

same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

**List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

**Amendment to CBP Regulations**

■ For the reasons set forth above, part 12 of title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

\* \* \* \* \*

**§ 12.104g [Amended]**

■ 2. In § 12.104g, paragraph (a), the table is amended in the entry for Nicaragua by removing the reference to “CBP Dec. 05—33” and adding in its place “CBP Dec. 10—32”.

**Alan Bersin,**

*Commissioner, U.S. Customs and Border Protection.*

Approved: October 15, 2010.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

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**BILLING CODE P**

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

**30 CFR Chapter III and 43 CFR Parts 4 and 10**

**RIN 1094-AA53**

**Interior Board of Land Appeals and Other Appeals Procedures**

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary is amending several existing procedural regulations governing appeals to the Interior Board of Land Appeals (IBLA); adopting new regulations governing consolidation, extensions of time, intervention, and motions in IBLA appeals; removing regulations relating to the former Interior Board of Surface Mining and Reclamation Appeals and Interior Board of Contract Appeals, which no longer exist; and correcting the address of the Office of Hearings and Appeals.

**DATES:** This rule is effective November 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Robert S. More, Director, Office of Hearings and Appeals, U.S. Department of the Interior, Phone 703-235-3810. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Office of the Secretary published a proposed rule on March 8, 2007, to update regulations of the Office of Hearings and Appeals (OHA) governing appeals to IBLA under 43 CFR part 4, subparts E and L. 72 FR 10454-10466. Subpart E contains regulations governing public land hearings and appeals, while subpart L contains regulations governing surface coal mining hearings and appeals. We proposed to amend the existing regulations governing service of documents, reconsideration, statements of reasons for appeal, answers, and requests for hearings; and we proposed to add regulations governing motions for consolidation, extensions of time, and intervention, and for serving and responding to other motions.

We received comments on the proposed rule from the State of Alaska Department of Law; Carl J.D. Bauman, Esq.; Biodiversity Conservation Alliance; Chevron North America Exploration and Production Company; Earthjustice; Kentucky Resources

Council; Mary A. Nordale, Esq.; Oil & Gas Accountability Project; J. P. Tangen, Esq.; Western Resource Advocates; and Wyoming Outdoor Council. We are grateful for the suggestions from these commenters and have made a number of changes in the proposed rule in response to the comments, as explained in the section-by-section analysis below.

This final rule makes changes to a number of other provisions that were not included in the proposed rule. These changes, also explained in the section-by-section analysis, are minor technical and conforming amendments that do not require notice and comment under the Administrative Procedure Act.

**II. Section-by-Section Analysis**

**A. 30 CFR Chapter III—Board of Surface Mining and Reclamation Appeals**

This chapter in Title 30 consists of a single part, 301, entitled “Procedures under the Surface Mining Control and Reclamation Act of 1977.” Part 301, in turn, consists of a single section, 301.1, entitled “Cross reference,” which refers readers to 43 CFR part 4, subpart L, for procedures relating to appeals to the Interior Board of Surface Mining and Reclamation Appeals (IBSMA). IBSMA was abolished by Secretarial Order dated April 26, 1983, and its functions were transferred to IBLA. 48 FR 22370 (May 18, 1983). However, 30 CFR Chapter III was never updated to reflect this change.

The fact that the outdated provisions of 30 CFR Chapter III have been overlooked for the last 27 years suggests that few if any readers were even aware of the cross-reference in § 301.1. During the same period, parties have had no apparent difficulty filing surface mining appeals with IBLA under 43 CFR part 4, subpart L. Since 30 CFR Chapter III appears unnecessary as well as outdated, this rule removes it from the CFR.

**B. 43 CFR Part 4, Subpart A—General; Office of Hearings and Appeals**

This rule revises 43 CFR 4.1, entitled “Scope of authority; applicable regulations,” to reflect changes to OHA’s organization and delegations since the last revision in 1996. In March 2005, the Hearings Division referred to in § 4.1(a) was divided into three separate components: The Departmental Cases Hearings Division, the Probate Hearings Division, and the White Earth Reservation Land Settlements Act (WELSA) Hearings Division. This change was effected by a revision to OHA’s organization chapter in the Departmental Manual, 112 DM 13

(2005). No change to the regulations was made at that time.

Effective January 6, 2007, Congress abolished the Interior Board of Contract Appeals (IBCA) referred to in § 4.1(b)(1) and transferred its functions to a new Civilian Board of Contract Appeals (CBCA) within the General Services Administration. Public Law 109–163, sec. 847, 119 Stat. 3391 (2006); see 71 FR 65825 (Nov. 9, 2006).

For the last several years, OHA's delegation chapter in the Departmental Manual has contained limits on OHA's authority. For example, OHA may not overrule or modify a final legal interpretation (M–Opinion) of the Solicitor, or review the merits of a biological opinion issued by the Fish and Wildlife Service. 212 DM 13 (2009). However, the introductory text to § 4.1 is silent with respect to any limitations on OHA's authority.

This rule therefore updates the description of the Hearings Divisions in § 4.1(a) and deletes the description of the IBCA in § 4.1(b)(1); the remaining paragraphs of § 4.1(b) are renumbered. The rule revises 43 CFR 4.1 to clarify that OHA's authority to hear, consider, and decide matters “as fully and finally as might the Secretary” is subject to any limitations imposed by the Secretary. And the rule updates redesignated § 4.1(b)(1)(ii) to include a reference to Indian probate judges, whose decisions—like those of administrative law judges—are appealable to the Interior Board of Indian Appeals.

#### *C. 43 CFR Part 4, Subpart B—General Rules Relating to Procedure and Practice*

The final rule makes minor formatting changes to § 4.21(b). And it revises § 4.22(a) to clarify that a document received after regular business hours at the office where it must be filed is considered filed on the next business day.

#### *D. 43 CFR Part 4, Subpart C—Special Rules of Practice Before the Interior Board of Contract Appeals*

Subpart C, consisting of §§ 4.100 through 4.128, sets forth procedures for appeals to IBCA. With the abolition of IBCA and transfer of its functions to CBCA, those procedures are no longer needed. CBCA has published its own procedures at 48 CFR part 6101. This rule therefore removes the regulations in subpart C from 43 CFR part 4.

#### *E. 43 CFR Part 4, Subpart E—Special Rules Applicable to Public Land Hearings and Appeals*

This rule finalizes the changes to subpart E set forth in the March 8, 2007,

proposed rule, with a number of revisions reflecting the comments we received. The preamble to the proposed rule at 72 FR 10454–10460 should be consulted for additional explanation of the changes as proposed.

#### *Section 4.400 Definitions.*

We proposed to add definitions for “BLM,” “last address of record,” and “party” and to revise definitions for “Board,” “Bureau,” and “office” or “officer.” No comments were received on the proposed definitions, and they are generally adopted as proposed. The one exception is the definition of “Bureau,” which has been revised.

The existing regulations define “Bureau” to mean simply the Bureau of Land Management (BLM). In the proposed rule, we proposed to revise the definition of “Bureau” to include the Minerals Management Service (MMS), “because IBLA reviews some decisions of the Minerals Management Service under subpart E, e.g., decisions concerning offshore minerals management and royalty management. See 30 CFR Sections 290.2, 290.8, 290.108.” 72 FR 10454. It was subsequently pointed out that IBLA also reviews royalty management decisions of the Bureau of Indian Affairs (BIA) under 30 CFR 290.108, and that BIA should also be included in the definition of “Bureau.” More recent developments affected our proposal to add MMS to the definition.

Effective June 18, 2010, Secretarial Order 3302 renamed MMS the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). Under paragraph 4(b) of that Order, all references to MMS in the Department's regulations, e.g., 30 CFR part 290, are being changed to BOEMRE. Under Secretarial Order 3299 (May 19, 2010), BOEMRE is being reorganized into three separate organizations over the next year. The first phase of the reorganization took effect October 1, 2010, when the Minerals Revenue Management function moved from BOEMRE and became the Office of Natural Resources Revenue (ONRR) within the Office of the Assistant Secretary—Policy, Management and Budget (PMB), reporting to the Deputy Assistant Secretary—Natural Resources Revenue. Both the Director of ONRR and the Deputy Assistant Secretary—Natural Resources Revenue may render decisions appealable to IBLA.

At some point in 2011, two other organizations will be created from the remaining BOEMRE functions, the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE). We

expect that some decisions from these two bureaus will also be appealable to IBLA.

In light of these developments, the final rule uses an expanded term, “Bureau or Office” in place of “Bureau,” and it defines the new term to mean BIA, BLM, BOEMRE, ONRR, the Deputy Assistant Secretary—Natural Resources Revenue, or any successor organization. The phrase “or any successor organization” will cover BOEM and BSEE when they come into existence.

#### *Section 4.401 Documents*

Section 4.401 governs the filing and service of documents in an appeal. *Filing* refers to submitting the original of a document to the appropriate decisionmaking authority (as specified in the regulations), while *service* refers to delivering a copy of the document to every other person who is participating in the appeal. A document is filed when it is duly received in the office of the appropriate decisionmaking authority (see 43 CFR 4.22(a)). A document is served when delivery is made or attempted as specified in this rule.

We proposed to revise § 4.401(c) to allow service of a document, other than a notice of appeal that initiates a proceeding, by first-class mail to a person's last address of record or by delivery service to a person's last address of record if it is not a post office box. Under the existing regulation, service is limited to personal delivery or registered or certified mail. “Last address of record” was defined in proposed § 4.400 as the address provided in a person's most recent filing in an appeal or, if there has not been any filing, the person's address as provided in the Bureau or Office decision under appeal.

Commenters supported liberalizing the service requirements, but some thought the proposed rule did not go far enough. Their suggestions included (a) allowing service by electronic mail or facsimile; (b) specifying that service on a party represented by counsel should be made on the representative; (c) requiring service at a party's current address, if known to be different from the last address of record; (d) not requiring service of documents on all parties named in the decision under appeal; and (e) increasing the number of days after which delivery is presumed to occur.

In response to the comments, the final rule provides that service of any document other than a notice of appeal can be made by personal delivery, mail, delivery service, or electronic means. Mail includes Express Mail, Priority Mail, or First-Class Mail (including

Registered Mail, Certified Mail, or First-Class Mail without such additional services). Delivery service includes package or envelope delivery by companies such as DHL, FedEx, and United Parcel Service. Electronic means includes electronic mail or facsimile.

Electronic means can be used if the party to be served has previously consented to that means in writing. Service by such means is effective when the document is transmitted, unless the serving party learns that the document did not reach the party to be served. In the latter case, the attempted service by electronic means is not effective, and the document must be served by another method. These provisions are modeled on the 2007 revisions to Rule 5 of the Federal Rules of Civil Procedure.

Under the final rule, a party must serve a notice of appeal and statement of reasons on all other persons (individuals and entities) named in the decision under appeal, so that those persons can decide whether they want to participate in the appeal. But subsequent documents have to be served only on the parties to the appeal, including the initiating and responding parties and any persons granted intervenor status. Thus, persons named in the decision under appeal who wish to participate in the appeal must file a notice of appeal under § 4.411, an answer under § 4.414, or a motion to intervene under § 4.406. Persons named in the decision under appeal who do not participate in the appeal do not have to be served with documents other than the notice of appeal and statement of reasons.

The final rule provides that service on a party known to be represented by counsel or other designated representative must be made on the representative. Service must be made at the last address of record of the party (if unrepresented) or the representative, unless the party or representative has notified the serving party of a subsequent change of address. This provision is intended to avoid disputes over whether the serving party sent a document to the most recent address known to the serving party. A party should be able to rely on a person's address of record in the Bureau or Office or a subsequent change of address notice. However, if a document sent to that address comes back undelivered or unclaimed, the serving party must make other reasonable efforts to complete service. For example, if a document sent by certified mail is returned unclaimed, the serving party should at least re-send the document by regular mail. *See Jones v. Flowers*, 547 U.S. 220, 234–35 (2006).

Also in response to comments, the rule provides that service by mail or a delivery service—in the absence of evidence to the contrary—will be deemed to take place 5 business days (typically 7 calendar days) after the document was sent, rather than 3 days as stated in the proposed rule. A sentence has been added stating that a document is considered sent when it is given to the U.S. Postal Service (or deposited in one of its mailboxes), properly addressed and with proper postage affixed, or when it is given to a delivery service (or deposited in one of its receptacles), properly addressed and with the delivery cost prepaid.

Corresponding revisions have been made to proposed § 4.422(c).

The final rule also adds a new § 4.401(d) specifying the format of documents filed in a case. Sections 4.412 and 4.414 in the proposed rule had included general formatting guidance for briefs filed with IBLA (“double-spaced, using standard margins and font size”); but we decided to include more specific guidance in § 4.401, where it would be applicable to all cases filed under subpart E. The language adopted is based on 43 CFR 45.11(a), 45.12(d).

#### *Section 4.403 Finality of Decision; Reconsideration*

The proposed rule revised the language in § 4.403 to clarify the standard for a motion for reconsideration, to specify that parties can file a response to such a motion, and to list circumstances that may warrant IBLA's granting a motion in its discretion. No comments were received on the proposed changes, and they are adopted as proposed.

#### *Section 4.404 Consolidation*

We proposed to add a regulation providing that the Board may consolidate appeals on its own initiative or on motion of a party, if the facts or legal issues involved are the same or similar. The rule would codify existing practice. One comment was received supporting the proposed regulation, and it is adopted as proposed.

#### *Section 4.405 Requests for Extension of Time*

We proposed to add a regulation governing motions requesting an extension of time to file a document with the Board. As proposed, the rule would require a party to file such a motion no later than the day before the document is due and to show good cause for the extension. It would allow any other party to file an objection within 2 business days after service of

the motion. And it would provide that, if the Board does not act on a motion before the document is due, the document must be filed no later than 15 days after the original due date, unless the Board subsequently shortens or lengthens the time by order. We received several comments on this proposal.

One commenter suggested that the party requesting an extension be required to indicate in the motion whether the other parties (or their counsel) oppose the motion; and the commenter expressed concern that a 2-day period for objecting to an extension is too short. The final rule adopts the commenter's suggestion with respect to requiring the moving party to ascertain whether other parties oppose the motion, and eliminates the 2-day period for objecting to an extension. Under § 4.401(c)(6), service is normally deemed to take place 5 business days after the document was sent. Five business days is the equivalent of 7 calendar days (or 8, if the period includes a holiday). Thus, under the rule as proposed, the Board would have to wait to rule on the motion for at least 7 calendar days after a motion for extension of time is filed for service to occur, plus an additional 2 days to allow for a response from the other parties (or more, if the commenter's suggestion of a longer response period were adopted). Meanwhile, the party seeking the extension does not know how long it will have to file its document. Most motions for extension of time are unopposed, and the Board is fully capable of deciding such motions without a written response from another party.

Another commenter suggested that, if the Board denies a motion for extension of time, the moving party should have an automatic 15-day extension, to run from receipt of the Board's order denying the motion. This suggestion was not adopted, since it would grant an extension of time in cases where the Board has already determined that good cause has not been shown. The same commenter suggested that an exception to the filing deadline for a motion for extension of time be provided for compelling circumstances; the commenter pointed out that such an exception was stated in the preamble to the proposed rule, but not in the regulation. This suggestion has been adopted.

A third commenter stated that the regulations should provide that extensions of reasonable duration will be freely granted. The commenter found it “ironic that the OHA can be proposing curtailed opportunities to present

pleadings when the IBLA takes three years to produce a decision on appeal.” We disagree that setting a “good cause” standard for extensions of time, as we have in § 4.405(d), will curtail opportunities for the parties to present their pleadings. Neither the proposed nor final rule reduces the time allowed for the parties to file their pleadings, and extensions of time will continue to be available upon a proper showing. It is also worth noting that the average age of IBLA’s pending cases has been falling steadily over the last few years, from 20 months at the start of FY 2004 to less than 5 months currently. In fact, one of the principal reasons for this rulemaking is to further improve the efficiency of IBLA’s adjudicatory process.

A final commenter suggested that “good cause” be defined in the regulations to include “difficulty in obtaining the administrative record or the need to fully review a lengthy record or an appeal involving complicated legal or factual issues.” We believe it would be impossible to adequately capture the wide array of personal, professional, substantive, and procedural reasons that could constitute “good cause” under appropriate circumstances, although the proposed rule preamble did note that conducting settlement negotiations in good faith would justify a reasonable extension of time.

For reasons explained below in connection with § 4.414, the final rule adds a paragraph (f) to this section, allowing for an automatic extension, not to exceed 30 days, of the deadline for filing an answer.

#### *Section 4.406 Intervention; Amicus Curiae*

We proposed to add a regulation governing intervention in appeals before IBLA and appearance as an amicus curiae. Under the proposed rule, if the person seeking to intervene would be adversely affected if the decision under appeal were reversed, vacated, set aside, or modified by the Board, a motion to intervene would be due within 30 days after the person knew or should have known that the decision had been appealed. However, if the person seeking to intervene would have an independent right to appeal the decision under § 4.410, a motion to intervene would be due within 30 days after the person was served with the decision or, if not served, knew or should have known of the decision. The preamble cited *Independent Petroleum Association of Mountain States*, 136 IBLA 279, 281 (1996), for the proposition that the Board will deny a

motion to intervene where granting it would circumvent the requirement in § 4.411(a) that an appeal be filed within 30 days after service of a decision.

One commenter objected to the proposal because, for a party having a right to appeal, the time for filing a motion to intervene could expire before the party even learns that another party has filed an appeal. According to the commenter, a party having a right to appeal may choose not to do so in the first instance, but may want to intervene if another party files an appeal, especially if the parties’ interests are not aligned. The commenter recommended that, in all cases, the deadline for filing a motion to intervene should be 30 days after the person knew or should have known that the decision has been appealed to the Board.

The final rule adopts the commenter’s recommended approach. It further requires the party seeking to intervene to set forth the basis for the proposed intervention in the motion, including (1) whether the person had a right to appeal the decision under § 4.410 or would be adversely affected if the decision under appeal were reversed, vacated, set aside, or modified by the Board, and (2) how and when the person learned of the appeal. The Board could then take that information into account in deciding whether to grant the motion.

The final rule adds a paragraph (e) specifying that a person granted full or limited intervenor status is a party to the appeal, while an amicus curiae is not. Thus, other parties are required to serve documents on an intervenor under § 4.401, though not on an amicus curiae. However, an amicus curiae is required to serve its brief on the parties to the appeal.

#### *Section 4.407 Motions*

We proposed to add a regulation governing motions filed with the Board, requiring that the motion provide a concise statement of the reasons supporting the motion, giving any other party 15 days to respond, and stating that the Board would rule on any motion as expeditiously as possible. The 15-day response deadline would apply unless another regulation or the Board by order provides otherwise.

Two commenters objected to the proposal. One argued that there is no need for a regulation on motions and that the Board should maintain its current practice. However, as explained in the proposed rule, the absence of a regulation leads to uncertainty among practitioners, e.g., as to the length of time they have to respond to a motion. The rule will help standardize practice

and facilitate prompt rulings on motions.

The other commenter objected to the 15-day response period as being insufficient in most cases and likely to result in motions for extension of time. The commenter recommended that 30 days be allowed for responding to a motion.

The Board’s experience is that most motions are routine in nature and are often unopposed or generate only a brief response. For those motions, a short response period facilitates disposition. Other motions are more substantive and justify a longer response period. Fifteen days is already a week longer than the 8 days allowed for responses to substantive motions in Rule 27 of the Federal Rules of Appellate Procedure. The final rule therefore retains the response deadline of 15 days after service of the motion. If additional time is needed for a particularly substantive motion, the responding party can request an extension of time under § 4.405.

#### *Section 4.410 Who May Appeal*

As explained above, the proposed rule included a revised definition of “Bureau” in § 4.400 as including MMS along with BLM. But it did not include any proposed changes to § 4.410, which mentions appeals only from decisions of BLM or an administrative law judge. The final rule revises § 4.410 to substitute the more inclusive term “Bureau or Office” for “BLM” in paragraphs (a) and (c). As explained above, the definition of “Bureau or Office” in § 4.400 has been further revised in the final rule to include BIA, BLM, BOEMRE, ONRR, the Deputy Assistant Secretary—Natural Resources Revenue, and any successor organization.

#### *Section 4.411 Appeal; How Taken, Mandatory Time Limit*

We proposed to add a provision to § 4.411(a) specifying that transmitting a notice of appeal by facsimile to the office of the officer who made the decision would not constitute filing. This proposal was intended to avoid the problem observed in cases in which an appellant attempted to transmit a notice of appeal by facsimile, but the relevant office did not receive it on time or at all. See *Underwood Livestock, Inc.*, 165 IBLA 128, 130–31 (2005); *National Wildlife Federation*, 162 IBLA 263, 264–66 (2004).

Two commenters objected to the proposal and argued that timely electronic transmission of a notice of appeal should be accepted. One of the commenters suggested that the

regulations include an express statement that the risk of delay or nondelivery of the notice of appeal is on the sender. BLM supported the proposed rule, expressing a concern that the volume of paper involved could overwhelm the facilities in some offices. They noted that one appellant had recently filed 17 appeals totaling about 1,200 pages.

Based on the Board's recent experience, it appears that some BLM offices already accept electronic filing of notices of appeal, while others may not. Rather than adopt a uniform rule for BLM, we have decided to delete proposed § 4.411(a)(4) for now, leaving it up to BLM whether to accept notices of appeal by facsimile or e-mail. We plan to revisit the issue of electronic filing in a future rulemaking.

We also proposed to add a provision to § 4.411(b) specifying that a person representing more than one appellant must state that he or she is authorized to do so. *See, e.g., The Friends and Residents of Log Creek*, 150 IBLA 44, 48 (1999) ("Proper application of the Department's rules of practice requires an affirmative showing that a representative of a named appellant is qualified and authorized to represent any other purported appellant or appellants, if single representation for multiple parties is intended").

One commenter objected that this requirement is unnecessary and would "create a trap for the unwary." The commenter pointed out that 43 CFR 1.5(a) already provides that the signature of a party's representative on a document constitutes a certificate that he or she is authorized and qualified to represent the party. The commenter argued that it would be "far simpler and more efficient" for the Board to issue an order to show cause, requiring a person to verify his or her authority to represent a party, in cases where the Board has a question about such authority.

We disagree with the commenter in part. If inclusion of a single statement in a notice of appeal avoids a potential issue about a representative's authority, that action would be "far simpler and more efficient" than the Board's issuance of an order to show cause, followed by responses from the parties—a process that would take at least a few weeks. Nevertheless, we share the commenter's concern about the new requirement creating a "trap for the unwary." Moreover, it may well be that, in many cases where this issue arises, a mere statement by the representative that other appellants have authorized him or her to represent them will not be sufficient to resolve the

issue. If so, the Board will still have to use an order to show cause to satisfy itself that the requirements of 43 CFR part 1 have been met. On balance, therefore, we have decided to omit the proposed requirement from the final rule.

The final rule amends § 4.411 to add an introductory phrase, "[e]xcept as otherwise provided by law," to paragraph (a)(2), since a statute or regulation may provide a longer or shorter period for filing an appeal than the normal 30 days. For example, under 30 U.S.C. 1724(d)(4)(B)(ii)(V), an order to perform a restructured accounting for oil and gas royalties must "provide the lessee or its designee 60 days within which to file an administrative appeal of the order to perform a restructured accounting."

The final rule also adds a new § 4.411(d), specifying what the office of the officer who made the decision must do after receiving a notice of appeal. The office must forward to the Board the notice of appeal and any accompanying documents, as well as the complete administrative record.

#### *Section 4.412 Statement of Reasons; Statement of Standing; Reply Briefs*

We proposed to revise § 4.412(a) to require a single statement of reasons to be filed within 30 days after the notice of appeal is filed, rather than allowing two or more statements of reasons as in the current regulations. No comments were received on this change, and it is adopted. We have modified the language of paragraph (a) slightly, to say that the statement of reasons must be filed "no later than 30 days after the notice of appeal was filed," rather than "within 30 days after the notice of appeal was filed." An appellant does not have to wait until "after the notice of appeal was filed" to file a statement of reasons; the two documents can be filed at the same time.

We also proposed to limit the statement of reasons to 30 pages (excluding exhibits, declarations, or other attachments), unless the appellant obtains leave of the Board to file a longer statement by showing good cause. And we proposed that an appellant would also have to show good cause for leave to file any additional pleading, e.g., a reply to an answer.

One commenter objected to the page limitation in the proposed rule, saying that it was arbitrary and inadequately justified in the proposed rule. Thirty pages is the limit for a principal brief under Rule 32(a)(7) of the Federal Rules of Appellate Procedure; and in the Board's experience, it should be sufficient in all but the most

complicated cases. This proposed change is adopted as proposed.

The same commenter and several others objected to the requirement that an appellant obtain leave of the Board to file a reply brief. The current regulations make no provision for a reply brief, and most appellants who wish to file a reply seek leave of the Board to do so. Thus the proposed rule is consistent with the prevailing practice. However, it is also true that the Board routinely grants leave to file a reply when requested, and appellants file replies in fewer than 10 percent of the cases. Thus, allowing a limited time for appellants to file a reply brief appears unlikely to delay proceedings unduly.

In light of the Board's experience and the comments received, the final rule expressly allows an appellant who feels the need to do so to file a reply brief within 15 days after service of an answer under § 4.414. This is comparable to the 14 days allowed for a reply brief in Rule 31 of the Federal Rules of Appellate Procedure. The reply brief is limited to the issues raised in the answer and to 20 pages, unless the appellant obtains leave of the Board to file a longer brief by showing good cause. No further briefing by any party is permitted, unless requested by the Board.

#### *Section 4.413 Service of Notice of Appeal*

The proposed rule included updated addresses for the Office of the Solicitor on which a copy of a notice of appeal and statement of reasons must be served. The Office of the Solicitor has informed us a handful of other changes, and the final rule revises the information in § 4.413(c)(1), (d)(5), and (d)(9) to reflect those changes. No public comments were received on the proposed changes, and they are adopted as proposed, with minor editorial changes.

#### *Section 4.414 Answers*

We proposed to require each party that wishes to participate in an appeal, including the Bureau, to file a single answer (or motion, if appropriate, e.g., a motion to dismiss) within 60 days of service of the statement of reasons for appeal. This is twice the length of time generally provided for filing an answer under the existing regulations and would equal the total length of time that an appellant has to file a statement of reasons from the date of service of the decision being appealed (30 days under § 4.411(a) plus 30 days under § 4.412(a)). No comments were received on the proposed change. On further

consideration, however, we have decided to leave the period for filing an answer in § 4.414(a) at 30 days, but to revise § 4.405 to provide for an automatic extension of time upon request, not to exceed 30 days.

In many cases currently, no party files an answer, which means that the case is ripe for adjudication 30 days after service of the notice of appeal or statement of reasons. Enlarging the period for filing an answer to 60 days in all cases would mean that the Board would have to wait an additional 30 days in every case to see whether a party filed an answer.

Under the final rule, if a person wants to file an answer but needs additional time to do so, the person can get up to the full 60 days contemplated in the proposed rule simply by filing a request for an extension of time before the end of the initial 30-day deadline. But if no one files an answer or a request for an extension of time within the initial 30-day period, the Board can proceed to consider the appeal, without having to wait an additional 30 days.

For the reasons discussed above in connection with § 4.411, the final rule omits the proposed requirement that, if a person is representing more than one party, the answer must state that the person is authorized to do so.

#### *Section 4.415 Motion for a Hearing on an Appeal Involving Questions of Fact*

We proposed several changes to existing § 4.415: (1) Deleting the requirement that a request for a hearing on issues of material fact be filed within 30 days after an answer is due; (2) requiring a party that requests a hearing to specify in its motion what the issues of material fact are, what evidence must be presented, what witnesses need to be examined, and what documentary evidence needs to be explained, if any; (3) including the standards used by the Board in deciding whether to refer a case for a hearing; (4) giving the Board the authority to refer a matter for a hearing by an administrative law judge (ALJ), who would issue (a) proposed findings of fact on specified issues, (b) a recommended decision, or (c) a decision that will be final in the absence of an appeal; and (5) authorizing the Board to suspend the effectiveness of the decision under review pending a final decision on the appeal if it finds good cause to do so.

One commenter objected to the proposed requirement that a party requesting a hearing specify what evidence must be presented, what witnesses need to be examined, and what documentary evidence needs to be explained, if any. The commenter

argued that discovery may be necessary before a party can make these determinations, and discovery may not be available until the case is referred to an ALJ for a hearing. The commenter recommended that the rule require a party to identify only the issues of material fact on which a hearing is necessary or, at the least, clarify that a party will not be limited to its specifications of evidence, witnesses, and documents in the request for a hearing.

We have decided to retain the requirement that the party specify, not only the issues of material fact to be heard, but also the evidence, witnesses, and documents to be presented or cross-examined. This information is needed for the Board to evaluate the hearing request and determine, for example, whether evidence could be presented in documentary form, rather than by oral testimony, thereby saving the parties and the ALJ the time and expense of a hearing. However, language has been added to § 4.415(e) clarifying that, unless the Board orders otherwise, the ALJ may consider other relevant issues and evidence identified after referral of the case for a hearing.

The same commenter also recommended that the proposed rule be amended to include procedures for discovery in cases handled by the Departmental Cases Hearings Division. While this recommendation is outside the scope of the current rulemaking, which focuses on procedures for IBLA, we agree that discovery procedures for cases before the Departmental Cases Hearings Division should be established. We will propose such procedures in a separate rulemaking.

No other comments were received on the proposed changes to § 4.415, and they are adopted as proposed.

#### *Section 4.421 Definitions*

We proposed to remove from this section a handful of terms that are also defined in § 4.400, to alphabetize the remaining definitions, and to revise them to reflect revisions to the definitions in § 4.400. No comments were received on the proposed changes, and they are adopted as proposed.

In addition, in response to a comment from BLM, we have substituted a definition of “manager” for the definition of “district manager” in the current regulation. BLM pointed out that subpart E never actually uses “district manager,” except to define it in this section as the supervising BLM officer of the grazing district. By contrast, subpart E uses “manager” in several regulations. Since BLM manages grazing both within grazing districts and

on the public lands outside grazing districts, the final regulation defines the term “manager” more broadly as “the BLM official with direct supervision over the public lands that are pertinent to the decision or contest.”

#### *Section 4.422 Documents*

The proposed rule included changes to the service requirements in § 4.422(c) corresponding to those proposed for § 4.401(c). The final rule adopts the same changes to § 4.422(c) as are adopted for § 4.401(c), discussed above. In addition, language has been included in § 4.422(c)(4) and (6) to reflect service of a complaint in a contest proceeding by publication, as provided in § 4.450–5.

#### *Section 4.433 Authority of the Administrative Law Judge*

Consistent with one of the proposed changes to § 4.415 mentioned above, we proposed to revise § 4.433 to provide authority to an ALJ to issue either a recommended decision or a decision that would be final for the Department absent an appeal to the Board, in addition to proposed findings of fact on the issues presented at the hearing. No comments were received on the proposed change, and it is adopted as proposed.

#### *Section 4.434 Conduct of Hearing*

We proposed to revise this regulation to substitute “administrative law judge” for “examiner” and to substitute “Bureau,” as defined in § 4.400, for “Bureau of Land Management.” No comments were received on the proposed changes, and they are adopted as proposed, except that the expanded term “Bureau or Office” is used in the final rule.

#### *Section 4.437 Copies of Transcript*

This regulation refers to the parties’ stipulating to a summary of the evidence, a procedure that has not been used for many years and is unnecessary, since all hearings are transcribed. The final rule removes this reference in § 4.437.

#### *Section 4.438 Summary of Evidence*

We proposed to remove this regulation as unnecessary, for the reasons explained above in connection with § 4.437. No comments were received on the proposed change, and it is adopted as proposed. Existing § 4.439 is redesignated § 4.438.

#### *Section 4.438 Action by Administrative Law Judge*

Consistent with the proposed changes to §§ 4.415 and 4.433 mentioned above,

we proposed to revise this regulation to authorize an ALJ to issue (a) proposed findings of fact on the issues presented at the hearing, (b) a recommended decision that includes findings of fact and conclusions of law, or (c) a decision that would be final for the Department absent an appeal to the Board. No comments were received on this proposed change, and it is adopted as proposed.

*Section 4.452–8 Findings and Conclusions; Decision by Administrative Law Judge*

Paragraphs (a) and (b) of this section provide that, following a hearing in a contest proceeding, the parties may submit proposed findings of fact and conclusions of law, and the ALJ will consider them and issue his or her decision, including findings, conclusions, and the reasons for them. Paragraph (c) provides that “[t]he Board may require, in any designated case, that the [ALJ] make only a recommended decision and that the decision and the record be submitted to the Board for consideration.”

As far as we are aware, the authority in paragraph (c) has never been used, and we are unaware of any reason to depart from the consistent current practice of having the ALJ render an initial decision that is then reviewable by the Board on appeal. The final rule, therefore, deletes paragraph (c).

*Section 4.476 Conduct of Hearing; Reporter’s Fees; Transcripts*

Like § 4.437 discussed above, § 4.476(d) refers to the parties’ stipulating to a summary of the evidence, a procedure that has not been used for many years and is unnecessary, since all hearings are transcribed. The final rule removes this reference in § 4.476.

*Section 4.477 Findings and Conclusions; Decision by Administrative Law Judge*

Paragraph (a) of this section provides that, following a hearing in a grazing proceeding and the time allowed for the parties to submit proposed findings of fact and conclusions of law, the ALJ will consider them and issue his or her decision, including findings, conclusions, and the reasons for them. Paragraph (b) provides that the Board “may require, in any designated case, that the [ALJ] make only a recommended decision and that such decision and the record be submitted to the Board for consideration.” We are not aware of the Board’s ever having used the authority in paragraph (b), and we

have deleted paragraph (b) from the final rule.

*Section 4.478 Appeals to the Board of Land Appeals; Judicial Review*

As noted in the proposed rule, in 2003, OHA amended its regulations to authorize an ALJ to issue an order granting or denying a petition for stay of a BLM grazing decision. 43 CFR 4.474(c), 68 FR 68765, 68771 (Dec. 10, 2003). The amendments also provided for an appeal to IBLA from such an order in § 4.478(a), but did not specify a time or place for filing the appeal. We proposed to amend § 4.478(a) to provide that an appeal may be filed with the ALJ in accordance with § 4.411(a). No comments were received on the proposed change, and it is adopted as proposed.

*F. 43 CFR Part 4, Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals*

*Section 4.1108 Form of Documents*

The final rule adds a new § 4.1108(g) providing that documents filed under subpart L must conform to the document formatting requirements of § 4.401(d). This provision takes the place of the more general formatting guidance (“double-spaced, using standard margins and font size”) included in proposed § s 4.1392(a)(2), (e)(2).

*Section 4.1109 Service*

The Solicitor’s Office has informed us that, in 2009, the Knoxville Field Solicitor’s Office moved to a new location. We have revised § 4.1109(a)(2)(ii) to update the office address.

*Section 4.1117 Reconsideration*

We proposed to add § 4.1117 to treat motions for reconsideration under subpart L in a manner consistent with those under subpart E. See § 4.403, discussed above. No comments were received on the proposed addition, and it is adopted as proposed.

*Section 4.1270 Petition for Discretionary Review of a Proposed Civil Penalty*

We proposed to correct the reference in § 4.1270(f) from § 4.1277 (which does not exist) to § 4.1275. No comments were received on the proposed change, and it is adopted as proposed.

*Section 4.1276 Reconsideration*

We proposed to remove this regulation because of the addition of § 4.1117, discussed above. No comments were received on the proposed change, and it is adopted as proposed.

*Section 4.1286 Motion for a Hearing*

We proposed to revise § 4.1286 to treat requests for a hearing under subpart L in a manner consistent with those under subpart E. See § 4.415, discussed above. No comments were received on the proposed changes, and they are adopted as proposed.

*Section 4.1287 Action by Administrative Law Judge*

The final rule adds a new § 4.1287 to require action by the ALJ, following referral of a case for a hearing under subpart L, in a manner consistent with that under subpart E. See redesignated § 4.438, discussed above.

*Section 4.1392 Contents of Request; Amendment of Requests; Responses*

Section 4.1392 governs the filing of requests for review, and responses to such requests, in cases involving a determination by the Office of Surface Mining Reclamation and Enforcement that a person does or does not have valid existing rights under 30 CFR 761.16. One commenter requested that the final regulations clarify a requester’s right to file a supplemental brief, which could serve to narrow the issues in contention. Consistent with the change to § 4.412 concerning reply briefs, discussed above, the final rule adds a § 4.1392(e), giving a requester who wishes to file a reply a limited opportunity to do so. The final rule also revises § 4.1392(d) to clarify the requirements for filing a response.

*G. 43 CFR Part 10—Native American Graves Protection and Repatriation Regulations*

In January 2002, OHA moved its headquarters offices to a new building and revised these regulations to update its address. 67 FR 4367, 4368 (Jan. 30, 2002). In April 2003, however, the National Park Service revised 43 CFR 10.12 and inadvertently republished OHA’s former address. 68 FR 16354, 16363–64 (Apr. 3, 2003). This final rule therefore revises § 10.12(j) and (k) to substitute OHA’s current address.

**III. Review Under Procedural Statutes and Executive Orders**

*A. Decision To Issue Final Rule Without Prior Notice and Comment on Some Provisions.* While prior notice and opportunity for comment were provided for most of the provisions of this final rule, the Office of the Secretary has included additional provisions that were not part of the March 8, 2007, proposed rule. These provisions are 30 CFR Chapter III and 43 CFR part 4, subpart C, which are removed; 43 CFR 4.1, 4.21, 4.22, 4.410, 4.437, 4.452–8,

4.476, 4.477, 4.1108, 4.1392, and 10.12, which are revised; and 43 CFR 4.401(d), 4.411(d), and 4.1287, which are added. As is clear from the section-by-section analysis above, the changes to these regulations are minor technical amendments or changes needed to conform to other statutory or regulatory actions.

The Department has determined that the public notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to these additional provisions because the changes being made relate solely to matters of agency organization, procedure, and practice. They therefore satisfy the exemption from notice and comment rulemaking in 5 U.S.C. 553(b)(A).

*B. Regulatory Planning and Review (E.O. 12866).* In accordance with the criteria in Executive Order 12866, we have determined that this document is not a significant regulatory action. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule will not have an annual economic effect of \$100 million or more or adversely affect in a material way an economic sector, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A cost-benefit and economic analysis is not required. These regulations will have virtually no effect on the economy because they only revise existing procedural regulations governing appeals and add new regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention.

2. This rule will not create inconsistencies with or interfere with other agencies' actions because only the Department of the Interior provides regulations that govern procedures for appeals of decisions concerning the use and disposition of public lands and their resources and concerning surface coal mining.

3. This rule will not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These regulations deal only with procedures governing appeals, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule does not raise novel legal or policy issues. The regulations would merely revise existing procedures and add regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention, which

are all familiar administrative procedures.

*C. Regulatory Flexibility Act.* The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Over the past 5 years, IBLA has received between 285 and 335 appeals per year, and appeals this year are running at an even lower rate. Not all appellants are small entities; but even if they were, 285–335 is not a substantial number, for purposes of the Act. Moreover, the minor procedural changes in this rule will not have a significant economic effect on those appellants who are small entities. A Small Entity Compliance Guide is not required.

*D. Small Business Regulatory Enforcement Fairness Act.* This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act:

1. It will not have an annual effect on the economy of \$100 million or more. The rule only revises procedural regulations governing appeals and adds regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention. The rule should have no effect on the economy.

2. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention will not affect costs or prices for citizens, individual industries, government agencies, or geographic regions.

3. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*E. Unfunded Mandates Reform Act.* In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we find that:

1. This rule will not have a significant or unique effect on small governments or significantly affect State, local, or tribal governments or the private sector.

Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention will neither uniquely nor significantly affect these governments.

2. This rule will not produce an unfunded Federal mandate of \$100 million or more on State, local, or tribal governments in the aggregate or the private sector in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1532, is not required.

*F. Takings (E.O. 12630).* In accordance with Executive Order 12630, we find that the rule will not have significant takings implications. A takings implication assessment is not required. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention should have no effect on property rights.

*G. Federalism (E.O. 13132).* In accordance with Executive Order 13132, we find that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention. A federalism summary impact statement is not required.

*H. Civil Justice Reform (E.O. 12988).* In accordance with Executive Order 12988, the Department has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Because these regulations will improve OHA's procedural regulations governing appeals and add regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention, they will not burden either administrative or judicial tribunals.

*I. Consultation with Indian Tribes (E.O. 13175).* Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. These regulations would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes. They would only revise OHA's procedural regulations governing appeals and add regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention.

J. *Paperwork Reduction Act.* This rule is exempt from the requirements of the Paperwork Reduction Act, since it applies to the conduct of agency administrative proceedings involving specific individuals and entities. 44 U.S.C. 3518(c); 5 CFR 1320.4(a)(2). An OMB form 83-I is not required.

K. *National Environmental Policy Act.* The Department has determined that this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR 1508.4, and the Department of the Interior's regulations at 43 CFR 46.210(i). CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that 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 43 CFR 46.210(i), which categorically excludes "[p]olicies, directives, regulations and guidelines: that are of an administrative, financial, legal, technical, or procedural nature \* \* \*" In addition, the Department has determined that none of the extraordinary circumstances listed in 43 CFR 46.215 applies to this rule.

The rule is an administrative and procedural rule that revises OHA's procedural regulations governing appeals and adds regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention. Therefore, given the categorical exclusion, neither an environmental assessment nor an environmental impact statement under NEPA is required.

L. *Information Quality Act.* In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act, Pub. Law 106-554.

M. *Effects on the Energy Supply (E.O. 13211).* This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. Revising OHA's procedural regulations governing appeals and adding regulations

governing consolidation of appeals, requests for extensions of time, motions, and intervention are not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects**

*30 CFR Part 301*

Administrative practice and procedure, Mines, Surface mining.

*43 CFR Part 4*

Administrative practice and procedure, Mines, Public lands, Surface mining.

*43 CFR Part 10*

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians—Claims, Museums, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Office of the Secretary amends 30 CFR Chapter III and 43 CFR parts 4 and 10 as set forth below:

**Title 30—Mineral Resources**

**Chapter III—[REMOVED]**

■ Under the authority of 30 U.S.C. 1211, 30 CFR Chapter III, consisting of part 301, is removed.

**Title 43—Public Lands: Interior**

**43 CFR Subtitle A—Office of the Secretary of the Interior**

**PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES**

■ 2. The authority citation for part 4 continues to read as follows:

**Authority:** 5 U.S.C. 301; 43 U.S.C. 1201.

**Subpart A—General; Office of Hearings and Appeals**

■ 3. In § 4.1, revise the introductory text and paragraph (a), remove paragraph (b)(1), redesignate paragraphs (b)(2) through (b)(4) as paragraphs (b)(1) through (b)(3), and revise the first sentence of newly redesignated paragraph (b)(1)(ii) to read as follows:

**§ 4.1 Scope of authority; applicable regulations.**

The Office of Hearings and Appeals, headed by a Director, is an authorized representative of the Secretary for the purpose of hearing, considering, and deciding matters within the jurisdiction of the Department involving hearings, appeals, and other review functions of the Secretary. The Office may hear, consider, and decide those matters as fully and finally as might the Secretary, subject to any limitations on its authority imposed by the Secretary.

Principal components of the Office include:

(a) One or more Hearings Divisions consisting of administrative law judges who are authorized to conduct hearings in cases required by law to be conducted under 5 U.S.C. 554, and other deciding officials who are authorized to conduct hearings in cases arising under statutes and regulations of the Department; and

(b) \* \* \*

(1) \* \* \*

(ii) Decisions and orders of administrative law judges and Indian probate judges in Indian probate matters, other than those involving estates of the Five Civilized Tribes of Indians. \* \* \*

\* \* \* \* \*

**§ 4.21 [Amended]**

■ 4. In § 4.21, amend paragraph (b)(3) by adding the word "and" after the semicolon at the end of the paragraph and amend paragraph (b)(4) by removing the semicolon at the end of the paragraph and adding a period in its place.

**Subpart B—General Rules Relating to Practice and Procedure**

■ 5. Revise § 4.22(a) to read as follows:

**§ 4.22 Documents.**

(a) *Filing of documents.* A document is filed in the office where the filing is required only when the document is received in that office during its regular business hours and by a person authorized to receive it. A document received after the office's regular business hours is considered filed on the next business day.

\* \* \* \* \*

**Subpart C—[Removed and Reserved]**

■ 6. Subpart C, consisting of §§ 4.100 through 4.128 and Appendix I, is removed and reserved.

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

■ 7. Revise the authority citation for part 4, subpart E, to read as follows:

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

■ 8. Revise § 4.400 to read as follows:

**§ 4.400 Definitions.**

As used in this subpart:  
*Administrative law judge* means an administrative law judge in the Office of Hearings and Appeals, appointed under 5 U.S.C. 3105.

*BIA* means the Bureau of Indian Affairs.

*BLM* means the Bureau of Land Management.

*Board* means the Interior Board of Land Appeals in the Office of Hearings and Appeals. The address of the Board is 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203. The telephone number is 703-235-3750, and the facsimile number is 703-235-8349.

*BOEMRE* means the Bureau of Ocean Energy Management, Regulation and Enforcement.

*Bureau or Office* means BIA, BLM, BOEMRE, ONRR, the Deputy Assistant Secretary—Natural Resources Revenue, or any successor organization, as appropriate.

*Last address of record* means the address in a person's most recent filing in an appeal or, if there has not been any filing, the person's address as

provided in the Bureau decision under appeal.

*ONRR* means the Office of Natural Resources Revenue.

*Office or officer* includes "administrative law judge" or "Board" where the context so requires.

*Party* includes a party's representative(s) where the context so requires.

*Secretary* means the Secretary of the Interior or an authorized representative.

■ 9. In § 4.401, revise paragraph (c) and add paragraph (d) to read as follows:

**§ 4.401 Documents.**

\* \* \* \* \*

(c) *Service of documents.* (1) A party that files any document under this subpart must serve a copy of it concurrently as follows:

(i) On the appropriate official of the Office of the Solicitor under § 4.413(c) and (d);

(ii) For a notice of appeal and statement of reasons, on each person named in the decision under appeal; and

(iii) For all other documents, on each party to the appeal (including intervenors).

(2) Service on a person or party known to be represented by counsel or other designated representative must be made on the representative.

(3) Service must be made at the last address of record of the person or party (if unrepresented) or the representative, unless the person, party, or representative has notified the serving party of a subsequent change of address.

(4) Service may be made as shown in the following table:

| If the document is * * *          | Service may be made by * * *   |
|-----------------------------------|--|
| (i) A notice of appeal .....      | (A) Personal delivery;<br>(B) Registered or certified mail, return receipt requested;<br>(C) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or<br>(D) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing. |
| (ii) Not a notice of appeal ..... | (A) Personal delivery;<br>(B) Mail;<br>(C) Delivery service, if the last address of record is not a post office box; or<br>(D) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means in writing.   |

(5) At the conclusion of any document that a party must serve under the regulations in this subpart, the party must sign a written statement that:

(i) Certifies that service has been or will be made in accordance with the applicable rules; and

(ii) Specifies the date and manner of service.

(6) Service that complies with paragraphs (c)(2) through (4) of this section is complete as shown in the following table:

| If service is made by * * *         | Service is complete when the document is * * *  |
|-------------------------------------|---|
| (i) Personal delivery .....         | Delivered to the party.   |
| (ii) Mail or delivery service ..... | Delivered to the party.   |
| (iii) Electronic means .....        | Transmitted to the party, unless the serving party learns that it did not reach the party to be served. |

(7) In the absence of evidence to the contrary, delivery under paragraph (c)(6)(ii) of this section is deemed to take place 5 business days after the document was sent. A document is considered sent when it is given to the U.S. Postal Service (or deposited in one of its mailboxes), properly addressed and with proper postage affixed, or when it is given to a delivery service (or deposited in one of its receptacles), properly addressed and with the delivery cost prepaid.

(d) *Document format.* (1) The format requirements in paragraph (d)(2) of this section apply to any pleading, motion, brief, or other document filed in a case under this subpart, other than an exhibit

or attachment or the administrative record.

(i) An exhibit or attachment must be 8½ by 11 inches in size or, if larger, folded to 8½ by 11 inches and attached to the document.

(ii) Any document that does not comply with the requirements in this paragraph (d) may be rejected.

(2) A document filed in a case must:  
(i) Be 8½ by 11 inches in size;  
(ii) Be printed on just one side of the page;

(iii) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(iv) Use 11 point font size or larger;

(v) Be double-spaced except for the case caption, argument headings, long

quotations, and footnotes, which may be single-spaced;

(vi) Have margins of at least 1 inch;

(vii) Be numbered sequentially, starting on the second page; and

(viii) Be stapled in the upper left-hand corner, if stapled, or bound on the left side, if bound.

■ 10. Revise § 4.403 to read as follows:

**§ 4.403 Finality of decision; reconsideration.**

(a) The Board's decision is final agency action and is effective on the date it is issued, unless the decision itself provides otherwise.

(b) The Board may reconsider its decision in extraordinary circumstances.

(1) A party that wishes to request reconsideration of a Board decision must file a motion for reconsideration with the Board within 60 days after the date of the decision.

(2) The motion may include a request that the Board stay the effectiveness of its decision.

(3) Any other party to the original appeal may file a response to a motion for reconsideration with the Board within 21 days after service of the motion, unless the Board orders otherwise.

(4) A motion for reconsideration will not stay the effectiveness or affect the finality of the Board's decision unless so ordered by the Board for good cause.

(5) A party does not need to file a motion for reconsideration in order to exhaust its administrative remedies.

(c) A motion for reconsideration must:

(1) Specifically describe the extraordinary circumstances that warrant reconsideration; and

(2) Include all arguments and supporting documents.

(d) Extraordinary circumstances that may warrant granting reconsideration include, but are not limited to:

(1) Error in the Board's interpretation of material facts;

(2) Recent judicial development;

(3) Change in Departmental policy; or

(4) Evidence that was not before the Board at the time the Board's decision was issued and that demonstrates error in the decision.

(e) If the motion cites extraordinary circumstances under paragraph (d)(4) of this section, it must explain why the evidence was not provided to the Board during the course of the original appeal.

(f) The Board will not grant a motion for reconsideration that:

(1) Merely repeats arguments made in the original appeal, except in cases of demonstrable error; or

(2) Seeks relief from the legally binding consequences of a statute or regulation.

■ 11. Add §§ 4.404 through 4.407 to read as follows:

**§ 4.404 Consolidation.**

If the facts or legal issues in two or more appeals pending before the Board are the same or similar, the Board may consolidate the appeals, either on motion by a party or at the initiative of the Board.

**§ 4.405 Extensions of time.**

(a) If a document other than a notice of appeal is required to be filed or served within a definite time, a party may seek additional time by filing with the Board a motion requesting an extension of time.

(b) A motion requesting an extension must be filed no later than the day before the date the document is due, absent compelling circumstances. The motion may be filed and served by facsimile. Section 4.401(a) does not apply to a motion requesting an extension of time.

(c) Except as provided in paragraph (f) of this section, before filing a motion requesting an extension of time, the moving party must make reasonable efforts to contact each other party to determine whether the party opposes the motion. The moving party must state in its motion:

(1) Whether any party it reached opposes the motion; and

(2) What steps it took to contact any party it was unable to reach.

(d) Except as provided in paragraph (f) of this section, the party must support its motion requesting an extension of time by showing there is good cause to grant it.

(e) A Board order granting or denying a motion requesting an extension will state when the document must be filed. Except as provided in paragraph (f) of this section, if the Board does not act on a motion before the document is due, the document must be filed no later than 15 days after the original due date, unless the Board orders otherwise.

(f) A party seeking additional time to file an answer may have one automatic extension, not to exceed 30 days, of the deadline in § 4.414(a) by filing a motion for such extension under paragraphs (a) and (b) of this section.

**§ 4.406 Intervention; amicus curiae.**

(a) A person who wishes to intervene in an appeal must file a motion to intervene within 30 days after the person knew or should have known that the decision had been appealed to the Board.

(b) A motion to intervene must set forth the basis for the proposed intervention, including:

(1) Whether the person had a right to appeal the decision under § 4.410 or would be adversely affected if the Board reversed, vacated, set aside, or modified the decision; and

(2) How and when the person learned of the appeal.

(c) The Board may:

(1) Grant the motion to intervene;

(2) Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or

(3) Grant the motion to intervene but limit the person's participation in the appeal.

(d) A person may file a motion at any time to file a brief as an amicus curiae.

(1) The motion must state the person's interest in the appeal and how its brief will be relevant to the issues involved.

(2) The Board may grant or deny the motion in its discretion. The Board may also allow a person to file a brief as amicus curiae if it denies the person's motion to intervene.

(e) A person granted full or limited intervenor status is a party to the appeal, while an amicus curiae is not. A person granted amicus curiae status must serve its brief on the parties to the appeal.

**§ 4.407 Motions.**

(a) Any motion filed with the Board must provide a concise statement of the reasons supporting the motion.

(b) When a person or party files a motion, other than a motion for an extension of time under § 4.405, any party has 15 days after service of the motion to file a written response, unless a provision of this subpart or the Board by order provides otherwise.

(c) The Board will rule on any motion as expeditiously as possible.

(d) The requirements of § 4.401(d) apply to a motion.

■ 12. In § 4.410, revise paragraphs (a) introductory text and (c) introductory text to read as follows:

**§ 4.410 Who may appeal.**

(a) Any party to a case who is adversely affected by a decision of the Bureau or Office or an administrative law judge has the right to appeal to the Board, except:

\* \* \* \* \*

(c) Where the Bureau or Office provided an opportunity for participation in its decisionmaking process, a party to the case, as set forth in paragraph (a) of this section, may raise on appeal only those issues:

\* \* \* \* \*

■ 13. In § 4.411, revise paragraphs (a) and (b) and add paragraph (d) to read as follows:

**§ 4.411 Appeal; how taken, mandatory time limit.**

(a) A person who wishes to appeal to the Board must file a notice that the person wishes to appeal.

(1) The notice of appeal must be filed in the office of the officer who made the decision (not the Board).

(2) Except as otherwise provided by law:

(i) A person served with the decision being appealed must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of service of the decision; and

(ii) If a decision is published in the **Federal Register**, a person not served with the decision must transmit the notice of appeal in time for it to be received in the appropriate office no later than 30 days after the date of publication.

(b) The notice of appeal must give the serial number or other identification of the case. The notice of appeal may include a statement of reasons for the appeal, and a statement of standing if required by § 4.412(b).

\* \* \* \* \*

(d) After receiving a timely notice of appeal, the office of the officer who made the decision must promptly forward to the Board:

- (1) The notice of appeal;
- (2) Any statement of reasons, statement of standing, and other documents included with the notice of appeal; and
- (3) The complete administrative record compiled during the officer's consideration of the matter leading to the decision being appealed.

■ 14. In § 4.412, revise the section heading and paragraph (a) and add paragraphs (d) and (e) to read as follows:

**§ 4.412 Statement of reasons; statement of standing; reply briefs.**

(a) An appellant must file a statement of reasons for appeal with the Board no later than 30 days after the notice of appeal was filed. Unless the Board orders otherwise upon motion for good cause shown, the text of a statement of reasons may not exceed 30 pages, excluding exhibits, declarations, or other attachments.

\* \* \* \* \*

(d) The filing of a reply brief is discouraged. However, an appellant who wishes to file a reply brief may do so within 15 days after service of an answer under § 4.414.

(1) The reply brief is limited to the issues raised in the answer.

(2) Unless the Board orders otherwise upon motion for good cause shown, the text of a reply brief may not exceed 20

pages, excluding exhibits, declarations, or other attachments.

(e) The requirements of § 4.401(d) apply to a statement of reasons and a reply brief.

■ 15. Revise §§ 4.413 through 4.415 to read as follows:

**§ 4.413 Service of notice of appeal.**

(a) The appellant must serve a copy of the notice of appeal on each person named in the decision from which the appeal is taken and on the Office of the Solicitor as identified in paragraphs (c) and (d) of this section. Service must be accomplished and certified as prescribed in § 4.401(c).

(b) Failure to serve a notice of appeal will subject the appeal to summary dismissal as provided in § 4.402.

(c) The appellant must serve a copy of the notice of appeal on the Office of the Solicitor as shown in the following table.

|   |  |
|---|--|
| If the appeal is taken from a decision of * * *   | Then the appellant must serve the notice on * * *  |
| (1) ONRR, the Deputy Assistant Secretary—Natural Resources Revenue, or BIA concerning royalties.                  | Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.  |
| (2) BOEMRE .....  | Associate Solicitor, Division of Mineral Resources, U.S. Department of the Interior, Washington, DC 20240.   |
| (3) The Director, BLM .....   | (i) If the decision concerns use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended: Associate Solicitor, Division of Land and Water Resources, U.S. Department of the Interior, Washington, DC 20240; or<br>(ii) If the decision concerns use and disposition of mineral resources: Associate Solicitor, Division of Mineral Resources, U.S. Department of the Interior, Washington, DC 20240.<br>The appropriate office identified in paragraph (d) of this section. |
| (4) A BLM State Office (including all District, Field, and Area Offices within that State Office's jurisdiction). |  |
| (5) An Administrative Law Judge .....   | The persons identified in paragraph (e) of this section.   |

(d) This paragraph applies to any appeal taken from a decision of a BLM State Office, including all District, Field,

and Area Offices within that State Office's jurisdiction. The appellant must serve documents on the Office of the

Solicitor in accordance with the following table, unless the decision identifies a different official:

| BLM state office         | Mailing address   |
|--------------------------|---|
| (1) Alaska .....         | Regional Solicitor, Alaska Region, U.S. Department of the Interior, 4230 University Drive, Suite 300, Anchorage, AK 99508-4626.   |
| (2) Arizona .....        | Field Solicitor, U.S. Department of the Interior, U.S. Courthouse, Suite 404, 401 W. Washington St. SPC 44, Phoenix, AZ 85003.  |
| (3) California .....     | Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, CA 95825-1890.  |
| (4) Colorado .....       | Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.   |
| (5) Eastern States ..... | (i) For decisions involving Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, or Wisconsin: Regional Solicitor, Northeast Region, U.S. Department of the Interior, One Gateway Center, Suite 612, Newton, MA 02458.<br>(ii) For decisions involving Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, or Tennessee: Regional Solicitor, Southeast Region, U.S. Department of the Interior, 75 Spring Street, SW., Suite 304, Atlanta, Georgia 30303. |
| (6) Idaho .....          | Field Solicitor, U.S. Department of the Interior, University Plaza, 960 Broadway Avenue, Suite 400, Boise, ID 83706.  |

| BLM state office   | Mailing address   |
|--|---|
| (7) Montana (covers the states of Montana, North Dakota, and South Dakota).    | (i) Deliveries by U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107-1394.<br>(ii) All other deliveries: Field Solicitor, U.S. Department of the Interior, 316 North 26th Street, Room 3005, Billings, MT 59101. |
| (8) Nevada .....   | Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, CA 95825-1890.  |
| (9) New Mexico (covers the states of New Mexico, Kansas, Oklahoma, and Texas). | Regional Solicitor, Southwest Region, U.S. Department of the Interior, 505 Marquette Ave., NW., Suite 1800, Albuquerque, NM 87102.  |
| (10) Oregon (covers the states of Oregon and Washington).                      | Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 805 SW. Broadway, Suite 600, Portland, OR 97205.   |
| (11) Utah .....  | Regional Solicitor, Intermountain Region, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138-1180.  |
| (12) Wyoming (covers the states of Wyoming and Nebraska).                      | Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215.   |

(e) This paragraph applies to any appeal taken from a decision of an administrative law judge.

(1) Except as provided in paragraph (e)(2) of this section, the appellant must serve either:

(i) The attorney from the Office of the Solicitor who represented the Bureau or Office at the hearing; or

(ii) If there was no hearing, the attorney who was served with a copy of the decision by the administrative law judge.

(2) If the decision involved a mining claim on national forest land, the appellant must serve either:

(i) The attorney from the Office of General Counsel, U.S. Department of Agriculture, who represented the U.S. Forest Service at the hearing; or

(ii) If there was no hearing, the attorney who was served with a copy of the decision by the administrative law judge.

(f) Parties must serve the Office of the Solicitor as required by this section until a particular attorney of the Office of the Solicitor files and serves a Notice of Appearance or Substitution of Counsel. Thereafter, parties must serve the Office of the Solicitor as indicated by the Notice of Appearance or Substitution of Counsel.

(g) The appellant must certify service as provided in § 4.401(c)(5).

**§ 4.414 Answers.**

(a) Any person served with a notice of appeal who wishes to participate in the appeal must file an answer or appropriate motion with the Board within 30 days after service of the statement of reasons for appeal. The answer must respond to the statement of reasons for appeal.

(b) Unless the Board orders otherwise upon motion for good cause shown:

(1) The text of the answer or motion may not exceed 30 pages, excluding exhibits, declarations, or other attachments; and

(2) The party may not file any further pleading.

(c) Failure to file an answer or motion will not result in a default. If an answer or motion is filed or served after the time required, the Board may disregard it in deciding the appeal, unless the delay in filing is waived as provided in § 4.401(a).

(d) The requirements of § 4.401(d) apply to an answer or motion.

**§ 4.415 Motion for a hearing on an appeal involving questions of fact.**

(a) Any party may file a motion that the Board refer a case to an administrative law judge for a hearing. The motion must state:

(1) What specific issues of material fact require a hearing;

(2) What evidence concerning these issues must be presented by oral testimony, or be subject to cross-examination;

(3) What witnesses need to be examined; and

(4) What documentary evidence requires explanation, if any.

(b) In response to a motion under paragraph (a) of this section or on its own initiative, the Board may order a hearing if there are:

(1) Any issues of material fact which, if proved, would alter the disposition of the appeal; or

(2) Significant factual or legal issues remaining to be decided, and the record without a hearing would be insufficient for resolving them.

(c) If the Board orders a hearing, it must:

(1) Specify the issues of fact upon which the hearing is to be held; and

(2) Request the administrative law judge to issue:

(i) Proposed findings of fact on the issues presented at the hearing;

(ii) A recommended decision that includes findings of fact and conclusions of law; or

(iii) A decision that will be final for the Department unless a notice of

appeal is filed in accordance with § 4.411.

(d) If the Board orders a hearing, it may do one or more of the following:

(1) Suspend the effectiveness of the decision under review pending a final Departmental decision on the appeal if it finds good cause to do so;

(2) Authorize the administrative law judge to specify additional issues; or

(3) Authorize the parties to agree to additional issues that are material, with the approval of the administrative law judge.

(e) The hearing will be conducted under §§ 4.430 to 4.438 and the general rules in subpart B of this part. Unless the Board orders otherwise, the administrative law judge may consider other relevant issues and evidence identified after referral of the case for a hearing.

■ 16. Revise § 4.421 to read as follows:

**§ 4.421 Definitions.**

In addition to the definitions in § 4.400, as used in this subpart:

*Director* means the Director of BLM or a BLM Deputy Director or Assistant Director.

*Manager* means the BLM official with direct jurisdiction over the public lands that are pertinent to the decision or contest.

*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.

*State Director* means the supervising BLM officer for the State in which a particular range lies, or an authorized representative.

■ 17. In § 4.422, revise paragraphs (c) and (d) to read as follows:

**§ 4.422 Documents.**

\* \* \* \* \*

(c) *Service of documents.* (1) A party that files any document under this subpart must serve a copy of it concurrently as follows:

(i) On the appropriate official of the Office of the Solicitor under § 4.413(c) and (d);

(ii) For a notice of appeal and statement of reasons, on each person

named in the decision under appeal; and

(iii) For all other documents, on each party to the appeal.

(2) Service on a party known to be represented by counsel or other designated representative must be made on the representative.

(3) Service must be made at the last address of record of the party (if unrepresented) or the representative, unless the party or representative has notified the serving party of a subsequent change of address.

(4) Service may be made as shown in the following table:

| If the document is * * *                          | Service may be made by * * *  |
|---|---|
| (i) An appeal under § 4.470 .....                 | (A) Personal delivery;<br>(B) Registered or certified mail, return receipt requested;<br>(C) Delivery service, delivery receipt requested, if the last address of record is not a post office box; or<br>(D) Electronic means, such as electronic mail or facsimile, if the person to be served has previously consented to that means of service in writing. |
| (ii) A complaint under § 4.450–4 or 4.451–2 ..... | (A) Any of the methods specified in paragraph (c)(4)(i) of this paragraph; or<br>(B) Publication as specified in § 4.450–5.   |
| (iii) Neither an appeal nor a complaint .....     | (A) Personal delivery;<br>(B) Mail;<br>(C) Delivery service, if the last address of record is not a post office box; or<br>(D) Electronic means, such as electronic mail or facsimile, if the person to be served has consented to that means in writing.   |

(5) At the conclusion of any document that a party must serve under the regulations in this subpart, the party must sign a written statement that:

(i) Certifies that service has been or will be made in accordance with the applicable rules; and  
(ii) Specifies the date and manner of service.

(6) Service that complies with paragraphs (c)(2) through (4) of this section is complete as shown in the following table:

| If service is made by * * *         | Service is complete when * * *  |
|-------------------------------------|---|
| (i) Personal delivery .....         | The document is delivered to the party.   |
| (ii) Mail or delivery service ..... | The document is delivered to the party.   |
| (iii) Electronic means .....        | The document is transmitted to the party, unless the serving party learns that it did not reach the party to be served. |
| (iv) Publication .....              | The final notice is published under § 4.450–5(b)(3).  |

(7) In the absence of evidence to the contrary, delivery under paragraph (c)(6)(ii) of this section is deemed to take place 5 business days after the document was sent.

(d) The manager or administrative law judge, as the case may be, may extend the time for filing or serving any document in a contest, other than a notice of appeal under § 4.452–9.

**§§ 4.430 through 4.432 [Amended]**

■ 18. In §§ 4.430 through 4.432 and 4.436, remove the reference “Bureau” and add in its place the reference “Bureau or Office” wherever it appears.

■ 19. Revise §§ 4.433 and 4.434 to read as follows:

**§ 4.433 Authority of the administrative law judge.**

(a) The administrative law judge has general authority to conduct the hearing in an orderly and judicial manner, including authority to:

- (1) Administer oaths;
- (2) Call and question witnesses;

(3) Subpoena witnesses as specified in paragraph (b) of this section;

(4) Issue findings and decisions as specified in paragraph (c) of this section; and

(5) Take any other actions that the Board may prescribe in referring the case for hearing.

(b) The administrative law judge has authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery. This authority must be exercised in accordance with the Act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102 through 106).

(c) The administrative law judge has authority to issue any of the following, as specified by the Board under § 4.415(c)(2):

(1) Proposed findings of fact on the issues presented at the hearing;

(2) A recommended decision that includes findings of fact and conclusions of law; or

(3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411 within 30 days of receipt of the decision.

(d) The issuance of subpoenas, the attendance of witnesses, and the taking of depositions are governed by §§ 4.423 and 4.26.

**§ 4.434 Conduct of hearing.**

(a) The administrative law judge may seek to obtain stipulations as to material facts.

(b) Unless the administrative law judge directs otherwise:

(1) The appellant will first present its evidence on the facts at issue; and

(2) The other parties and the Bureau or Office will then present their evidence on such issues.

**§ 4.436 [Amended]**

■ 20. In § 4.436, remove the reference “Bureau” and add in its place the reference “Bureau or Office” wherever it appears.

■ 21. Revise § 4.437 to read as follows:

**§ 4.437 Copies of transcript.**

Each party must pay for any copies of the transcript that the party requests.

The Bureau or Office will file the original transcript with the case record.

**§ 4.438 [Removed]**

- 22. Remove § 4.438.

**§ 4.439 [Redesignated as § 4.438]**

- 23. Redesignate § 4.439 as § 4.438 and revise it to read as follows:

**§ 4.438 Action by administrative law judge.**

(a) Upon completion of the hearing and the incorporation of the transcript in the record, the administrative law judge will issue and serve on the parties, as specified by the Board under § 4.415(c)(2):

- (1) Proposed findings of fact on the issues presented at the hearing;
- (2) A recommended decision that includes findings of fact and conclusions of law and that advises the parties of their right to file exceptions under paragraph (c) of this section; or
- (3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(b) The administrative law judge will promptly send to the Board the record and:

- (1) The proposed findings;
- (2) The recommended decision; or
- (3) The final decision if a timely notice of appeal is filed.

(c) The parties will have 30 days from service of proposed findings or a recommended decision to file exceptions with the Board.

- 24. In § 4.452–8, revise the section heading and remove paragraph (c). The revision reads as follows:

**§ 4.452–8 Findings and conclusions; decision by administrative law judge.**

\* \* \* \* \*

- 25. Revise § 4.476(d) to read as follows:

**§ 4.476 Conduct of hearings; reporter's fees; transcript.**

\* \* \* \* \*

(d) The reporter's fees will be borne by the Government. Each party must pay for any copies of the transcript that the party requests. The Government will file the original transcript with the case record.

- 26. Revise § 4.477 to read as follows:

**§ 4.477 Findings and conclusions; decision by administrative law judge.**

As promptly as possible after the time allowed for presenting proposed findings and conclusions, the administrative law judge will make findings of fact and conclusions of law, unless waiver has been stipulated, and will render a decision upon all issues of

material fact and law presented on the record. In doing so, he or she may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. The reasons for the findings, conclusions, and decision made will be stated, and along with the findings, conclusions, and decision, will become a part of the record in any further appeal. A copy of the decision must be sent by certified mail to all the parties.

- 27. Revise § 4.478(a) to read as follows:

**§ 4.478 Appeals to the Board of Land Appeals; judicial review.**

(a) Any person who has a right of appeal under § 4.410 or other applicable regulation may appeal to the Board from an order of an administrative law judge granting or denying a petition for a stay in accordance with § 4.411.

\* \* \* \* \*

- 28. The authority citation for part 4, subpart L, continues to read as follows:

**Authority:** 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

- 29. Add § 4.1108(g) to read as follows:

**§ 4.1108 Form of documents.**

\* \* \* \* \*

(g) Documents filed under this subpart must conform to the requirements of § 4.401(d).

- 30. Revise § 4.1109(a)(2)(i) to read as follows:

**§ 4.1109 Service.**

(a) \* \* \*

(2) \* \* \*

(i) For mining operations in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, Texas, and Virginia: Field Solicitor, U.S. Department of the Interior, 800 S. Gay Street, Suite 800, Knoxville, Tennessee 37929; Telephone: (865) 545–4294; FAX: (865) 545–4314.

\* \* \* \* \*

- 31. Add § 4.1117 to read as follows:

**§ 4.1117 Reconsideration.**

A party may file a motion for reconsideration of any decision of the Board under this subpart within 60 days after the date of the decision. The provisions of § 4.403 apply to a motion filed under this paragraph.

- 32. Revise § 4.1270(f) to read as follows:

**§ 4.1270 Petition for discretionary review of a proposed civil penalty.**

\* \* \* \* \*

(f) If the petition is granted, the rules in §§ 4.1273 through 4.1275 are applicable, and the Board must use the point system and conversion table contained in 30 CFR part 723 or 845 in recalculating assessments. However, the Board has the same authority to waive the civil penalty formula as that granted to administrative law judges in § 4.1157(b)(1). If the petition is denied, the decision of the administrative law judge is final for the Department, subject to § 4.5.

**§ 4.1276 [Removed]**

- 33. Remove § 4.1276.

- 34. Revise § 4.1286 to read as follows:

**§ 4.1286 Motion for a hearing on an appeal involving issues of fact.**

(a) Any party may file a motion that the Board refer a case to an administrative law judge for a hearing. The motion must state:

(1) What specific issues of material fact require a hearing;

(2) What evidence concerning these issues must be presented by oral testimony, or be subject to cross-examination;

(3) What witnesses need to be examined; and

(4) What documentary evidence requires explanation, if any.

(b) In response to a motion under paragraph (a) of this section or on its own initiative, the Board may order a hearing if there are:

(1) Any issues of material fact which, if proved, would alter the disposition of the appeal; or

(2) Significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them.

(c) If the Board orders a hearing, it must:

(1) Specify the issues of fact upon which the hearing is to be held; and

(2) Request the administrative law judge to issue:

(i) Proposed findings of fact on the issues presented at the hearing;

(ii) A recommended decision that includes findings of fact and conclusions of law; or

(iii) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(d) If the Board orders a hearing, it may do one or more of the following:

(1) Suspend the effectiveness of the decision under review pending a final Departmental decision on the appeal if it finds good cause to do so;

(2) Authorize the administrative law judge to specify additional issues; or

(3) Authorize the parties to agree to additional issues that are material, with the approval of the administrative law judge.

(e) The hearing will be conducted under §§ 4.1100, 4.1102 through 4.1115, 4.1121 through 4.1127, and 4.1130 through 4.1141. Unless the Board orders otherwise, the administrative law judge may consider other relevant issues and evidence identified after referral of the case for a hearing.

■ 35. Add § 4.1287 to read as follows:

**§ 4.1287 Action by administrative law judge.**

(a) Upon completion of the hearing and the incorporation of the transcript in the record, the administrative law judge will issue and serve on the parties, as specified by the Board under § 4.415(c)(2):

(1) Proposed findings of fact on the issues presented at the hearing;

(2) A recommended decision that includes findings of fact and conclusions of law and that advises the parties of their right to file exceptions under paragraph (c) of this section; or

(3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(b) The administrative law judge will promptly send to the Board the record and:

(1) The proposed findings;

(2) The recommended decision; or

(3) The final decision if a timely notice of appeal is filed.

(c) The parties will have 30 days from service of the recommended decision to file exceptions with the Board.

■ 36. In § 4.1392, revise paragraphs (a) and (d) and add paragraph (e) to read as follows:

**§ 4.1392 Contents of request; amendment of requests; responses.**

(a) The request for review:

(1) Must include:

(i) A clear statement of the reasons for appeal;

(ii) A request for specific relief;

(iii) A copy of the decision appealed from; and

(iv) Any other relevant information; and

(2) May not exceed 30 pages, excluding exhibits, declarations, and other attachments, unless the Board orders otherwise upon motion for good cause shown.

\* \* \* \* \*

(d) An interested party may file an answer, motion, or statement as described in paragraph (b) of this

section in response to an amended request for review as follows:

(1) If the request for review is amended as a matter of right, the answer, motion, or statement must be filed within the longer of the following periods:

(i) The time remaining for response to the original request for review; or

(ii) Ten days after receipt of the amended request for review; and

(2) If the Board grants a motion to amend a request for review, the answer, motion, or statement must be filed within the time set by the Board in its order granting the motion.

(e) The filing of a reply is discouraged. However, a person who filed a request for review may file a reply that:

(1) Is limited to the issues raised in an answer or motion;

(2) Does not exceed 20 pages, excluding exhibits, declarations, and other attachments, unless the Board orders otherwise upon motion for good cause shown; and

(3) Is filed within:

(i) Fifteen days after service of the answer or motion under paragraph (b) or (d)(1) of this section; or

(ii) The time set by the Board in its order under paragraph (d)(2) of this section.

**PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS**

■ 37. The authority citation for part 10 is revised to read as follows:

**Authority:** 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

**Subpart C—Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections**

**§ 10.12 [Amended]**

■ 38. In § 10.12:

■ a. In paragraph (j) introductory text, remove the address “4015 Wilson Boulevard, Arlington, VA 22203–1923” and add in its place the address “801 North Quincy Street, Arlington, VA 22203”; and

■ b. In paragraphs (k)(1) and (3), remove the address “4015 Wilson Boulevard, Arlington, VA 22203–1954” and add in its place the address “801 North Quincy Street, Arlington, VA 22203”.

Dated: October 4, 2010.

**Rhea S. Suh,**

*Assistant Secretary—Policy, Management and Budget.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG–2010–0927]

RIN 1625–AA00

**Safety Zones; Temporary Change of Date for Recurring Fireworks Display Within the Fifth Coast Guard District, Wrightsville Beach, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the enforcement period of safety zone regulations for a recurring fireworks display within the Fifth Coast Guard District. These regulations apply to only one recurring fireworks display event that takes place at Wrightsville Beach, NC. Safety zone regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Motts Channel and Banks Channel near Wrightsville Beach, NC, during the event.

**DATES:** In § 165.506, Table to § 165.506, entry (d)14 is effective from 5:30 p.m. to 8:30 p.m. on November 27, 2010. In § 165.506, Table to § 165.506, entry (d)10 is suspended effective from November 20, 2010 through November 27, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0927 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0927 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Chief Warrant Officer Joseph Edge, Prevention Department, Coast Guard Sector North Carolina, Atlantic Beach, NC; telephone 252–247–4525, e-mail [Joseph.M.Edge@uscg.mil](mailto:Joseph.M.Edge@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**