

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.