garnishment has been terminated for accounts that have been paid in full.

**§ 105–57.012 Actions prohibited by the employer.**

An employer may not discharge, refuse to employ, or take disciplinary action against the debtor due to the issuance of a withholding order under this part. *See* 31 U.S.C. 3720D(e).

**§ 105–57.013 Refunds.**

(a) If a hearing official, at a hearing held pursuant to § 105–57.005 of this part, determines that a debt is not legally due and owing to the United States, GSA will promptly refund any amount collected by means of administrative wage garnishment.

(b) Unless required by Federal law or contract, refunds under this part will not bear interest.

**§ 105–57.014 Right of action.**

GSA may sue any employer for any amount that the employer fails to withhold from wages owed and payable to an employee in accordance with §§ 105–057.006 and 105–57.008 of this part, plus attorney's fees, costs, and if applicable, punitive damages. However, a suit may not be filed before the termination of the collection action involving a particular debtor, unless earlier filing is necessary to avoid expiration of any applicable statute of limitations period. For purposes of this part, ''termination of the collection action'' occurs when GSA has terminated collection action in accordance with the FCCS or other applicable standards. In any event, termination of the collection action will have been deemed to occur if GSA has not received any payments to satisfy the debt from the particular debtor whose wages were subject to garnishment, in whole or in part, for a period of one (1) year.

[FR Doc. 03–30407 Filed 12–9–03; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Office of the Secretary

## 43 CFR Part 4

**RIN 1090–AA84**

## Special Rules Applicable to Public Land Hearings and Appeals

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of Hearings and Appeals (OHA) is amending its existing regulations governing petitions for stays of grazing decisions issued by the Bureau of Land Management. The changes would specifically authorize OHA administrative law judges to decide such petitions, which would expedite the administrative review process by eliminating an inefficient division of authority.

**EFFECTIVE DATE:** January 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U. S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203, Phone: 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. The Proposed Rule*

On May 22, 2003, the Office of Hearings and Appeals (OHA) proposed to amend its existing regulations governing petitions to stay bureau decisions. 68 FR 27955–27960 (May 22, 2003). As explained in that proposal, the existing regulations governing hearings and appeals of grazing decisions issued by the Bureau of Land Management (BLM) assign responsibility for deciding petitions for a stay of such decisions to the Interior Board of Land Appeals (IBLA) or the Director, OHA. Responsibility for conducting the hearing, ruling on other motions, and making the initial decision on the appeal, however, rests with administrative law judges (ALJs) in the Hearings Division, OHA.

When an appeal of a grazing decision is filed with a BLM field office, the current OHA regulations require that office to forward the appeal to the BLM State Director, and the State Director to transmit it to the OHA Hearings Division office in Salt Lake City, Utah. 43 CFR 4.470(d). If a petition for a stay of the decision accompanies the appeal, the Hearings Division must forward the petition to IBLA in Arlington, Virginia. Under 43 CFR 4.21(b)(4), IBLA (or the OHA Director) has 45 days to decide whether or not to grant the petition; after IBLA decides, it returns the record to the Hearings Division in Salt Lake City. In the meantime, the ALJ to whom the case is assigned normally waits to schedule the hearing and to rule on any motions concerning the appeal, such as a motion to intervene in the appeal or a motion by BLM to dismiss the appeal. IBLA does not have authority to rule on such motions.

This division of responsibility results in delays and inefficiencies that would be alleviated if the ALJs also had authority to rule on petitions for a stay. For example, IBLA sometimes finds during its consideration of a stay petition that a motion to dismiss should be granted. However, under the existing regulations, IBLA cannot grant the motion but must proceed to decide the stay petition and then refer the case, including the motion to dismiss, back to the Hearings Division. If the ALJ had authority to rule on a petition for a stay, he or she could consider any other pending motions at the same time and, where appropriate, grant a motion to dismiss without having to rule on the petition. Moreover, under the existing regulations, IBLA must thoroughly review the record in deciding whether to grant a stay petition, and the ALJ must then do the same in deciding the merits of the case. This is an unnecessary duplication of effort and takes time away from IBLA's consideration of other appeals.

Therefore, OHA proposed amendments to the existing regulations in 43 CFR 4.21 and 4.470 *et seq.* to provide the authority to ALJs to rule on petitions for a stay of BLM grazing decisions. OHA also proposed that any party may appeal to the IBLA an order of an ALJ granting or denying a petition for a stay. Any party (other than BLM) wishing to appeal an order of an ALJ denying a petition for a stay would be able to seek judicial review instead of appealing to IBLA.

OHA also proposed to revise the existing regulatory language to make it clearer and to conform to Departmental requirements for writing rules in plain language. *See* 318 DM 4.2.

*B. Responses to Comments*

We received comments on the proposed rules from Nordhaus Haltom Taylor Taradash & Bladh, LLP, on behalf of the Jicarilla Apache Nation, the Pueblo of Laguna, and the Pueblo of Santa Ana; the National Wildlife Federation; Budd-Falen Law Offices, P.C.; the National Mining Association; Holme Roberts & Owen LLP, on behalf of Placer Dome America; Jason R. Warran, Esq.; and the American Farm Bureau Federation.

Most commenters expressed agreement with the basic intent of the proposed rule, *i.e.*, to authorize ALJs to decide petitions for stay of BLM grazing decisions. But they raised numerous questions about the proposed amendments to the general regulation in 43 CFR 4.21 and the need for such amendments, and they urged that we limit the final rule to the grazing-related provisions of §§ 4.470–.478.

For example, some commenters were concerned that the proposed amendments to § 4.21 could be misinterpreted to change the current effective date provisions for BLM decisions involving mining operations under 43 CFR subpart 3809, BIA decisions appealable under 25 CFR part 2, or other bureau decisions in unanticipated contexts. In addition, some commenters were concerned that proposed § 4.22 did not make as clear as the existing § 4.21(a) that some bureau decisions may be effective immediately, *i.e.*, during the period when an appeal of the decision may be filed, pursuant to another regulation, *e.g.*, 43 CFR 4160.3(f) or 3809.803. Another commenter questioned whether proposed § 4.22 was as clear as existing § 4.21 that, absent another regulation or petition for a stay, a bureau decision would become effective on the day after the expiration of the time an appeal could be filed. Further, some commenters were concerned about the effect of the proposed rule on the many existing regulations that cross reference § 4.21, prior to the Department's updating those regulations with references to the new sections in the proposed rule.

In light of these questions and concerns, we have decided to defer action on the proposed amendments to 43 CFR 4.21 and consider further the questions raised about those proposed amendments. For this reason, we will limit our responses to comments that related to the proposed amendments (1) extending authority to ALJs to decide petitions for a stay of BLM grazing decisions and (2) providing for appeals of ALJ decisions on such petitions.

One comment suggested that proposed § 4.471(a) be amended to allow the filing of a petition for a stay any time one can satisfy the requirements of proposed § 4.471(d), rather than limiting the time to the 30 days allowed for filing an appeal. The commenter observed that the harm from a BLM decision may not become apparent for some time and that, if an appeal was still pending before an ALJ, there would be no reason the ALJ could not consider the appropriateness of a stay if that time came later. If the decision had already been substantially implemented, that could be taken into consideration in determining the relative harm to the parties. The number of stay petitions might be reduced if the regulations did not force an appellant to decide within 30 days whether a decision was going to cause immediate and irreparable harm, the commenter suggested.

We agree that in some cases the effect of a BLM decision might not become apparent until after 30 days, and we do not wish to encourage the filing of petitions for a stay that may not be necessary. However, under existing IBLA decisions, petitions for a stay may be filed after the 30-day period for filing an appeal has expired. In *Robert E. Oriskovich,* 128 IBLA 69, 70 (1993), IBLA noted that, while the failure to timely file a petition for stay results in the decision being appealed becoming effective on the day following the expiration of the appeal period, nothing in the regulations precludes the filing of a subsequent petition for stay that the Board may, in its discretion, entertain. *See also Western Shoshone National Council,* 130 IBLA 69, 72 (1994) (''Nothing in the regulations at 43 CFR part 4 precludes appellant from filing a petition or request for a stay at any time during a proceeding before the Board. * * * '') Because an administrative law judge would have general jurisdiction over an appeal from a BLM grazing decision, he or she could entertain a petition for a stay that was filed with the Hearings Division at any time the appeal was still pending. Therefore, it is not necessary to amend the regulation in order to allow the filing of a petition for a stay after the appeal period has expired, as the commenter suggested.

Another comment suggested that proposed § 4.478(a) be amended to allow a person adversely affected by the decision of an ALJ on a petition for a stay to appeal to IBLA even if the person was not a ''party to the case'' as defined in § 4.410(b). For example, if a person had not objected to a proposed BLM decision that became final because he or she agreed with it, the person would not have a right to appeal the BLM decision under § 4.410 since he or she was not adversely affected by the decision and had not previously participated in the decision-making process. See 68 FR 33794, 33803 (June 5, 2003). However, if another party appealed the BLM decision and the ALJ granted a stay, the person could be adversely affected by the stay. In that situation, the commenter argued, the person should be allowed to appeal the stay to IBLA.

The commenter is correct that, if the person was not a ''party to the case'' as defined in § 4.410(b), he or she would not have a right to appeal the ALJ's stay decision to IBLA. Under that regulation, a ''party to the case'' is

> One who has taken the action that is the subject of the decision on appeal, is the object of that decision, or has otherwise participated in the process leading to the decision under appeal, *e.g.*, by filing a mining claim or an application for use of public lands, by commenting on an environmental document, or by filing a protest to a proposed action.

Other ways a person in the situation described in the comment could have previously participated in the decision-making process might include commenting on the proposed BLM decision or intervening in the case before the ALJ to oppose the stay petition.

We are not persuaded that a requirement of previous participation in the case is unduly burdensome or should be waived in the situation posited by the commenter. As explained in the preamble to the June 5, 2003, final rule amending § 4.410, this is a codification of longstanding IBLA precedent on who has standing to appeal a decision. 68 FR 33794. We have therefore retained the reference to § 4.410 in final § 4.478(a).

A commenter suggested that, if an appellant sought IBLA review of an ALJ decision on a petition for a stay under proposed § 4.478(a) but the Board did not ''expeditiously issue a decision on the appeal'' as provided in proposed § 4.478(c), then the appellant should be allowed to abandon that appeal and instead go to federal court under proposed § 4.478(b). The commenter expressed concern that the Board might not quickly decide such appeals, despite the statement in proposed § 4.478(c).

The commenter's concern for timely decisions must be balanced against the significant benefits that inure to both the Department and the courts from the requirement that appellants exhaust their administrative remedies before seeking judicial review. Given the commitment that OHA is making in adopting § 4.478(c), we disagree with the commenter that there is a risk of substantial delay in IBLA's review process sufficient to warrant forgoing those benefits. Of course, if the BLM decision is in effect, one may seek judicial review at any time. *See Darby* v. *Cisneros,* 509 U.S. 137, 153–54, 113 S. Ct. 2539, 2547–48 (1993).

Other commenters thought the proposed rule was arbitrary in providing that a party could seek immediate judicial review of an ALJ order denying a stay but not of an ALJ order granting a stay; the latter would first have to be appealed to IBLA.

We disagree with the commenters that this result is arbitrary. Under both the proposed and final rule, an appeal to IBLA is available in either situation. However, if a stay is denied, the BLM decision is operative, and judicial review is available under the APA as an alternative to an IBLA appeal. *See* 5 U.S.C. 704; *Darby, supra.* The rule

simply reflects this statutory and decisional authority. If the stay is granted and the BLM decision is inoperative, resort to the courts is not available until the parties have exhausted their administrative remedies.

One comment stated that § 4.479 needs to be amended so as not to require exhaustion of administrative remedies when 43 CFR 4160.3(d) or (e) allows grazing to take place even if a stay has been granted, citing *Idaho Watersheds Project* v. *Hahn*, 307 F.3d 815, 824–28 (9th Cir. 2002). Section 4160.3(d)–(e) specifies what grazing use is authorized when OHA stays a BLM decision pending appeal. In general,

> An applicant who was granted grazing use in the preceding year may continue at that level of authorized use during the time the decision is stayed. * * * Where an applicant had no authorized grazing use during the previous year * * *, the authorized grazing use shall be consistent with the final decision pending the [OHA] final determination on the appeal.

In *Hahn*, environmental plaintiffs challenged BLM grazing decisions on the grounds that they perpetuated a long-term problem of livestock overgrazing in the Owyhee Resource Area, allegedly in violation of federal statutes and regulations and BLM's own guidelines for rangeland management. BLM and the ranchers argued that the lawsuit should be dismissed because the plaintiffs had not filed an administrative appeal and sought a stay of the grazing decisions and had therefore failed to exhaust their administrative remedies. The court disagreed, holding that, because of § 4160.3(d)–(e), BLM's grazing decisions would not be rendered inoperative even if a stay were granted.

While finding that the plaintiffs were not required to exhaust their administrative remedies under the facts of that case, the court in *Hahn* left open the prospect that, under a different set of facts, a stay would render the final BLM decision inoperative for purposes of 5 U.S.C. 704, even if it resulted in authorized use at the previous year's level. In that situation, exhaustion of administrative remedies would still be required. For example, if a BLM grazing decision increased a rancher's authorized use from the previous year's level and an environmental group challenged that increase, a stay that resulted in authorized use at the previous year's level under § 4160.3(d)–(e) would render the BLM decision inoperative, and exhaustion of administrative remedies would be required. Similarly, if a BLM grazing decision reduced a rancher's authorized use from the previous year's level and the rancher challenged that decrease, a stay that resulted in authorized use at the previous year's level would render the BLM decision inoperative, and exhaustion of administrative remedies would be required. We have revised § 4.479(d) to reflect the court's decision in *Hahn*.

One commenter opposed the proposed regulations on the grounds that, under the Taylor Grazing Act (TGA) and the APA, a BLM decision

> affecting a grazing permit is a sanction and an order within the meaning of the APA [and] cannot become effective until the permittee is afforded a hearing and allowed to present testimony and other evidence. 5 U.S.C. 556(d) & (e). * * * The proposed rule change would be facially invalid. * * * [T]he proposed changes force the holder of a TGA grazing permit to seek a stay when the TGA and the APA mandate that such a stay be automatic.

We disagree that the typical BLM grazing decision is either a ''sanction'' or an ''order'' within the meaning of the APA. In fact, in a number of cases, the grazing permittee has sought the BLM decision and wants it to take effect immediately, but another interested party files an appeal and a petition for a stay. In any event, this argument is currently under review in *Wallace* v. *Bureau of Land Management*, No. 02–1119 (CBS) (D. Colo.). If necessary based on the outcome of that litigation, we will consider further amendments to our regulations at a future time.

*C. Section-by-Section Analysis*

*Section 4.421*

We have added a definition for the term ''person named in the decision,'' and that term is then used in §§ 4.470–.472 to identify everyone who must be served with an appeal, petition for a stay, and a response. The term is defined as ''an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title.'' BLM is required to serve its proposed decision on these persons under § 4160.1, and will list their names and addresses at the conclusion of its final grazing decision. This will help to ensure that anyone whose interest may be adversely affected by the final BLM decision, or by an appeal of that decision, has an opportunity to participate in the appeal process and will be bound by the outcome.

*Section 4.470*

This section is based on the existing § 4.470(a)–(b). We have added the phrase, ''or within 30 days after a proposed decision becomes final as provided in § 4160.3(a),'' to be consistent with § 4160.4. We have also added the phrase, ''and serve a copy of the appeal on any other person named in the decision,'' at the end of § 4.470(a). This language is based on the service requirements in 43 CFR 4.22(b), 4.413(a).

Throughout this preamble and rule, references to a ''final BLM grazing decision'' or ''the decision'' should be construed to include any relevant portion of such a decision. Thus an adversely affected party may appeal only a portion of a BLM decision, may petition for or be granted a stay of only a portion of a BLM decision, and so on. Adding a phrase like ''or relevant portion thereof'' wherever the term ''final BLM grazing decision'' appears would make the rule cumbersome and would merely state what most readers would take for granted anyway.

Paragraphs (b), (c), and (d) are based on similar language in the existing § 4.470. Paragraphs (b) and (c) are adopted as proposed, and paragraph (d) is modified to refer to the appeal period provided in paragraph (a). We have moved proposed paragraph (e) to redesignated § 4.474 because that section deals with the authority of an ALJ; as a result, proposed paragraph (f) has become paragraph (e).

*Section 4.471*

Section 4.471 is new; existing § 4.471 has been redesignated as § 4.473. As proposed, new § 4.471 would have referred to the standards and procedures in existing § 4.21 (proposed §§ 4.22-.24) regarding petitions for a stay and requests to make a BLM decision immediately effective. Since we have decided not to amend § 4.21 in this final rule, we have revised § 4.471 so that it fully incorporates the relevant standards and procedures from § 4.21.

In new § 4.471, paragraph (a) specifies where a petition for a stay must be filed, and paragraph (b) specifies where copies must be served.

Proposed paragraph (b), dealing with requests to make a BLM decision effective immediately—and related provisions in proposed §§ 4.474(c)(2) and 4.478(a)(2)—have been deleted. These provisions were intended to extend to the ALJ the authority given to the OHA Director and the Board in § 4.21(a)(1) to make a decision effective immediately when the public interest so requires, notwithstanding the automatic stay provisions of § 4.21(a)(1)–(3). Instead of the several deleted provisions, we have added § 4.479(c) to state the same authority more simply.

Proposed paragraph (c), redesignated as paragraph (b), has been revised to require service of copies of the appeal

and of any petition for a stay on (1) any other person named in the decision from which the appeal is taken, and (2) the appropriate office of the Office of the Solicitor, as provided in § 4.413(a) and (c). We have deleted the requirement to send a copy to the Hearings Division, OHA, in Arlington.

Because we are not amending the general rules in subpart B as proposed, we have revised proposed paragraph (d), redesignated as paragraphs (c) and (d), to incorporate the standards for granting a stay and the burden of proof that are currently found in section 4.21(b)(1)–(2).

*Section 4.472*

This section is also new; existing § 4.472 has been redesignated as § 4.474. New § 4.472 sets forth procedures and time frames for the filing of various documents by BLM and other persons following receipt of the appeal and petition for a stay. It also sets forth a deadline for a decision by the ALJ on such a petition.

Paragraph (a) is based on existing § 4.470(d). As revised, BLM must transmit an appeal to the Hearings Division, Office of Hearings and Appeals, in Salt Lake City, Utah, within 10 days after receiving the appeal. If a petition for a stay has been received, BLM's transmittal must also include any response BLM wishes to file to the petition and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay, such as BLM's environmental assessment. If necessary, an ALJ could grant an extension of the 10-day period under § 4.22(f). If BLM files a response, it must serve a copy on the appellant and any other person named in the decision from which the appeal is taken.

Under paragraph (b), any person named in the decision from which the appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file a motion to intervene in the appeal together with the response with the Hearings Division within 10 days after receiving the petition. The person must serve a copy of the motion to intervene and response on the appellant, the appropriate office of the Office of the Solicitor, and any other person named in the decision.

Under existing § 4.471, redesignated as § 4.473 by this final rule, BLM is to notify any person it believes may be directly affected by the decision on appeal. Such a person may appear at the hearing and, ''upon a proper showing of interest, may be recognized by the administrative law judge as an intervenor in the appeal.'' For guidance on what interest is sufficient for intervenor status, *see Bear River Land and Grazing* v. *BLM*, 132 IBLA 110, 113–14 (1995). As existing § 4.471 shows, a motion to intervene is not limited to the 10-day period for filing a response to a petition for a stay; but if a person who is not yet a party to the appeal wishes to respond to the petition for a stay, he or she must submit a motion to intervene along with his or her response, within the 10 days allowed for a response to a petition for a stay.

Under paragraph (c), if a petition for a stay has not been filed, BLM must promptly transmit the pertinent documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division.

Under paragraph (d), an ALJ must rule on a petition for a stay that is filed with an appeal, and any motion to intervene filed under paragraph (b), within 45 days after the expiration of the appeal period. This deadline is based on existing § 4.21(b)(4).

Paragraph (e), dealing with the effective date of a BLM decision for which a petition for a stay has been filed, is based on § 4.21(a)(3). It provides that any BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the ALJ denies the petition or fails to act on the petition within the 45-day deadline set forth in paragraph (d).

Paragraph (f) authorizes any party to file a motion to dismiss the appeal or any other appropriate motion with the Hearings Division at any appropriate time and provides for a response to such a motion. This paragraph is also based on language in existing § 4.470(d). The existing regulation provides that the BLM State Director may file a motion to dismiss within 30 days of his or her receipt of the appeal, for any of six specified reasons. In fact, however, under existing Hearings Division and IBLA practice, BLM or any other party may file any appropriate motion at any appropriate time for any appropriate reason. Therefore, new § 4.472(f) is worded more broadly than existing § 4.470(d) to allow for other movants, motions, times for filing, and reasons.

Paragraph (g) requires service of a motion or response on the other parties to the appeal.

*Section 4.474*

Existing § 4.472 dealing with the authority of an ALJ has been redesignated as new § 4.474(a)–(b). Paragraph (c) has been added to authorize the ALJ to rule on any petition for a stay of a BLM decision or any motion. As noted above, the authority of an ALJ to consolidate appeals, found in existing § 4.470(c) and proposed as § 4.470(e), has been added to this section as paragraph (d).

*Section 4.478*

Existing § 4.476 dealing with appeals to IBLA has been redesignated as new § 4.478. Because we are not amending the general rules in subpart B as proposed, we have revised proposed paragraph (a) by removing the reference to proposed § 4.24(c) and have incorporated proposed § 4.24(d) through (f) as § 4.478(b) through (d). Proposed § 4.478(b), which was based on existing § 4.476, has become paragraph (e).

*Section 4.479*

Existing § 4.477 dealing with the effectiveness of a BLM decision pending appeal has been redesignated as § 4.479. Final § 4.479 has been expanded from its proposed version to explain more fully the effectiveness of a BLM grazing decision pending appeal. Paragraph (a) has been added to incorporate the limited automatic stay provisions of existing § 4.21(a) and proposed § 4.22. These automatic stay provisions do not apply if BLM has made its decision immediately effective under § 4160.3, as set forth in proposed § 4.479(a), which is final § 4.479(b), or under § 4190.1, which was added by the June 5, 2003, rulemaking 68 FR 33794, 33804.

As noted previously, final § 4.479(c) has been added to extend to the ALJ the authority given to the OHA Director and the Board in § 4.21(a)(1) to make a decision effective immediately when the public interest so requires, notwithstanding the automatic stay provisions of § 4.21(a)(1)–(3). Proposed § 4.479(b) has been retained as final § 4.479(d). Final § 4.479(e) and (f) modify proposed § 4.479(c) to clarify the requirement for exhaustion of administrative remedies and to reflect the decision in the Hahn case, discussed above.

## II. Review Under Procedural Statutes and Executive Orders

*A. Regulatory Planning and Review (E.O. 12866)*

In accordance with the criteria in Executive Order 12866, the Department finds that this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended rules will have virtually no effect on the economy because they will only add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

2. This rule will not create inconsistencies with or interfere with other agencies' actions. The rules amend existing OHA regulations to add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

3. This rule will not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations have to do only with the procedures for hearings and appeals of BLM grazing decisions, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule will only add authority for ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

4. This rule does not raise novel legal or policy issues. The rule simply extends ALJs' existing authority to include the authority to decide petitions for a stay of BLM grazing decisions, and provides for appeals of ALJ decisions on such petitions.

*B. Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The extension of authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on small entities. A Small Entity Compliance Guide is not required.

*C. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

1. This rule will not have an annual effect on the economy of $100 million or more. Granting authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on the economy.

2. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Granting ALJs authority to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will not affect costs or prices for citizens, individual industries, or government agencies.

3. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*D. Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), the Department finds as follows:

1. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. Small governments do not often appeal BLM grazing decisions. Authorizing ALJs to decide petitions for a stay of such decisions, and providing for appeals of ALJ decisions on such petitions, will neither uniquely nor significantly affect these governments because such authority currently exists elsewhere. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

2. This rule will not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*E. Takings (E.O. 12630)*

In accordance with Executive Order 12630, the Department finds that the rule will not have significant takings implications. A takings implication assessment is not required. These amendments to existing rules authorizing ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will have no effect on property rights.

*F. Federalism (E.O. 13132)*

In accordance with Executive Order 13132, the Department finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. There is no foreseeable effect on states from extending to ALJs the existing authority to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions. A federalism assessment is not required.

*G. Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. These regulations, because they simply extend to ALJs already existing authority to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions, will not burden either administrative or judicial tribunals.

*H. Paperwork Reduction Act*

This rule will not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. These regulations will only extend authority to ALJs to decide petitions for stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions; they will not require the public to provide information.

*I. National Environmental Policy Act*

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that

the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to this rule. This rule is an administrative and procedural rule, relating to the authority of ALJs to decide petitions for stays of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

*J. Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of this rule on federally recognized Indian tribes and has determined that there are no potential effects. These rules will not affect Indian trust resources; they will provide authority to ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

*K. Effects on the Nation's Energy Supply*

In accordance with Executive Order 13211, the Department finds that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will not affect energy supply or consumption.

**List of Subjects in 43 CFR Part 4**

Administrative practice and procedure, Grazing lands, Public lands.

Dated: December 3, 2003.

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management and Budget.*

■ For the reasons set forth in the preamble, part 4, subpart E, of title 43 of the Code of Federal Regulations is amended as set forth below:

## PART 4—[AMENDED]

## Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

■ 1. The authority for 43 CFR part 4, subpart E, is revised to read as follows:

**Authority:** Sections 4.470 to 4.480 also issued under the authority of 43 U.S.C. 315a.

■ 2. The cross reference for 43 CFR part 4, subpart E, continues to read as follows:

*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.

■ 3. In § 4.421, revise paragraph (c) and add paragraph (h) to read as follows:

### § 4.421 Definitions

* * * * *

(c) *Bureau* or *BLM* means the Bureau of Land Management.

* * * * *

(h) *Person named in the decision* means any of the following persons identified in a final BLM grazing decision: an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title.

### §§ 4.471–4.478 [Redesignated]

■ 4. Redesignate §§ 4.471 through 4.478 as §§ 4.473 through 4.480, respectively.

■ 5. Revise § 4.470 and add new §§ 4.471 and 4.472 to read as follows:

### § 4.470 How to appeal a final BLM grazing decision to an administrative law judge.

(a) Any applicant, permittee, lessee, or other person whose interest is adversely affected by a final BLM grazing decision may appeal the decision to an administrative law judge within 30 days after receiving it or within 30 days after a proposed decision becomes final as provided in § 4160.3(a) of this title. To do so, the person must file an appeal with the BLM field office that issued the decision and serve a copy of the appeal on any person named in the decision.

(b) The appeal must state clearly and concisely the reasons why the appellant thinks the BLM grazing decision is wrong.

(c) Any ground for appeal not included in the appeal is waived. The appellant may not present a waived ground for appeal at the hearing unless permitted or ordered to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM grazing decision within the period provided in paragraph (a) of this section may not later challenge the matters adjudicated in the final BLM decision.

(e) Filing an appeal does not by itself stay the effectiveness of the final BLM decision. To request a stay of the final BLM decision pending appeal, *see* § 4.471.

### § 4.471 How to petition for a stay of a final BLM grazing decision.

(a) An appellant under § 4.470 may petition for a stay of the final BLM grazing decision pending appeal by filing a petition for a stay together with the appeal under § 4.470 with the BLM field office that issued the decision.

(b) Within 15 days after filing the appeal and petition for a stay, the appellant must serve copies on—

(1) Any other person named in the decision from which the appeal is taken; and

(2) The appropriate office of the Office of the Solicitor, in accordance with § 4.413(a) and (c).

(c) A petition for a stay of a final BLM grazing decision pending appeal under paragraph (a) of this section must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

(d) The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

### § 4.472 Action on an appeal and petition for a stay.

(a) BLM must transmit any documents received under §§ 4.470 and 4.471, within 10 days after receipt, to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah. If a petition for a stay has been filed, the transmittal must also include any response BLM wishes to file to a petition for a stay and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final

BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; the final BLM grazing decision; and any other documents that BLM wishes the administrative law judge to consider in deciding the petition for a stay. BLM must serve a copy of any such response on the appellant and any other person named in the decision from which the appeal is taken.

(b) Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c), and any other person named in the decision.

(c) If a petition for a stay has not been filed, BLM must promptly transmit the following documents from the case file to the administrative law judge assigned to the appeal, once the appeal has been docketed by the Hearings Division: the application, permit, lease, or notice of unauthorized use underlying the final BLM grazing decision; the proposed BLM grazing decision; any protest filed by the appellant under § 4160.2; and the final BLM grazing decision.

(d) Within 45 days after the expiration of the time for filing a notice of appeal, an administrative law judge must grant or deny—

(1) A petition for a stay filed under § 4.471(a), in whole or in part; and

(2) A motion to intervene filed with a response to the petition under paragraph (b) of this section.

(e) Any final BLM grazing decision that is not already in effect and for which a stay is not granted will become effective immediately after the administrative law judge denies a petition for a stay or fails to act on the petition within the time set forth in paragraph (d) of this section.

(f) At any appropriate time, any party may file with the Hearings Division a motion to dismiss the appeal or other appropriate motion. The appellant and any other party may file a response to the motion within 30 days after receiving a copy.

(g) Within 15 days after filing a motion or response under paragraph (f) of this section, any moving or responding party must serve a copy on every other party. Service on BLM must be made on the appropriate office of the Office of the Solicitor in accordance with § 4.413(a) and (c).

■ 6. In newly redesignated § 4.474, add paragraphs (c) and (d) to read as follows:

**§ 4.474 Authority of administrative law judge.**

* * * * *

(c) The administrative law judge may consider and rule on all motions and petitions, including a petition for a stay of a final BLM grazing decision.

(d) An administrative law judge may consolidate two or more appeals for purposes of hearing and decision when they involve a common issue or issues.

■ 7. Revise newly redesignated § 4.478 to read as follows:

**§ 4.478 Appeals to the Board of Land Appeals; judicial review.**

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay.

(b) As an alternative to paragraph (a) of this section, any party other than BLM may seek judicial review under 5 U.S.C. 704 of a final BLM grazing decision if the administrative law judge denies a petition for a stay, either directly or by failing to meet the deadline in § 4.472(d).

(c) If a party appeals under paragraph (a) of this section, the Board must issue an expedited briefing schedule and decide the appeal promptly.

(d) Unless the Board or a court orders otherwise, an appeal under paragraph (a) of this section does not—

(1) Suspend the effectiveness of the decision of the administrative law judge; or

(2) Suspend further proceedings before the administrative law judge.

(e) Any party adversely affected by the administrative law judge's decision on the merits has the right to appeal to the Board under the procedures in this part.

■ 8. Revise newly redesignated § 4.479 to read as follows:

**§ 4.479 Effectiveness of decision during appeal.**

(a) Consistent with the provisions of §§ 4.21(a) and 4.472(e) and except as provided in paragraphs (b) and (c) of this section or other applicable regulation, a final BLM grazing decision will not be effective—

(1) Until the expiration of the time for filing an appeal under § 4.470(a); and

(2) If a petition for a stay is filed under § 4.471(a), until the administrative law judge denies the petition for a stay or fails to act on the petition within the time set forth in § 4.472(d).

(b) Consistent with the provisions of §§ 4160.3 and 4190.1 of this title and notwithstanding the provisions of § 4.21(a), a final BLM grazing decision may provide that the decision will be effective immediately. Such a decision will remain effective pending a decision on an appeal, unless a stay is granted by an administrative law judge under § 4.472 or by the Board under § 4.478(a).

(c) Notwithstanding the provisions of § 4.21(a), when the public interest requires, an administrative law judge may provide that the final BLM grazing decision will be effective immediately.

(d) An administrative law judge or the Board may change or revoke any action that BLM takes under a final BLM grazing decision on appeal.

(e) In order to ensure exhaustion of administrative remedies before resort to court action, a BLM grazing decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless—

(1) A petition for a stay of the BLM decision has been timely filed and the BLM decision has been made effective under § 4.472(e), or

(2) The BLM decision has been made effective under paragraphs (b) or (c) of this section or other applicable regulation, and a stay has not been granted.

(f) Exhaustion of administrative remedies is not required if a stay would not render the challenged portion of the BLM decision inoperative under subpart 4160 of this title.

[FR Doc. 03–30631 Filed 12–9–03; 8:45 am]

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## DEPARTMENT OF ENERGY

### 48 CFR Parts 904, 923, 952, and 970

**RIN 1991–AB54**

### Acquisition Regulations; Conditional Payment of Fee, Profit, and Other Incentives

**AGENCY:** Department of Energy.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Energy publishes interim final amendments to its Acquisition Regulation setting forth policies for reductions of fee or other amounts payable to DOE prime contractors because of contractor performance failures related to safeguarding of classified information and to adequate protection of environment, health and safety, including the health and safety of workers, at contractor operated sites.

**DATES:** This rule is effective January 9, 2004. Written comments on specified portions of this interim final rule