

(2) A copy of each notice served on parties in interest, with proof of mailing;

(3) The record of evidence received, including any transcript made of testimony;

(4) Data for heirship finding and family history, and data supplementary thereto;

(5) The final order determining the heirs of the decedent and the administrative judge's notices thereof; and

(6) Any other material or documents deemed relevant by the administrative judge.

§4.354 Reconsideration or rehearing.

(a) Any party aggrieved by the final order of the administrative judge may, within thirty (30) days after the date of mailing such decision, file with the administrative judge a written petition for reconsideration and/or rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If it is based upon newly discovered evidence, it shall be accompanied by affidavits of witnesses stating fully what the new evidence or testimony is to be. It shall also state justifiable reasons for the prior failure to discover and present the evidence.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative judge shall issue an order denying the petition and shall set forth therein the reasons therefor. The administrative judge shall serve copies of such order on all parties in interest.

(c) If the petition appears to show merit, or if the administrative judge becomes aware of sufficient additional evidence to justify correction of error even without the filing of a petition, or upon remand from the Board following an appeal resulting in vacating the final order, the administrative judge shall cause copies of the petition, supporting papers, and other data, or in the event of no petition an order to show cause or decision of the Board vacating the final order in appropriate cases, to be served on all parties in interest. The parties in interest will be allowed a reasonable, specified time within which to submit answers or

legal briefs in opposition to the petition or order to show cause or Board decision. The administrative judge shall then reconsider, with or without hearing, the issues of fact and shall issue a final order upon reconsideration, affirming, modifying, or vacating the original final order and making such further orders as are deemed warranted. The final order upon reconsideration shall be served on all parties in interest and shall become final thirty (30) days from the date on which it is mailed.

(d) Successive petitions for reconsideration and/or rehearing shall not be permitted. Nothing herein shall be considered as a bar to the remand of a case by the Board for further reconsideration, hearing, or rehearing after appeal.

§4.355 Omitted compensation.

When, subsequent to the issuance of a final order determining heirs under §4.352, it is found that certain additional compensation had been due the decedent and had not been included in the report of compensation, the report shall be modified administratively by the Project Director. Copies of such modification shall be furnished to all heirs as previously determined and to the appropriate administrative judge.

§4.356 Appeals.

(a) A party aggrieved by a final order of an administrative judge under §4.352, or by a final order upon reconsideration of an administrative judge under §4.354, may appeal to the Board (address: Board of Indian Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203). A copy of the notice of appeal must also be sent to the Project Director and to the administrative judge whose decision is being appealed.

(b) The notice of appeal must be filed with the Board no later than thirty (30) days from the date on which the final order of the administrative judge was mailed, or, if there has been a petition for reconsideration or rehearing filed, no later than thirty (30) days from the date on which the final order upon reconsideration of the administrative judge was mailed. A notice of appeal

§ 4.357

that is not timely filed will be dismissed.

(c) The Project Director shall ensure that the record is expeditiously forwarded to the Board.

(d) Within thirty (30) days after the notice of appeal is filed, the appellant shall file a statement of the reasons why the final order or final order upon reconsideration is in error. If the Board finds that the appellant has set forth sufficient reasons for questioning the final order or final order upon reconsideration, the Board will issue an order giving all parties in interest an opportunity to respond, following which a decision shall be issued. If the Board finds that the appellant has not set forth sufficient reasons for questioning the final order, the Board may issue a decision on the appeal without further briefing.

(e) The Board may issue a decision affirming, modifying, or vacating the final order or final order upon reconsideration. A decision on appeal by the Board either affirming or modifying the final order or final order upon reconsideration shall be final for the Department of the Interior. In the event 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.c

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

43 CFR Subtitle A (10–1–02 Edition)

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