

**§ 4.422**

**43 CFR Subtitle A (10–1–11 Edition)**

**§ 4.422 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 or contest in connection with which the document is required to be filed. This paragraph does not apply to requests for postponement of hearings under §§ 4.452–1 and 4.452–2.

(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 contest, 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 noted upon the records of the land office. Thereafter such transferee or encumbrancer must be made a party to any proceedings thereafter initiated adverse to the entry.

(c) *Service of documents.* (1) A party that files any document under this subpart must serve a copy of it concurrently as follows:

(i) On the appropriate official of the Office of the Solicitor under § 4.413(c) and (d);

(ii) For a notice of appeal and statement of reasons, on each person named in the decision under appeal; and

(iii) For all other documents, on each party to the appeal.

(2) Service on a party known to be represented by counsel or other designated representative must be made on the representative.

(3) Service must be made at the last address of record of the party (if unrepresented) or the representative, unless the party or representative has notified the serving party of a subsequent change of address.

(4) Service may be made as shown in the following table:

If the document is . . .	Service may be made by . . .
(i) An appeal under § 4.470 .....	(A) Personal delivery; (B) Registered or certified mail, return receipt requested; (C) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or (D) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means of service in writing.
(ii) A complaint under § 4.450–4 or 4.451–2.	(A) Any of the methods specified in paragraph (c)(4)(i) of this paragraph; or (B) Publication as specified in § 4.450–5.
(iii) Neither an appeal nor a complaint.	(A) Personal delivery; (B) Mail; (C) Delivery service, if the last address of record is not a post office box; or (D) Electronic means, such as electronic mail or facsimile, if the person to be served has consented to that means in writing.

(5) At the conclusion of any document that a party must serve under the regulations in this subpart, the party must sign a written statement that:

(i) Certifies that service has been or will be made in accordance with the applicable rules; and

(ii) Specifies the date and manner of service.

(6) Service that complies with paragraphs (c)(2) through (4) of this section is complete as shown in the following table:

If service is made by . . .	Service is complete when . . .
(i) Personal delivery .....	The document is delivered to the party.

If service is made by . . .	Service is complete when . . .
(ii) Mail or delivery service . . .	The document is delivered to the party.
(iii) Electronic means . . .	The document is transmitted to the party, unless the serving party learns that it did not reach the party to be served.
(iv) Publication . . .	The final notice is published under § 4.450-5(b)(3).

(7) In the absence of evidence to the contrary, delivery under paragraph (c)(6)(ii) of this section is deemed to take place 5 business days after the document was sent.

(d) The manager or administrative law judge, as the case may be, may extend the time for filing or serving any document in a contest, other than a notice of appeal under § 4.452-9.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 68 FR 33803, June 5, 2003; 75 FR 64667, Oct. 20, 2010]

#### § 4.423 Subpoena power and witness provisions.

The administrative law judge is authorized to issue subpoenas directing 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, for the purpose of taking testimony but not for discovery. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the Act of January 31, 1903 (43 U.S.C. 102-106), and 28 U.S.C. 1821.

#### HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT

#### § 4.430 Prehearing conferences.

(a) The administrative law judge may, in his discretion, on his own motion or motion of one of the parties or of the Bureau or Office direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings.

(b) The administrative law judge shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the

issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the administrative law judge unless modified for good cause, by subsequent order.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64668, Oct. 20, 2010]

#### § 4.431 Fixing of place and date for hearing; notice.

The administrative law judge shall fix a place and date for the hearing and notify all parties and the Bureau or Office. All hearings held in connection with land selection appeals arising under the Alaska Native Claims Settlement Act, as amended, shall be conducted within the State of Alaska, unless the parties agree otherwise.

[47 FR 26392, June 18, 1982, as amended at 75 FR 64668, Oct. 20, 2010]

#### § 4.432 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau or Office except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the administrative law judge at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the