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(1-90 Edition)

## Office of the Secretary of the Interior

§ 4.310

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### § 4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent shall issue a certificate to the administrative law judge that this has been done and file therewith such documents in support thereof as the administrative law judge may require. The administrative law judge shall then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in § 4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

### § 4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with § 4.307, all income received or accrued from the land interests purchased by the tribe shall be credited to the estate.

CROSS REFERENCE: See 25 CFR Part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

### GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: Sections 4.310 through 4.318 appear at 54 FR 6485, Feb. 10, 1989, unless otherwise noted.

### § 4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) shall be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings shall be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service shall be

accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or representative shall include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *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 or answered was served or the day of any other event after which a 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.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

## § 4.311

### § 4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant shall serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel shall have 30 days from receipt of appellant's brief to file answer briefs, copies of which shall be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel shall be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel shall be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The Bureau of Indian Affairs shall be considered an interested party in any proceeding before the Board. The Board may request that the Bureau submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date shall not be less than the appropriate period of time established in this section.

### § 4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion or order of an official of the Bureau of Indian Affairs or an administrative law judge. Distribution of decisions shall be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and shall be given immediate effect.

## 43 CFR Subtitle A (10-1-90 Edition)

### § 4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board shall apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section shall be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board shall be served in the same manner as appeal briefs.

### § 4.314 Exhaustion of administrative remedies.

(a) No decision of an administrative law judge or an official of the Bureau of Indian Affairs, which at the time of its rendition is subject to appeal to the Board, shall be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

[54 FR 6485, Feb. 10, 1989; 54 FR 7504, Feb. 21, 1989]

### § 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and shall contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition shall not stay the effect of any decision or order and shall not affect the finality of any

## Office of the Secretary of the Interior

decision or order for purposes of judicial review, unless so ordered by the Board.

### § 4.316 Remands from courts.

Whenever any matter is remanded from any court to the Board for further proceedings, the Board will either remand the matter to an administrative law judge or to the Bureau of Indian Affairs, or to the extent the court's directive and time limitations will permit, the parties shall be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

### § 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board shall be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals shall determine the matter of disqualification.

### § 4.318 Scope of review.

An appeal shall be limited to those issues which were before the administrative law judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the official of the Bureau of Indian Affairs on review. However, except as specifically limited in this part or in Title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

locus Curiae; intervention; joinder.

interested person or Indian wishing to intervene or to join in or to appear as amicus to obtain an order in and before the Board shall apply in the Board stating the action sought. Permission to intervene, to join parties, to join for other relief, may be for purposes and subject to established by the Board. It shall be liberally con-

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Any other appeal will lie within 30 days from a decision of the

Board on filing of a petition for reconsideration not required to exhaust administrative remedies.

Feb. 10, 1989; 54 FR 7504, Feb.

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granted. A party may file only one petition for reconsideration.

Any petition for reconsideration of a decision or order of the Board shall not affect the finality of any

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### APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: Sections 4.320 through 4.323 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

#### § 4.320 Who may appeal.

A party in interest shall have a right of appeal to the Board of Indian Appeals from an order of an administrative law judge on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(a) *Notice of Appeal.* Within 60 days from the date of the decision, an appellant shall file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. A statement of the errors of fact and law upon which the appeal is based shall be included in either the notice of appeal or in any brief filed. The notice of appeal shall include the names and addresses of parties served. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction.

(b) *Service of copies of notice of appeal.* The appellant shall personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy shall be served upon the administrative law judge whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board shall include a certification that service was made as required by this section.

(c) *Action by administrative law judge; record inspection.* The administrative law judge, upon receiving a copy of the notice of appeal, shall notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record shall be conformed to the original by the Land Titles and Records Office and shall thereafter be available for inspection either at the Land Titles and Records

# § 4.321

Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the administrative law judge shall have a transcript prepared which shall be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

## § 4.321 Notice of transmittal of record on appeal.

The original record on appeal shall be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

## § 4.322 Docketing.

The appeal shall be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal shall be notified of the docketing. The docketing notice shall specify the time within which briefs may be filed and shall cite the procedural regulations governing the appeal.

## § 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, shall be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part shall be conformed to the original and forwarded to the Superintendent concerned.

# 43 CFR Subtitle A (10-1-90 Edition)

## APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: Sections 4.330 through 4.340 appear at 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

## § 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR Chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary of the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

- (1) Tribal enrollment disputes;
- (2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or
- (3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

## § 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

- (a) To the extent that decisions which are subject to appeal to a

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higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secret Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided in regulation.

## § 4.332 Appeal to the Board; how mandatory time for filing; preparation; assistance; requirement for bond

(a) A notice of appeal shall be in writing, signed by the appellant or his attorney of record or other duly representative as provided in CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 days after receipt by the appellant of a decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs as required by § 4.333 of this part. The notice of appeal sent to the Board shall certify that a copy has been filed with the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

- (1) A full identification of the case;
- (2) A statement of the reasons for the appeal and of the relief sought; and
- (3) The names and addresses of additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs previously notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs

TO THE BOARD OF INDIAN AP-  
PEALS FROM ADMINISTRATIVE AC-  
TIONS OF OFFICIALS OF THE BUREAU  
OF INDIAN AFFAIRS; ADMINISTRATIVE  
ACTIONS IN OTHER INDIAN MATTERS  
RELATING TO PROBATE PROCEED-

Sections 4.330 through 4.340  
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noted.

Scope.

The definitions set forth in 25  
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administrative actions or decisions of  
officials of the Bureau of Indian Af-  
fairs under regulations in 25  
CFR 1.2, and (2) administrative  
actions of the Board of Indian Appeals  
in matters pertaining to Indians  
referred to it for exercise of  
authority of the Secretary or  
Assistant Secretary—Indian Af-

cept as otherwise permitted by  
the Secretary or the Assistant Sec-  
retary of Indian Affairs by special delega-  
tion, request, the Board shall not  
consider:

(1) Tribal enrollment disputes;  
(2) Matters decided by the Bureau of  
Indian Affairs through exercise of its  
primary authority; or  
(3) Appeals from decisions pertain-  
ing to final recommendations or ac-  
tions of officials of the Minerals Man-  
agement Service, unless the decision is  
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law (decisions not so based  
arise from determinations of  
the Minerals Management Service, are  
appeals in accordance with 43  
CFR 1.2).

Who may appeal.

Any interested party affected by a  
administrative action or decision  
of an official of the Bureau of Indian  
Affairs issued under regulations in  
the Code of Federal Regu-  
lations may appeal to the Board of  
Indian Appeals, except—  
(a) To the extent that decisions  
are subject to appeal to a

higher official within the Bureau of  
Indian Affairs must first be appealed  
to that official;

(b) Where the decision has been ap-  
proved in writing by the Secretary or  
Assistant Secretary—Indian Affairs  
prior to promulgation; or

(c) Where otherwise provided by law  
or regulation.

§ 4.332 Appeal to the Board; how taken;  
mandatory time for filing; preparation  
assistance; requirement for bond.

(a) A notice of appeal shall be in  
writing, signed by the appellant or by  
his attorney of record or other quali-  
fied representative as provided by 43  
CFR 1.2, and filed with the Board of  
Indian Appeals, Office of Hearings  
and Appeals, U.S. Department of the  
Interior, 4015 Wilson Boulevard, Ar-  
lington, Virginia 22203, within 30 days  
after receipt by the appellant of the  
decision from which the appeal is  
taken. A copy of the notice of appeal  
shall simultaneously be filed with the  
Assistant Secretary—Indian Affairs.  
As required by § 4.333 of this part, the  
notice of appeal sent to the Board  
shall certify that a copy has been sent  
to the Assistant Secretary—Indian Af-  
fairs. A notice of appeal not timely  
filed shall be dismissed for lack of ju-  
risdiction. A notice of appeal shall in-  
clude:

- (1) A full identification of the case;
- (2) A statement of the reasons for  
the appeal and of the relief sought;  
and
- (3) The names and addresses of all  
additional interested parties, Indian  
tribes, tribal corporations, or groups  
having rights or privileges which may  
be affected by a change in the deci-  
sion, whether or not they participated  
as interested parties in the earlier pro-  
ceedings.

(b) In accordance with 25 CFR  
2.20(c) a notice of appeal shall not be  
effective for 20 days from receipt by  
the Board, during which time the As-  
sistant Secretary—Indian Affairs may  
decide to review the appeal. If the As-  
sistant Secretary—Indian Affairs prop-  
erly notifies the Board that he has de-  
cided to review the appeal, any docu-  
ments concerning the case filed with  
the Board shall be transmitted to the  
Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian  
or Indian tribe not represented by  
counsel, the official who issued the de-  
cision appealed shall, upon request of  
the appellant, render such assistance  
as is appropriate in the preparation of  
the appeal.

(d) At any time during the pendency  
of an appeal, an appropriate bond may  
be required to protect the interest of  
any Indian, Indian tribe, or other par-  
ties involved.

§ 4.333 Service of notice of appeal.

(a) On or before the date of filing of  
the notice of appeal the appellant  
shall serve a copy of the notice upon  
each known interested party, upon the  
official of the Bureau of Indian Af-  
fairs from whose decision the appeal is  
taken, and upon the Assistant Sec-  
retary—Indian Affairs. The notice of  
appeal filed with the Board shall cer-  
tify that service was made as required  
by this section and shall show the  
names and addresses of all parties  
served. If the appellant is an Indian or  
an Indian tribe not represented by  
counsel, the appellant may request the  
official of the Bureau whose decision  
is appealed to assist in service of  
copies of the notice of appeal and any  
supporting documents.

(b) The notice of appeal will be con-  
sidered to have been served upon the  
date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to  
file documents may be granted upon a  
showing of good cause, except for the  
time fixed for filing a notice of appeal  
which, as specified in § 4.332 of this  
part, may not be extended.

§ 4.335 Preparation and transmittal of  
record by official of the Bureau of  
Indian Affairs.

(a) Within 20 days after receipt of a  
notice of appeal, or upon notice from  
the Board, the official of the Bureau  
of Indian Affairs whose decision is ap-  
pealed shall assemble and transmit  
the record to the Board. The record on  
appeal shall include, without limita-  
tion, copies of transcripts of testimony  
taken; all original documents, peti-  
tions, or applications by which the



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proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

#### § 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

#### § 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or

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a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

#### § 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party in the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

#### § 4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

#### § 4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

#### Office of the Secretary of the Interior

#### 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.