

significant effect on the human environment. In practice, this will normally be done through a documented checklist of criteria.

As we stated earlier in this preamble, making decisions effective immediately encourages public participation by making it more essential at the project design/environmental review stage. It is at this stage that BLM gathers evidence and public input upon which to base its decisions.

One comment from an association of professional foresters suggested that BLM should give priority to areas outside the wildland-urban interface area when dangerous fuel buildup or post-wildfire conditions originating on BLM-administered public lands could have impacts on adjacent private lands.

We are not stating any priorities in this rule. The local field manager will determine where to initiate wildfire management projects, and will consult with appropriate local interests, including state and local government agencies, private property owners, academic experts, and environmental interest groups, in order to identify resources or properties that need protection.

In practice, BLM plans and implements forest health and fuel reduction treatments both within and outside the wildland-urban interface. Targeting of appropriated dollars for both fiscal year 2002 and 2003 was apportioned approximately 60 percent to wildland-urban interface and 40 percent to non-wildland-urban interface lands. Also, BLM selects all fuels and hazard reduction projects with input from a variety of Federal and non-Federal stakeholders. Thus, a wide variety of parties aids in the project prioritization process.

The same comment went on to suggest that BLM lands for which state forestry agencies have initial attack responsibilities (due to the location or situation of the land, or under cooperative agreements or other arrangements) should also be included in the immediate implementation of fire management decisions. Since the rule applies to all fire management decisions, the decisions that the comment refers to will be effective immediately when BLM makes the determination required by section 4190.1(a) or 5003.1(b).

4. How Should BLM's Wildfire Management Procedures Relate to the Regulations of the Office of Hearings and Appeals?

One comment said that, because public lands decisions often involve irretrievable natural resources, such as

wildlife habitat, BLM should at least defend its actions in the internal appeals process before moving forward with a disputed action.

The problem of uncharacteristically intense and volatile wildfire behavior in certain ecosystems is getting worse. The intensity of some of these fires can result in post-fire conditions that limit the ability of the site to be rehabilitated/restored. It is precisely because wildfire management decisions often involve irretrievable natural or cultural resources, or human habitations, that these decisions must be made effective immediately and the appeals process expedited.

One comment stated that the proposed rule failed to explain its relationship with 43 CFR 4.21(a)(2)–(3) and (b), dealing with requests for stays of bureau decisions. It said that the preamble stated only that “the BLM decision will not be subject to the automatic stay of 43 CFR 4.21(a).” Under current regulations, the comment continued,

A decision becomes effective on the day after the appeals period expires, unless a petition for stay pending appeal is filed. The proposed regulation does not state that its intent is to eliminate the possibility of the IBLA's granting a stay under the standards of 43 CFR § 4.21(b). Yet it is silent as to the effect of filing a petition for such a stay. If the intent of the rule is to eliminate the 45-day stay triggered, under current regulations, by the filing of such a petition, then it effectively eliminates any possibility of meaningful IBLA review of “wildfire management decisions.” If the BLM can proceed to implement a decision despite the filing of a petition for a stay, that decision may well be implemented before the IBLA ever rules on the petition, effectively eliminating any opportunity for administrative review. Parties adversely affected will have no alternative but to proceed immediately to federal court.

The comment has uncovered a drafting error in the proposed rule. Rather than exempting wildfire management decisions from the provisions of all of section 4.21, it should have referred specifically to section 4.21(a)(1). The final rule corrects this error. The stay provisions of section 4.21(b) will apply to decisions made effective immediately under this final rule.

OHA is developing a proposed rule reorganizing section 4.21. When that rule is published in final form, it will include conforming amendments to correct any cross-reference discrepancies in the regulations promulgated today in this rule.

C. Time Limit for Decisions on Appeals From BLM Wildfire Management Decisions

OHA proposed to add a new section, 43 CFR 4.416, requiring IBLA to decide appeals from BLM wildfire management decisions within 60 days after all pleadings have been filed. Some comments stated that the 60-day deadline that the proposed rule sets for the IBLA to decide appeals in “wildfire management” cases is unreasonable for several reasons: (1) It may not be possible for the IBLA to decide “wildfire management” cases within the time period provided; (2) expediting these cases may impose additional delays on the remainder of the Board's cases; and (3) the rule imposes no consequences for the IBLA's failure to meet the 60-day deadline, so that the result of the Board's failure to meet the deadline would simply be for the challenged decision to continue in effect indefinitely, frustrating any opportunity for meaningful administrative review prior to a project's implementation and its potentially irreversible effects. Other comments said that the effect of the rule would be to moot the issues involved in the decision before an objective decisionmaker can resolve them.

The possibility of such delay in other appeals does exist, depending on how many appeals from BLM wildfire management decisions there are; but the trade-off in the use of IBLA's resources is appropriate in view of the necessity for rapid implementation of wildfire management decisions. The severity of the effects of recent fire seasons on the land and resources, and on the national and local economies, justifies whatever impacts the rule may have on other cases on IBLA's docket. Imposing a 60-day deadline on an IBLA decision on the merits has no effect on the ability of an appellant to petition for a stay of the decision appealed. Petitioning for a stay is the mechanism for preventing a decision from remaining in effect indefinitely pending appeal, if the appellant can demonstrate a sufficient basis for staying the decision.

One comment suggested adding to proposed § 4.416, “and within 180 days after the appeal is filed.” We have adopted this suggestion in the final rule. The added language will provide a definite deadline for deciding appeals from wildfire management decisions.

Proposed section 4.416 is adopted as amended.

D. Proof of Service

OHA also proposed to amend three sections—43 CFR 4.401(c)(2), 4.422(c)(2), and 4.450–5—to provide