

§ 4.24 Action on a petition for a stay.

(a) Any party who is served with a copy of a stay petition under § 4.23(c) may file a response but must do so within 10 days after service. This includes the bureau official who made the decision being appealed.

(1) The responding party must serve the response on the persons listed in § 4.23(c) either by delivering it personally or by registered or certified mail, return receipt requested.

(2) The appropriate official will not grant a stay by default merely because no response to a petition has been filed.

(b) Within 45 days after the end of the time for filing an appeal, the appropriate official must grant or deny any petition for a stay.

(c) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the appropriate Appeals Board from an order of an administrative law judge to:

(1) Grant or deny a petition for a stay; or

(2) Make a bureau decision effective immediately.

(d) As an alternative to paragraph (c) of this section, any party other than the bureau may seek judicial review under 5 U.S.C. 704 of an order of an administrative law judge to:

(1) Deny a petition for a stay (either directly or by failing to meet the deadline in paragraph (b) of this section); or

(2) Make a bureau decision effective immediately.

(e) If a party appeals under paragraph (c) of this section, the Appeals Board must issue an expedited briefing schedule and expeditiously issue a decision on the appeal.

(f) Unless the Appeals Board or the court orders otherwise, an appeal under paragraph (c) 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.

§ 4.25 Decisions subject to judicial review.

This section applies to any bureau decision that can be appealed to the Office of Hearings and Appeals. The bureau decision is not final agency action subject to judicial review under 5 U.S.C. 704 unless it has become effective under § 4.22 or other applicable regulation.

§ 4.26 Finality and reconsideration of decisions.

(a) A decision by the Director or an Appeals Board is final for the Department and cannot be appealed. However, the Director or an Appeals

Board may reconsider a decision if either:

(1) In the judgment of the Director or the Appeals Board there exist extraordinary circumstances and sufficient reason for reconsideration; or

(2) Other regulations allow for reconsideration under standards other than those set forth in paragraph (a)(1) of this section.

(b) To request reconsideration under paragraph (a) of this section, an appellant must:

(1) File the request promptly, or within the time required by the regulations relating to the type of proceeding concerned; and

(2) State clearly and completely the nature of the error prompting the request for reconsideration.

(c) Filing a request for reconsideration does not stay the effectiveness of the decision unless the Director or the Appeals Board so orders.

(d) An appellant does not have to file a request for reconsideration in order to exhaust administrative remedies.

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

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

Authority: 43 U.S.C. 1201 and 315a.

5. In § 4.421, revise paragraph (c) to read as follows:

§ 4.421 Definitions.

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

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§§ 4.471 through 4.478 [Redesignated as §§ 4.473 through 4.480].

6. Sections 4.471 through 4.478 are redesignated as §§ 4.473 through 4.480, respectively.

7. Section 4.470 is revised and §§ 4.471 and 4.472 are added to read as follows:

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

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal a final bureau decision within 30 days after receiving it. To do this, the person must file a notice of appeal with the BLM field office that issued the decision.

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

(c) Any ground for appeal not included in the notice of appeal is considered waived. The appellant may not present a waived ground for appeal

at the hearing unless permitted to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM decision within the period allowed in the decision may not later challenge the matters adjudicated in the final decision.

(e) An administrative law judge may consolidate appeals for purposes of hearing and decision when:

(1) Appellants file separate appeals; and

(2) The issues involved are common to two or more appeals.

(f) Filing a notice of appeal does not by itself change the effective date of the decision. To request a change in the effective date, *see* § 4.471.

§ 4.471 How to request a change in the effective date of a final BLM decision.

(a) An appellant under § 4.470 may petition for a stay of the BLM decision pending appeal. The appellant must do this within 30 days after receiving the BLM decision by filing a petition for stay together with the notice of appeal required by § 4.470.

(b) An appellant under § 4.470 may request that a BLM decision become effective immediately. The appellant must do this within 30 days after receiving the BLM decision by filing a request for an immediate effective date together with the notice of appeal required by § 4.470.

(c) The appellant must file documents required by this section with both:

(1) The BLM office that issued the decision; and

(2) The Hearings Division, Office of Hearings and Appeals, 801 North Quincy Street, Suite 300, Arlington, VA 22203.

(d) The standards and procedures for obtaining a stay or requesting an immediate effective date are those set forth in §§ 4.22 through 4.24.

§ 4.472 Action on appeals and requests for effective date changes.

(a) The BLM field office must promptly forward to the State Director any documents received under §§ 4.470 and 4.471. If the State Director does not file a motion to dismiss under paragraph (b) of this section:

(1) The State Director must promptly forward all documents and the administrative record to the Office of Hearings and Appeals; and

(2) An administrative law judge will rule on the appeal and any motion or request.

(b) Within 30 days after receiving documents submitted under paragraph (a) of this section, the State Director may file a motion to dismiss the appeal for one or more of the following reasons: