

following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, § 4.21 General provisions.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

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

Administrative practice and procedure; Grazing lands; Public lands.

For the reasons set forth in the preamble, under authority delegated to the Director, Office of Hearings and Appeals, by the Secretary of the Interior, part 4, subparts B and E, of title 43 of the Code of Federal Regulations are proposed to be amended as set forth below:

Dated: May 13, 2003.

**Robert S. More,**

*Director, Office of Hearings and Appeals.*

#### PART 4—[AMENDED]

1. The authority for 43 CFR part 4 continues to read as follows:

**Authority:** R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

#### Subpart B—General Rules Relating to Procedures and Practice

##### §§ 4.22 through 4.31 [Redesignated as §§ 4.27 through 4.36].

2. Sections 4.22 through 4.31 are redesignated as §§ 4.27 through 4.36.

3. Section 4.21 is revised and new §§ 4.22 through 4.26 are added to read as follows:

#### § 4.21 Definitions of terms used in this subpart.

As used in this subpart:

*Appropriate official* means the Director of the Office of Hearings and Appeals, an Appeals Board, or an administrative law judge, as applicable in a particular situation.

*Bureau* means a bureau or office of the Department of the Interior.

*Days* means calendar days unless otherwise stated.

*Decision* means a written determination or, if applicable, a portion of a written determination.

#### § 4.22 Effect of a decision pending appeal.

(a) The provisions of this section apply to any decision by a bureau that includes a right of appeal to the Office of Hearings and Appeals, unless a law or other applicable regulation provides otherwise.

(b) No such bureau decision is effective during the period of time allowed for filing an appeal, unless it is made immediately effective under paragraph (c)(2) of this section.

(c) A bureau decision becomes effective as shown in the following table:

If . . .	And . . .	Then . . .
(1) A statute or other regulation provides that the bureau decision will not take effect pending a decision on an appeal,	a person who has a right of appeal files a notice of appeal,	the bureau decision will become effective if and when it is affirmed by the Office of Hearings and Appeals or the appeal is dismissed.
(2) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal,	a party to the appeal demonstrates that the public interest requires making the bureau decision effective immediately,	the appropriate official (see § 4.21) may provide that the bureau decision becomes effective immediately.
(3) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appellant satisfies the requirements of § 4.23,	the appropriate official may stay the effect of the bureau decision under § 4.24, and the bureau decision will become effective if and when it is affirmed by the Office of Hearings and Appeals or the appeal is dismissed.
(4) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appellant does not satisfy the requirements of § 4.23,	the bureau decision becomes effective when the appropriate official denies the petition.
(5) A person who has a right of appeal under § 4.410 or other applicable regulation files a timely notice of appeal and a petition for a stay,	the appropriate official does not act on petition within 45 days of the end of the appeal period,	the decision becomes effective on the 46th day after the end of the appeal period.

#### § 4.23 How to petition for a stay of the effective date of a decision.

(a) To request a stay of a bureau decision, an appellant must file a notice of appeal and a petition for a stay as required under paragraphs (b) and (c) of this section. The appellant must file these documents before the end of the appeal period specified in the bureau decision. The provisions of this section apply unless a law or other applicable regulation provides otherwise.

(b) To obtain a stay under this section, an appellant must:

(1) Be a person who has a right of appeal under § 4.410 or other applicable regulation; and

(2) Demonstrate that the appropriate official should grant a stay based on the following standards:

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

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

(iii) The likelihood of immediate and irreparable harm if the appropriate official does not grant the stay; and

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

(c) The appellant must serve a copy of the notice of appeal and petition for a stay on each of the following simultaneously:

(1) The appropriate official before whom the appeal is pending;

(2) The bureau official who made the decision being appealed; and

(3) Each party, if any, named in the bureau decision that is being appealed.