative law judge.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the administrative law judge to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses shall be subject to cross-examination by any party to the proceeding. The administrative law judge may question any witness whenever it appears necessary. Documentary evidence will be received by the administrative law judge and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the administrative law judge will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The administrative law judge shall summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same preference and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the administrative law judge proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

(d) The reporter's fees will be borne by the Government. Each party must pay for any copies of the transcript that the party requests. The Government will file the original transcript with the case record.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003, as amended at 75 FR 64669, Oct. 20, 2010]

§4.477 Findings and conclusions; decision by administrative law judge.

As promptly as possible after the time allowed for presenting proposed findings and conclusions, the administrative law judge will make findings of fact and conclusions of law, unless waiver has been stipulated, and will render a decision upon all issues of material fact and law presented on the record. In doing so, he or she may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. The reasons for the findings, conclusions, and decision made will be stated, and along with the findings, conclusions, and decision, will become a part of the record in any further appeal. A copy of the decision must be sent by certified mail to all the parties.

[75 FR 64669, Oct. 20, 2010]

§4.478 Appeals to the Board of Land Appeals; judicial review.

(a) Any person who has a right of appeal under §4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay in accordance with §4.411.

(b) As an alternative to paragraph (a) of this section, any party other than BLM may seek judicial review under 5 U.S.C. 704 of a final BLM grazing decision if the administrative law judge denies a petition for a stay, either directly or by failing to meet the deadline in §4.472(d).

(c) If a party appeals under paragraph (a) of this section, the Board must issue an expedited briefing schedule and decide the appeal promptly.

(d) Unless the Board or a court orders otherwise, an appeal under paragraph (a) of this section does not—

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

(e) Any party adversely affected by the administrative law judge's decision

on the merits has the right to appeal to the Board under the procedures in this part.

[68 FR 68771, Dec. 10, 2003, as amended at 75 FR 64669, Oct. 20, 2010]

§ 4.479 Effectiveness of decision during appeal.

(a) Consistent with the provisions of §§ 4.21(a) and 4.472(e) and except as provided in paragraphs (b) and (c) of this section or other applicable regulation, a final BLM grazing decision will not be effective—

(1) Until the expiration of the time for filing an appeal under § 4.470(a); and

(2) If a petition for a stay is filed under § 4.471(a), until the administrative law judge denies the petition for a stay or fails to act on the petition within the time set forth in § 4.472(d).

(b) Consistent with the provisions of §§ 4160.3 and 4190.1 of this title and notwithstanding the provisions of § 4.21(a), a final BLM grazing decision may provide that the decision will be effective immediately. Such a decision will remain effective pending a decision on an appeal, unless a stay is granted by an administrative law judge under § 4.472 or by the Board under § 4.478(a).

(c) Notwithstanding the provisions of § 4.21(a), when the public interest requires, an administrative law judge may provide that the final BLM grazing decision will be effective immediately.

(d) An administrative law judge or the Board may change or revoke any action that BLM takes under a final BLM grazing decision on appeal.

(e) In order to ensure exhaustion of administrative remedies before resort to court action, a BLM grazing decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless—

(1) A petition for a stay of the BLM decision has been timely filed and the BLM decision has been made effective under § 4.472(e), or

(2) The BLM decision has been made effective under paragraphs (b) or (c) of this section or other applicable regulation, and a stay has not been granted.

(f) Exhaustion of administrative remedies is not required if a stay would not render the challenged portion of the BLM decision inoperative under subpart 4160 of this title.

[68 FR 68771, Dec. 10, 2003]

§ 4.480 Conditions of decision action.

(a) *Record as basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative, and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceedings, shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing preference will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of part 4100 of this title.

[44 FR 41790, July 18, 1979. Redesignated at 68 FR 68770, Dec. 10, 2003]

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 71 FR 6366, Feb. 8, 2006, unless otherwise noted.

GENERAL PROVISIONS

§ 4.601 What is the purpose of this subpart?

(a) The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Department of the Interior. Under the Act, an eligible party may receive an award when it prevails over the Department or other agency, unless the position of the Department or other agency was substantially justified or special circumstances make an award unjust. The regulations in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures