

#### § 4.22

(c) *Exhaustion of administrative remedies.* No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective in the manner provided in paragraphs (a)(3) or (b)(4) of this section or a decision has been made effective pending appeal pursuant to paragraph (a)(1) of this section or pursuant to other pertinent regulation.

(d) *Finality of decision.* No further appeal will lie in the Department from a decision of the Director or an Appeals Board of the Office of Hearings and Appeals. Unless otherwise provided by regulation, reconsideration of a decision may be granted only in extraordinary circumstances where, in the judgment of the Director or an Appeals Board, sufficient reason appears therefor. Requests for reconsideration must be filed promptly, or within the time required by the regulations relating to the particular type of proceeding concerned, and must state with particularity the error claimed. The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Director or an Appeals Board. A request for reconsideration need not be filed to exhaust administrative remedies.

[36 FR 7186, Apr. 15, 1971, as amended at 58 FR 4942, Jan. 19, 1993]

#### § 4.22 Documents.

(a) *Filing of documents.* A document is filed in the Office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it.

(b) *Service generally.* A copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case, except as otherwise provided by § 4.31. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his/her client, and

#### 43 CFR Subtitle A (10-1-06 Edition)

service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by order of a presiding official or an appeals board. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(c) *Retention of documents.* All documents, books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding before the Office of Hearings and Appeals will be retained with the official record of the proceedings. However, the withdrawal of original documents may be permitted while the case is pending upon the submission of true copies in lieu thereof. When a decision has become final, an appeals board in its discretion may, upon request and after notice to the other party or parties, permit the withdrawal of original exhibits or any part thereof by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal. Transcripts of testimony and/or documents received or reviewed pursuant to § 4.31 of these rules shall be sealed against disclosure to unauthorized persons and retained with the official record, subject to the withdrawal and substitution provisions hereof.

(d) *Record address.* Every person who files a document for the record in connection with any proceeding before the Office of Hearings and Appeals shall at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the matter is pending of any change in address, giving the docket or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required herein, he will not be entitled to notice in connection with the proceedings.

(e) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time

prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served or the day of any other event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays and other nonbusiness days shall be excluded in the computation.

(f) *Extensions of time.* (1) The time for filing or serving any document may be extended by the Appeals Board or other officer before whom the proceeding is pending, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

[36 FR 7186, Apr. 15, 1971, as amended at 53 FR 49660, Dec. 9, 1988]

#### § 4.23 Transcript of hearings.

Hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties, costs of transcripts to be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of Hearings and Appeals employees will be at rates which cover the cost of manpower, machine use and materials, plus 25 percent, adjusted to the nearest 5 cents. If the reporting is done pursuant to a contract between the reporter and the Department of the Interior Agency or office which is involved in the proceeding, or the Office of Hearings and Appeals, fees for transcripts will be at rates established by the contract.

#### § 4.24 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of an Appeals Board, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in other proceedings, the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision after a hearing or on appeal shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the hearing or appeal, except for documents or other evidence received or reviewed pursuant to § 4.31(d).

(b) *Official notice.* Official notice may be taken of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice.

[36 FR 7186, Apr. 15, 1971, as amended at 53 FR 49660, Dec. 9, 1988]

#### § 4.25 Oral argument.

The Director or an Appeals Board may, in their discretion, grant an opportunity for oral argument.

#### § 4.26 Subpoena power and witness provisions generally.

(a) *Compulsory attendance of witnesses.* The administrative law judge, on his own motion, or on written application of a party, is authorized to issue subpoenas requiring 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. Subpoenas will be issued on a form approved by the Director. A subpoena may be served by any person who is not a party and is not less than 18 years of age, and the original subpoena bearing a certificate of service shall be filed with the administrative law judge. A