

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 BLM, BLM currently forwards the decision and accompanying record to the Hearings Division office in Salt Lake City, Utah. If a petition for a stay of the decision accompanies the notice of appeal, the Hearings Division must forward the record to IBLA in Arlington, Virginia. Under 43 CFR 4.21(b)(4), IBLA (or the 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. The same situation applies, but less frequently, to requests to place grazing decisions into immediate effect under 43 CFR 4.21(a)(1) if BLM has not done so under 43 CFR 4160.3(f).

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 and requests to place grazing decisions into immediate effect. 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 petitions for a stay and requests to place decisions into immediate effect, 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 or request. 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.

By contrast, the regulations governing hearings under the Surface Mining Control and Reclamation Act of 1977 authorize an ALJ to consider whether to grant a motion for temporary relief (which is comparable to a petition for a stay) and also to decide the merits. IBLA gets involved in temporary relief cases only if a party appeals an ALJ's

decision. *See, e.g.*, 43 CFR 4.1267, 4.1367(f), 4.1376(h). OHA has found these procedures workable and cost-effective. ALJs are also authorized to grant stays of decisions issued under BLM's onshore oil and gas operations regulations, *see* 43 CFR 3165.3(e), 3165.4(c), and of civil penalties issued by the Minerals Management Service, *see* 30 CFR 241.55(b).

Therefore, OHA proposes amendments to the existing regulations to provide the authority to ALJs to rule on petitions for a stay of BLM grazing decisions and requests to place these decisions into immediate effect. We also propose that any party may appeal to the IBLA an order of an ALJ granting or denying (1) a petition for a stay, or (2) a request to place a decision into immediate effect. Any party (other than BLM) wishing to appeal an order of an ALJ denying a petition for a stay or granting a request to place a decision into immediate effect may seek judicial review instead of appealing to IBLA.

The proposed rule would revise both 43 CFR 4.21, which applies to OHA proceedings generally, and 43 CFR 4.470–4.478, which apply to appeals from BLM grazing decisions. Currently OHA does not encounter the inefficient division of responsibility described above outside the context of grazing appeals. However, by revising § 4.21, we would eliminate the same inefficiency should it arise in some other context where the merits of the appeal were pending before the Hearings Division but, under current regulations, a stay petition must be decided by IBLA. In any case in which the ALJ has jurisdiction of the merits, we believe the ALJ should be authorized to decide a stay petition or a request to place a bureau decision in immediate effect. By revising § 4.21 as well as § 4.477, we would be keeping the two sets of provisions consistent.

OHA is also proposing 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. We propose to do so by defining terms, creating more sections, reorganizing the provisions to put the main ideas first, and shortening sentences. In 43 CFR part 4, subpart B, we propose to revise existing § 4.21, to add new §§ 4.22 through 4.26, and to redesignate existing §§ 4.22 through 4.31 as §§ 4.27 through 4.36, respectively. Similarly, in 43 CFR part 4, subpart E, we would revise existing § 4.470, add new §§ 4.471 and 4.472, and redesignate existing §§ 4.471 through 4.478 as §§ 4.473 through 4.480, respectively. We would add paragraph (c) to newly redesignated § 4.474, and

revise newly redesignated §§ 4.478 and 4.479. If this proposed rule becomes final, BLM would have to amend its regulations that refer to existing §§ 4.21 through 4.31 or §§ 4.470 through 4.478 to update the cross-references.

III. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, we find 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 would 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 would have virtually no effect on the economy because they would only add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

2. This rule would not create inconsistencies with or interfere with other agencies' actions. The rules propose to amend existing OHA regulations to add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

3. This rule would 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 proposed rule would only add authority for ALJs to decide petitions for a stay of grazing decisions and to place such decisions into immediate effect.

4. This rule does not raise novel legal or policy issues. The rule would simply extend ALJs' existing authority to include the authority to decide petitions for a stay of BLM grazing decisions and requests to place such decisions into immediate effect.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule would 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