

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 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 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:

(a) *Secretary* means the Secretary of the Interior or his authorized representatives.

(b) *Bureau* means Bureau of Land Management.

(c) *Board* means the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. The terms *office* or *officer* as used in this subpart include *Board* where the context requires.

(d) *Administrative law judge* means an administrative law judge in the Office of Hearings and Appeals, Office of the Secretary, appointed under section 3105 of title 5 of the United States Code.

#### §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) Wherever the regulations in this subpart require that a copy of a document be served upon a person, service may be made by delivering the copy personally to him or by sending the document by registered or certified mail, return receipt requested, to his address of record in the Bureau.

(2) At the conclusion of any document that a party must serve under the regulations in this part, the party must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service.

#### § 4.402

(3) A document will be considered to have been served at the time of personal service, of delivery of a registered or certified letter, or of the return by post office of an undelivered registered or certified letter.

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

#### § 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 decision of the Board shall constitute final agency action and be effective upon the date of issuance, unless the decision itself provides otherwise. The Board may reconsider a decision in extraordinary circumstances for sufficient reason. A petition for reconsideration shall be filed within 60 days after the date of a decision. The petition shall, at the time of filing, state with particularity the error claimed and include all arguments and supporting documents. The petition may include a request that the Board stay the effectiveness of the decision for which reconsideration is sought. No answer to a petition for reconsideration is required unless so ordered by the Board. The filing, pendency, or denial of a petition for reconsideration shall not operate to stay the effectiveness or affect the finality of the decision involved unless so ordered by the Board. A petition for reconsideration

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ation need not be filed to exhaust administrative remedies.

[52 FR 21308, June 5, 1987]

#### 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 an officer of the Bureau of Land Management or of an administrative law judge shall have a 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 BLM provided an opportunity for participation in its decision-making 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