



**U.S. DEPARTMENT OF THE INTERIOR**  
**OFFICE OF HEARINGS AND APPEALS**

**INTERIOR BOARD**  
**OF**  
**LAND APPEALS**  
**MANUAL**

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## **INTRODUCTION**

This manual sets forth the procedures and practices followed by the Interior Board of Land Appeals (IBLA or the Board) in managing its adjudication of appeals. They are intended to be consistent with the provisions of applicable statutes, regulations, and the Office of Hearings and Appeals manual. If there is an inconsistency, those provisions govern. If special circumstances warrant, a procedure or practice in this manual may be varied at the direction of or with the approval of the Chief Administrative Judge.

## **PART I            INTAKE AND DOCKETING**

### **Chapter 1            Receipt of Notice of Appeal**

1. A person may appeal certain decisions of the Bureau of Land Management, the Bureau of Indian Affairs, the Bureau of Ocean Energy Management, Regulation and Enforcement, the Office of Natural Resources Revenue, the Deputy Assistant Secretary – Natural Resources Revenue, the Office of Surface Mining Reclamation and Enforcement, or any successor organization, as appropriate, or a decision of an administrative law judge, under the procedures set forth in 43 C.F.R. Part 4, subparts E and L. *See, e.g.*, 43 C.F.R. §§ 4.411, 4.1271, and 30 C.F.R. § 290.108. The agency office that receives a notice of appeal is expected to forward the decision and the accompanying administrative record to IBLA promptly. *See Patrick G. Blumm*, 116 IBLA 321, 334 (1990).

2. Docket numbers are assigned to appeals in the order the appeals are docketed. A new cycle of numbers begins at the beginning of each fiscal year, e.g., IBLA 2011-0001 for the first appeal received on or after October 1, 2010. If a petition for reconsideration of an IBLA decision or order or a request for attorney fees is filed, or a case on judicial review is remanded to the Board, the docket number previously assigned to the appeal will be assigned to the petition, followed by a “-1,” “-2,” etc. indicating a further phase of the original case, e.g., IBLA 2010-0046-1.

## **PART I           INTAKE AND DOCKETING**

### **Chapter 2           Docketing the Appeal**

1. After a docket number has been assigned to an appeal, the Docket Clerk will place the record and all related pleadings in an accordion file labeled with the docket number and the name of the appellant. If the record is too big for a case file, the Docket Clerk will mark the box(es) containing it with the docket number. The case file (and boxes) are kept in the docket room unless the appeal is being actively worked on by a judge or attorney.
  
2. The Docket Clerk will enter the docket number, name of appellant, agency, agency serial number, date of receipt, subject matter description, ABC [Activity Based Costing] code, other relevant information, and the fax number of the appellant or appellant's attorney, if available, into the Docket Management System (DMS).
  
3. The Docket Clerk will complete a case data sheet and staple it to the cover of the record.
  
4. The Docket Clerk will prepare a standard acknowledgment letter that includes the docket number of the appeal, a request for the appellant's fax number, a request for an electronic copy of any filing, and a notice concerning Alternative Dispute Resolution (ADR), to be signed by the Chief Administrative Judge, and mailed to the appellant.

## **PART I            INTAKE AND DOCKETING**

### **Chapter 3            Notices of Appeal before Receipt of Case File**

If a notice of appeal or other document that appears to initiate an appeal is received before the agency decision and accompanying record are received, and the notice of appeal or other document is accompanied by a petition for stay, the Docket Clerk will assign a docket number to the pleading and enter the relevant information into the DMS. If no petition for stay accompanies the pleading, the Docket Clerk will place it in the “Undocketed Appeal” box in the docket room and will call for the record if it has not appeared within 7-10 days.

## **PART I            INTAKE AND DOCKETING**

### **Chapter 4            Updating the Docket Card**

Every incoming or outgoing document in a pending appeal is appropriately recorded on the Docket Card in the DMS, e.g., Statement of Reasons filed, 6/27/10. If a case file has been removed from the docket room, the judge or attorney to whom the appeal has been assigned should inform the Docket Clerk so it can be noted in the DMS.



## **PART I                    INTAKE AND DOCKETING**

### **Chapter 5                Examination of Case Files**

1. Case files that do not contain any information protected from disclosure by the Privacy Act, 5 U.S.C. § 552a, or claimed to be confidential under 43 C.F.R. § 4.31 may be examined at the Board's offices by any member of the public during normal business hours by appointment with the Docket Clerk (phone 703-235-3750).
2. Case files that do contain information protected from disclosure by the Privacy Act or claimed to be confidential under 43 C.F.R. § 4.31 may be examined only in response to a request submitted in writing under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and only as required by that Act.
3. Prior to any examination of a case file, the Docket Clerk will review the file and remove any confidential or otherwise protected information.
4. The person examining a file must complete a record of the examination, showing name, date, and whom the person represents, which will be included in the file.
5. When necessary, a case file may be temporarily returned to the appropriate agency and made available for examination there.

## **PART II            INITIAL REVIEW OF APPEAL**

### **Chapter 1            Review of Jurisdiction and Motions for Unassigned Appeals**

1. The Docket Clerk will review all incoming and unassigned appeals to check for potential lack of jurisdiction (e.g., late notice of appeal, exceptions under 43 C.F.R. § 4.410) and for motions (e.g., motions to intervene; to dismiss; or to request an extension of time, expedited consideration, or consolidation) and will refer any jurisdictional question or motion to the Chief Administrative Judge with the accompanying case file.
  
2. The Chief Administrative Judge, or a designee, will author orders addressing jurisdictional defects and responding to motions for all unassigned appeals.
  
3. After an appeal has been assigned, the lead judge will author orders addressing jurisdictional defects and responding to motions. *See* Part III, Chapter 2, Paragraph 1.

## **PART II            INITIAL REVIEW OF APPEAL**

### **Chapter 2            Review of Petitions for Stay**

1. The Docket Clerk will review all incoming appeals to identify petitions for a stay of the agency decision, and will refer any petition to the Deputy Chief Administrative Judge or other designated judge with the accompanying case file. The Docket Clerk or the judge will determine the date by which a stay must be granted or denied.
2. The Deputy Chief Administrative Judge, or other designated judge, will author orders responding to petitions for stay, upon consideration of the applicable criteria (e.g., 43 C.F.R. § 4.21(b) (1)(i)-(iv) and (2) and similar regulations), and will issue them on or before 45 days after the end of the time for filing a notice of appeal. Other procedural motions filed in such appeals may be addressed at the time the petition for stay is resolved.
3. The Deputy Chief Administrative Judge, or other designated judge, will review appeals that include a petition for stay to determine suitability for ADR. If direct negotiation seems appropriate, the judge will include language in the stay decision directing the parties to attempt to settle. If an appeal may be suitable for other types of ADR, the judge will refer the parties to the Department of the Interior's Office of Collaborative Action and Dispute Resolution.

## **PART II            INITIAL REVIEW OF APPEAL**

### **Chapter 3            Suspension of Cases in Alternative Dispute Resolution (ADR)**

Upon notice from the parties that they have agreed to pursue direct negotiation or other types of ADR (whether on their own initiative, in response to the notice provided under Part I, Chapter 2, Paragraph 4, or in response to a decision under Part II, Chapter 2, Paragraph 3), the appeal will be formally suspended on IBLA's docket and is tracked in the DMS pending completion of the ADR process.

## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 1            Assignment of Appeals**

“The Chief Administrative Judge of an Appeals Board may direct that an appeal may be decided by a panel of any two Administrative Judges of the Board, but if they are unable to agree upon a decision . . . may assign one or more additional Administrative Judges . . . to consider the appeal.” 43 C.F.R. § 4.2(a).

Currently, the Chief Administrative Judge assigns appeals to 2-judge panels, generally on a rotational basis (designating the lead judge and the panel member), taking into consideration statutory or regulatory deadlines, OHA priorities, and management considerations. Normally, petitions for reconsideration, requests for attorney fees, and remands are assigned to the panel that decided the appeal.

## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 2            Lead Judge Responsibilities**

1. After an appeal has been assigned, the lead judge will respond to any incoming motions and may issue non-dispositive orders without the signature of the panel member, although consultation with the panel member is encouraged, as appropriate. A dispositive order requires the signature of both judges. An order referring an appeal for hearing by an Administrative Law Judge is considered a dispositive order.
2. The lead judge is responsible for drafting the order or decision (which may entail working with an attorney draft) and for the initial editing and proofreading. (See Part VI.) The draft order or decision will be properly formatted, at 1.5 spacing.
3. After the lead judge finalizes a draft order or decision, he or she will submit it with the case file to the panel member. The lead judge will immediately in writing notify the Docket Clerk, copying the Chief Administrative Judge, of the date the draft was submitted to the panel member.
4. When the panel member returns the draft and case file to the lead judge, the panel member will immediately in writing notify the Docket Clerk and the Chief Administrative Judge of the date the panel member returned the draft and the status (agreement or disagreement). If the panelists disagree, the 15-day period to resolve the disagreement begins immediately. (See Part III, Chapter 4).
3. The lead judge is responsible for closing the case file once the decision or order has been issued (see Part IV).

## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 3            Panel Member Responsibilities**

1. The panel member is responsible for reviewing the draft order or decision from the lead judge, focusing first on general organization and content, including the outcome and legal analysis. If the panel member is in general agreement with the draft, he or she should provide comments and suggestions (if any) for improving the draft, including issues of organization, content, grammar and usage, spelling, punctuation, etc. If the panel member disagrees with the initial draft with respect to the outcome of the appeal and/or the legal analysis, the judges should proceed in accordance with Part III, Chapter 4.
2. For draft orders or decisions consisting of up to 25 pages of text (including necessary attachments, appendices, and exhibits), the panel member initially has up to 10 working days to respond. For draft orders or decisions consisting of more than 25 up to 50 pages of text, the panel member initially has up to 15 working days to respond. For draft orders or decisions consisting of more than 50 pages of text, the panel member initially has up to 20 working days to respond. If the appeal involves particularly complex issues or a lengthy record, the panel member may request additional time from the Chief Administrative Judge, also informing the lead judge of the request for more time.
3. The panel member and lead judge should normally give subsequent reviews and actions with respect to revised drafts their highest work priority.

## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 4            Divided Panel**

1. The lead judge and panel member will make a good faith effort to resolve disagreements with respect to the outcome of an appeal and/or the legal analysis of the order or decision. If, however, within 15 working days after the lead judge receives the initial response from the panel member, the panel is unable to resolve disagreements, the Chief Administrative Judge will assign an additional judge, on an established random basis, to the panel to consider the appeal. Notwithstanding the 15-day limit on efforts to resolve disagreements, at any time after the initial response of the panelist, either the lead judge or the panelist may request that the Chief Administrative Judge assign an additional judge to the panel. Prior to making such an assignment, the Chief Administrative Judge may meet with the panel to attempt to resolve their disagreement.
2. The additional judge will review the draft or drafts and the case record and respond to the panel orally or in writing of his or her opinion in the appeal in a manner consistent with Part III, Chapter 3.
3. When a majority decision is reached, the three panelists will determine which judge will draft the majority, dissenting, and, possibly, additional opinions (e.g., concurring, or concurring in part and dissenting in part). Those opinions will be completed within 10 working days of the additional judge's response.



## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 5            Circulation of Draft Orders and Decisions for Comment**

1. Draft decisions and orders (with certain exceptions, as determined by the Chief Administrative Judge) will be copied and distributed to all judges for comment, including already circulated draft orders or decisions that have been substantially revised. The circulation period begins the day after a draft has been submitted for circulation, and the circulation period ends on the final day at the close of business (5:00 pm). Drafts must be properly formatted, at 1.5 spacing, reviewed for proper grammar and style, and then submitted for circulation no later than 4:30 pm in order for the following business day to be counted as the first day of circulation.

2. For draft orders and decisions consisting of up to 25 pages of text (including necessary attachments, appendices, and exhibits), the circulation period will be 5 working days. For draft orders and decisions consisting of more than 25 up to 50 pages of text, the circulation period will be 10 working days. For draft orders and decisions consisting of more than 50 pages of text, the circulation period will be 20 working days. The Chief Administrative Judge may determine that a longer circulation period is necessary for a particularly complex draft order or decision, and if an already circulated draft order or decision has been substantially revised, the Chief Administrative Judge may require recirculation for a period to be determined on a case-by-case basis.

3. Judges not assigned to the panel will review drafts and offer the panel substantive comments, when appropriate, before the close of the circulation period. Substantive comments will be provided to all the judges on the Board.

4. Incidental comments regarding grammar and usage, spelling, punctuation, etc. may be accepted, rejected, or modified by the lead judge without further consultation with his or her panelist or the commenter.

5. The lead judge will confer with the panel member about all substantive comments received. The panel must provide a response to all substantive comments to all the judges, indicating what changes to the draft, if any, the panel proposes to make to satisfy the comments, explaining the reasons for its response, and offering to discuss the matter further with the commenter(s). If, at any time after discussion (which must be concluded within 3 working days of whenever it begins), the panel declines to accept a comment and the commenter wishes to request a hold of the draft order or decision in accordance with Part III, Chapter 6, Paragraph 2, the commenter will notify the panel and the Chief Administrative Judge in writing and will have 2 working days in which to secure additional votes for a hold.

6. A commenter may request, through the Chief Administrative Judge, that a draft decision or order that has been revised be recirculated under this chapter. If the panel disagrees that the draft has been revised to the extent that recirculation is needed, the lead judge will inform the Chief Administrative Judge, who will decide whether or not the draft will be recirculated.

7. If a draft decision or order is recirculated, the lead judge must note on the cover sheet the reasons for recirculation, highlight the changes to the draft in bold font, and notify the entire Board by an e-mail message briefly explaining the changes.

## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 6            Holding a Draft Order or Decision**

1. The Chief Administrative Judge may place a hold on a draft order or decision on his own behalf by written notice to all judges of his decision to do so, including his rationale.
2. The Chief Administrative Judge will place a hold on a draft order or decision when he receives requests for a hold from three judges, either within the circulation period (if the panel has already rejected substantive suggestions during that period) or following the circulation process during the 2-day period in Part III, Chapter 5, Paragraph 5. A dissenting opinion in a circulating decision will be considered as a request for a hold by the judge who authored the dissent.
3. Each request for a hold must be based on the judge's independent review of the circulating opinion(s), will be in writing, and will state specific reasons for the request. The reasons may include agreement with a dissenting opinion or a memorandum of another judge. Requests for a hold will be addressed to the Chief Administrative Judge, and copies will be provided to all other judges. The Chief Administrative Judge will provide notice of the hold in writing to all judges.
4. If a draft order or decision is held, the panel will work with the Chief Administrative Judge or the judges who requested the hold to attempt to resolve the issues of concern.
5. If the panel can resolve the issues raised by the judge(s) who requested or imposed the hold by revising the draft, the panel will circulate the revised draft as provided in Part III, Chapter 5.

6. If the panel cannot resolve issues within 10 working days of notice of the hold, the Chief Administrative Judge will announce a meeting of all judges (Board Meeting) to discuss the appeal, normally to be held within 15 working days of the announcement.

## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 7            Procedure Following Announcement of a Board Meeting to Discuss a Held Appeal**

1. The lead judge will return the case file for the held appeal to the docket room within 48 hours of the announcement of the Board Meeting. The case file will be available in the docket room for review by all judges prior to the Board Meeting. All judges are encouraged to review the case file, to the extent necessary to contribute to the Board Meeting and the resulting decision making process.
  
2. The Chief Administrative Judge will preside and maintain order at the Board Meeting.
  
3. Presentations will be made first by the majority, then by the minority and/or holding judges, followed by general discussion and questions.
  
4. The Chief Administrative Judge reserves the right to limit debate and issues raised at the Board Meeting and in subsequent draft opinions if in his discretion he determines that all reasonably relevant matters have been fully addressed by the Board.
  
5. Following the general discussion, the Chief Administrative Judge will determine, following an expression of the preferences of the administrative judges present, whether the appeal can most effectively be disposed of (1) by the current 2- or 3-judge panel, (2) by assigning an additional judge to consider the appeal and author or join a majority or dissenting opinion (when the appeal has been held on the basis of the original 2-judge panel's decision), or (3) by assigning all administrative judges attending the meeting to consider the appeal and either join a majority or dissenting opinion or author an additional opinion.

## **PART III            REVIEW AND DISPOSITION OF APPEALS**

### **Chapter 8            Schedule for Drafting and Review of Opinions Following a Board Meeting**

1. The Docket Clerk will make the case file available to the authors of the draft majority and dissenting opinions, which will be completed within 10 or fewer working days following the Board Meeting, as determined by the Chief Administrative Judge, at which time the case file will be returned to the Docket Room. These opinions will then be circulated concurrently for comment to all judges attending the Board Meeting for 3 working days.
  
2. Substantive comments on the draft opinions will be provided in writing to the authors of the draft opinions, with copies to all judges.
  
3. Revisions, if any, of the draft majority and dissenting opinions, will be limited to those directly responsive to comments received during the most recent circulation period and will be completed within 3 working days after completion of circulation, at which time the revised opinions will again circulate to all judges for 3 working days for final comments. No substantive revisions to the opinions will be permitted at this point, without the approval of the Chief Administrative Judge. All judges will then be given notice that they have 3 working days for the preparation of any additional opinions. If any additional opinions are prepared, those additional opinions will be circulated to all judges for an additional 3 working days.
  
4. Within 3 working days after circulation of any additional opinions, or if no additional opinions are prepared, within 3 working days after completion of circulation for final comments, all opinions will be finalized and signed, consistent with Part IV, Chapters 1 and 2.

## **PART IV            ISSUING FINAL ORDERS AND DECISIONS**

### **Chapter 1            Preparing Final Orders and Decisions**

1. The lead judge, or his or her designee, will prepare the final order or decision in accordance with Part VI. Dissenting or additional opinions will be prepared in final by the authoring judge or his or her designee in accordance with Part VI.

2. The lead judge is responsible for ensuring the proofreading of the final order or decision and for making any final corrections; the author of any dissenting or additional opinion is responsible for the proofreading of that opinion. Team proofreading is encouraged.

## **PART IV            ISSUING FINAL ORDERS AND DECISIONS**

### **Chapter 2            Signatures**

1. The lead judge will sign the final version of the order or decision, and takes it for signature to each concurring judge along with the circulating draft. If a concurring judge is absent and has left a written authorization for use of his or her signature stamp, the signature stamp may be used on the final order or decision. The author of a dissenting or additional opinion will sign his or her opinion.

2. The final signed version of an order or decision must be submitted for issuance and distribution no later than 4:30 pm in order to be dated and credited as of that day. A final order or decision that is submitted after 4:30 pm will be dated, credited, issued, and distributed the next business day.

3. If an order or decision is signed by the panel and submitted for issuance, and problems with editing, format, or substance are identified during the issuance process, the order or decision must be appropriately revised by the lead judge and re-signed by the panel, if necessary, prior to the 4:30 pm deadline in order to be dated and credited as of that day. Otherwise, the final order or decision will be dated, credited, issued, and distributed the next business day after final revisions have been made.



## **PART IV            ISSUING FINAL ORDERS AND DECISIONS**

### **Chapter 3            Closing the Case File**

1. The lead judge is responsible for closing the case file. If an attorney was assigned to the case and completed a draft dispositive order or decision, that attorney will close the case file under the direction of the lead judge, consistent with this Chapter.
  
2. Final orders must include a list of “Appearances” that provides names and addresses of the parties and any others who are to receive copies of the order. If possible, fax numbers should be included for all parties.
  
3. Final decisions must be accompanied by an “Address Sheet” containing the names and addresses of all parties and others who are to receive copies of the decision as well as the date the appeal was ripe for decision, normally 30 days after receipt of the last substantive pleading.
  
4. Generally, all pleadings will be two-hole punched and placed in the case file on the metal fasteners in reverse chronological order, with the most recent document on top. All items that are not part of the record should be removed from the case file.
  
5. The case file must be assembled and closed in accordance with this Chapter within 5 business days of issuance of the final order or decision that disposes of the case.
  
6. On the day a decision is issued, the lead judge must send an electronic version of the final decision, as signed (and any accompanying appendices or exhibits), to the person designated for entering decisions into ISYS and preparing decisions for posting on the OHA website. On the day an order is issued, the lead judge must provide an electronic version of the final order for entry into the DMS.

## **PART IV            ISSUING FINAL ORDERS AND DECISIONS**

### **Chapter 4            Distribution of Final Orders and Decisions**

1. The Legal Assistant will copy all final Board orders and decisions for distribution and mailing to the parties and others on the list of appearances or address sheet.

2. If all parties have provided fax numbers, the Legal Assistant will send the final orders or decisions by fax with follow-up copies by regular mail. If the document is not faxed to the parties, the Legal Assistant will send it to them by certified mail, return receipt requested, or by overnight mail. All other recipients will be sent copies by regular mail. The original of the order or decision will be placed in the case file.

## **PART IV            ISSUING FINAL ORDERS AND DECISIONS**

### **Chapter 5            Record-keeping and Returning the Case File**

Disposition of the appeal and receipt of the final order or decision will be recorded in the DMS. Case files of appeals disposed of by order will generally be returned to the appropriate agency office immediately, while those of appeals disposed of by decision will be retained until expiration of the time for filing a petition for reconsideration.

## **PART V                    INTERNAL MANAGEMENT**

“The Chief Administrative Judge . . . is responsible for the internal management and administration of the Board, and . . . is authorized to act on behalf of the Board in conducting correspondence and in carrying out such other duties as may be necessary in the conduct of routine business of the Board.” 43 C.F.R. § 4.2(c). This includes the functions described above; staff attorney assignments; approval of any office-related travel or training; approval of administrative judges’ leave and time sheets; and responding to communications from the public, the Department, or members of Congress.

The Chief Administrative Judge may refer written inquiries concerning the status of appeals to the Docket Clerk.

## **PART VI            DECISION/ORDER WRITING REQUIREMENTS**

1. Judges and attorneys will prepare decisions and orders using IBLA templates found on the R: drive, in accordance with the OHA Style Manual, Strunk & White's *The Elements of Style*, the U.S. Government Printing Office Style Manual (2008), and the latest edition of *The Bluebook: A Uniform System of Citation*. The Chief Administrative Judge will resolve disagreements concerning the proper style, citation, etc.
2. Headnote topics should conform to those listed on the most recent topical index, which is posted on the S: drive. Appropriate changes or additions to the headnote topics, when needed, should be proposed to the Chief Administrative Judge for consideration and adoption.
3. The most common disposition alternatives are: affirmed, affirmed as modified, reversed, vacated, set aside, dismissed, and remanded. For guidance, consult the explanations in Appendix I.
4. All decisions, orders, dissenting opinions, and additional opinions (e.g., concurring, or concurring in part and dissenting in part) must accurately state the material facts, legal issues, and applicable law. They will be concise and discuss only matters relevant to the issues presented by the appeal.
5. An administrative judge will avoid ad hominem, derisive, intemperate, or other language not consistent with judicial demeanor in any majority, dissenting, or additional opinion, or in any order.
6. As a guideline, no decision or order should exceed 20 pages single-spaced, and no dissenting opinion or additional opinion (e.g., concurring, or concurring in part and dissenting in part) should exceed 10 pages single-spaced.

7. An Administrative Law Judge's opinion may be adopted in whole or in part in a Board order or decision when it is in the interest of economy of resources to do so.

## **PART VII            EX PARTE CONTACTS**

43 C.F.R. § 4.27(b) prohibits any communication concerning the merits of a proceeding between (1) any party to the proceeding, or any person interested in the proceeding, or any representative of a party or interested person and (2) any Office of Hearings and Appeals personnel involved or who may reasonably be expected to become involved in the decision making process of that proceeding unless the communication is made in the presence of all other parties or their representatives (if it is an oral communication) or it is furnished to all other parties (if it is written).

“Proceedings,” “interested person,” and “person interested in the proceeding” are defined in 43 C.F.R. § 4.27(b). Proceedings include pending appeals, rulemakings that might affect a pending appeal, and requests for reconsideration or review by the Director.

43 C.F.R. § 4.27(b) does not prohibit communications concerning appeal status or advice concerning compliance with procedural requirements unless the area of inquiry is an area of controversy in the proceeding.

Any oral communication made in violation of the prohibition must be documented with a memorandum to the file written by the person who received the communication; a copy of the memorandum must be included in the record and provided to all parties, who must be given an opportunity to respond.

Any written communication shall be included in the record and a copy provided to all parties, who shall be given an opportunity to respond. Normally, an order (“*Ex parte* communication provided”) is prepared giving the parties 30 days to respond to a copy of the memorandum or written communication if they wish to do so.

If it is not clear from a document that service was provided in accordance with 43 C.F.R. § 4.413 and no proof of service (see 43 C.F.R. § 4.401(c)(2)) is made, an order (“Completion of service”) may be prepared that includes a copy of the document or directs a party to serve it and gives all adverse parties 30 days to respond if they wish to do so.



## **PART VIII      REQUESTS, MOTIONS, AND PETITIONS**

### **Chapter 1          Requests for Limiting Disclosure of Confidential Information**

43 C.F.R. § 4.31(a) provides procedures for a person who submits a document to request that it be regarded as exempt from public disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, under 18 U.S.C. § 1905, or otherwise. Under those circumstances, the information submitted is not disclosed except as provided in FOIA (*see* 43 C.F.R. Part 2, subpart B) or upon a request from a party that is submitted under 43 C.F.R. § 4.31(c). *See Taylor Energy Co.*, 143 IBLA 194 (1998).

If documents submitted as part of the record by an agency are designated “confidential,” they (or the entire case file) should be kept in a blue Special Attention Mail envelope.

## **PART VIII      REQUESTS, MOTIONS, AND PETITIONS**

### **Chapter 2          Requests for Oral Argument**

The Board may grant oral argument in its discretion, either at the request of a party or on its own initiative, when it appears clarification of the issues would be aided by the opportunity to inquire of counsel. 43 C.F.R. § 4.25. The recommendation of a panel or other administrative judges that oral argument be granted must be approved by the Chief Administrative Judge. Oral argument may be conducted in person or via videoconference or teleconference. It will be transcribed or recorded for the record. The Chief Administrative Judge will issue an order to the parties at least ten days in advance stating the time, place, and method of the argument.

An oral argument will normally be conducted in Arlington, Virginia, unless it involves a land selection under the Alaska Native Claims Settlement Act, in which case it will be conducted in Alaska “for good cause shown.” *See* 47 Fed. Reg. 26391 (June 18, 1982). In other kinds of appeals, the Chief Administrative Judge must approve oral arguments at locations other than Arlington.

## **PART VIII      REQUESTS, MOTIONS, AND PETITIONS**

### **Chapter 3          Requests for a Hearing**

The Board may refer an appeal to an administrative law judge for a hearing to present evidence on a matter of fact, either at the request of a party or on its own initiative. 43 C.F.R. § 4.415 If a party requests a hearing, the party must explain what specific issues of material fact require a hearing, what evidence concerning these issues must be presented by oral testimony, or be subject to cross-examination, what witnesses need to be examined, and what documentary evidence requires explanation.

If the Board orders a hearing, it will specify the issues upon which it is to be held. The order may authorize the administrative law judge to include other issues, either at the request of a party or on his or her own initiative.

## **PART VIII      REQUESTS, MOTIONS, AND PETITIONS**

### **Chapter 4          Motions to Intervene**

If a person files a motion to intervene and demonstrates that it could have independently brought the appeal it seeks to participate in or that its interests could be adversely affected by the outcome of the appeal (e.g., if the agency decision were overturned), the IBLA will normally grant the motion in accordance with 43 C.F.R. § 4.406. For intervention in appeals under the Surface Mining Control and Reclamation Act of 1977, *see* 43 C.F.R. § 4.1110.

A person may file such a motion at any time and the IBLA should grant or deny it promptly. If the Board denies intervention as a party, it may grant the person *amicus curiae* status pursuant to 43 C.F.R. § 4.406(d).

## **PART VIII      REQUESTS, MOTIONS, AND PETITIONS**

### **Chapter 5          Motions to Consolidate**

When there are common or related issues of fact or law and it would be more efficient to consider those issues together, the Chief Administrative Judge (if the appeals are unassigned) or the lead judge, with the concurrence of the Chief Administrative Judge, may consolidate (or unconsolidate) two or more appeals at any time upon motion of a party or on the Board's initiative, pursuant to 43 C.F.R. § 4.404.

## **PART VIII      REQUESTS, MOTIONS, AND PETITIONS**

### **Chapter 6          Motions to Expedite Consideration**

When it would be in the public interest to do so, the Board may expedite consideration of an appeal, either in response to a motion from a party or on its own initiative. It may be in the public interest, for example, to consider an appeal ahead of when it would normally occur if a decision on appeal would establish a precedent that would be helpful, or if a party is facing particularly exigent circumstances (e.g., a short construction season or contractual obligations).

## **PART VIII      REQUESTS, MOTIONS, AND PETITIONS**

### **Chapter 7          Motions for Reconsideration**

The IBLA may reconsider a decision or an order in extraordinary circumstances pursuant to 43 C.F.R. § 4.403. Extraordinary circumstances include, but may not be limited to, an error or misinterpretation of fact or law in the decision, a new development in the law, or the availability of new evidence that demonstrates an error in the decision (if its previous absence from the record is explained). The lead judge on an appeal may order a party to submit an answer to a petition for reconsideration. Motions for reconsideration are to be decided promptly.

Depending on the circumstances, either an order or a decision may be employed if a motion for reconsideration is granted. If the rationale is changed, normally a decision is preferable.

## **PART IX            CERTIFYING AN APPEAL RECORD**

If a Board order or decision is appealed to federal court, the lead judge is responsible for signing an affidavit, prepared by the Counsel for the Board, certifying the record as complete. The Counsel for the Board will prepare a letter of transmittal that will accompany the case file to the clerk of court, the Department of Justice, the office of a U.S. Attorney, or the Office of the Solicitor.

If the Secretary or Director exercises jurisdiction over an appeal in accordance with 43 C.F.R. § 4.5, and the case record is in the possession of the Board, the Docket Clerk will insure that the case record is timely transmitted to the appropriate office and that evidence of receipt by that office is maintained by the Board.



## APPENDIX I, COMMON DISPOSITION ALTERNATIVES.

- Affirmed** For use when the Board is in complete, or nearly complete, agreement with the decision below. A decision should be affirmed even if the Board corrects non-substantive errors, e.g., dates or citations, that do not affect its soundness.
- Affirmed as Modified** For use when the result reached by the decision below is correct and no relief is afforded the appellant, but the Board finds the basis for the result was incorrect in whole or in part. If the Board does not change something in the decision below, e.g., if it affirms on the basis of only one of three reasons given, then “affirmed as modified” is not appropriate. Similarly, if the Board agrees with the basis of the decision below but adds a reason of its own, that is not a modification. To “modify” a decision, the Board must change something substantive in it.
- Reversed** For use when the Board finds the result in the decision below is incorrect and provides the correct result in a way that disposes of the case. However, it is possible to “reverse and remand” without disposing of a case, e.g., in a contest proceeding.
- Vacated** For use when the Board finds the result in the decision below is incorrect, but offers no result of its own. Usually indicates a need for further adjudication, but the Board does not indicate what the outcome of the further adjudication should be.
- Set Aside** For use when the Board cannot determine whether the decision below is correct or not, e.g., because supporting evidence in the record is inadequate, critical facts were assumed but not established, or the decision was rendered prematurely. A decision that is set aside is no longer in effect, but it does not prevent the agency from re-issuing the same decision, if the record supports it.
- Remanded** Used in conjunction with Reversed, Vacated, or Set Aside, when the Board returns a decision to the agency below that made it, with instructions to initiate, continue with, or repeat an aspect of the adjudication process. A remand is not appropriate if merely ministerial actions are required following disposition of the appeal.
- Referred** For use when the Board refers an appeal to the Hearings Division for an hearing on an issue or issues of fact.
- Dismissed** For use when an appeal is disposed of, usually on procedural grounds such as an untimely notice of appeal or failure to file a statement of reasons, or a request to withdraw an appeal, without discussion of the merits.
- \* \* \* In Part** For use when the Board reviews a decision and finds some aspects of it must be disposed of differently than others, e.g., “affirmed in part, reversed in part.”