

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 shall be borne by the Government. Each party shall pay for any copies of the transcript obtained by him. Unless the parties stipulate to a summary of the evidence, the Government will file the original copy of the transcript with the case record.

§4.475 Findings of fact and decision by administrative law judge: Notice; submission to Board of Land Appeals for decision.

(a) 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, and shall render a decision upon all material issues of fact and law presented on the record. In doing so he 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 decisions made shall be stated, and along with the findings, conclusions, and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Board of Land Appeals may require, in any designated case, that the administrative law judge make only a recommended decision and that such decision and the record be submitted to the Board for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (a) of this section. The Board shall then make the decision in the case. This decision shall in-

clude such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the administrative law judge.

§4.476 Appeals to the Board of Land Appeals.

Any party affected by the administrative law judge's decision, including the State Director, has the right to appeal to the Board of Land Appeals, in accordance with the procedures and rules set forth in this part 4.

§4.477 Effect of decision suspended during appeal.

Notwithstanding the provisions of §4.21(a) of this part pertaining to the period during which a final decision will not be in effect, and consistent with the provisions of §4160.3 of this title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. Any action taken by the authorized officer pursuant to a decision shall be subject to modification or revocation by the administrative law judge or the Board upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, a decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall not be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

[44 FR 41790, July 18, 1979, as amended at 60 FR 9958, Feb. 22, 1995]

§4.478 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