

the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes “[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.” In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to this rule. This rule is an administrative and procedural rule, relating to the authority of ALJs to decide petitions for stays of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

#### *J. Government-to-Government Relationship With Tribes*

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of this rule on federally recognized Indian tribes and has determined that there are no potential effects. These rules will not affect Indian trust resources; they will provide authority to ALJs to decide petitions for a stay of BLM grazing decisions, and provide for appeals of ALJ decisions on such petitions.

#### *K. Effects on the Nation’s Energy Supply*

In accordance with Executive Order 13211, the Department finds that this regulation does not have a significant effect on the nation’s energy supply, distribution, or use. Extending authority to ALJs to decide petitions for a stay of BLM grazing decisions, and providing for appeals of ALJ decisions on such petitions, will not affect energy supply or consumption.

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

Administrative practice and procedure, Grazing lands, Public lands.

Dated: December 3, 2003.

**P. Lynn Scarlett,**

*Assistant Secretary—Policy, Management and Budget.*

■ For the reasons set forth in the preamble, part 4, subpart E, of title 43 of the Code of Federal Regulations is amended as set forth below:

#### **PART 4—[AMENDED]**

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

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

**Authority:** Sections 4.470 to 4.480 also issued under the authority of 43 U.S.C. 315a.

■ 2. The cross reference for 43 CFR part 4, subpart E, continues to read as follows:

*Cross Reference:* See subpart A for the authority, jurisdiction, and membership of the Board of Land Appeals within the Office of Hearings and Appeals. For general rules applicable to proceedings before the Board of Land Appeals as well as the other Appeals Boards of the Office of Hearings and Appeals, see subpart B.

■ 3. In § 4.421, revise paragraph (c) and add paragraph (h) to read as follows:

##### **§ 4.421 Definitions**

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

\* \* \* \* \*

(h) *Person named in the decision* means any of the following persons identified in a final BLM grazing decision: an affected applicant, permittee, lessee, or agent or lienholder of record, or an interested public as defined in § 4100.0–5 of this title.

##### **§§ 4.471–4.478 [Redesignated]**

■ 4. Redesignate §§ 4.471 through 4.478 as §§ 4.473 through 4.480, respectively.

■ 5. Revise § 4.470 and add new §§ 4.471 and 4.472 to read as follows:

##### **§ 4.470 How to appeal a final BLM grazing decision to an administrative law judge.**

(a) Any applicant, permittee, lessee, or other person whose interest is adversely affected by a final BLM grazing decision may appeal the decision to an administrative law judge within 30 days after receiving it or within 30 days after a proposed decision becomes final as provided in § 4160.3(a) of this title. To do so, the person must file an appeal with the BLM field office that issued the decision and serve a copy of the appeal on any person named in the decision.

(b) The appeal must state clearly and concisely the reasons why the appellant

thinks the BLM grazing decision is wrong.

(c) Any ground for appeal not included in the appeal is waived. The appellant may not present a waived ground for appeal at the hearing unless permitted or ordered to do so by the administrative law judge.

(d) Any person who, after proper notification, does not appeal a final BLM grazing decision within the period provided in paragraph (a) of this section may not later challenge the matters adjudicated in the final BLM decision.

(e) Filing an appeal does not by itself stay the effectiveness of the final BLM decision. To request a stay of the final BLM decision pending appeal, see § 4.471.

##### **§ 4.471 How to petition for a stay of a final BLM grazing decision.**

(a) An appellant under § 4.470 may petition for a stay of the final BLM grazing decision pending appeal by filing a petition for a stay together with the appeal under § 4.470 with the BLM field office that issued the decision.

(b) Within 15 days after filing the appeal and petition for a stay, the appellant must serve copies 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, in accordance with § 4.413(a) and (c).

(c) A petition for a stay of a final BLM grazing decision pending appeal under paragraph (a) of this section must show sufficient justification based on the following standards:

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

(2) The likelihood of the appellant’s success on the merits;

(3) The likelihood of immediate and irreparable harm if the stay is not granted; and

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

(d) The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

##### **§ 4.472 Action on an appeal and petition for a stay.**

(a) BLM must transmit any documents received under §§ 4.470 and 4.471, within 10 days after receipt, to the Hearings Division, Office of Hearings and Appeals, Salt Lake City, Utah. If a petition for a stay has been filed, the transmittal must also include any response BLM wishes to file to a petition for a stay and the following documents from the case file: the application, permit, lease, or notice of unauthorized use underlying the final