DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

[Docket No. DOI-2022-0010; 256D0102DM; D6CS00000; DLSN00000.000000; DX6CS25]

RIN 1094-AA57

Practices Before the Department of the Interior

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is issuing this final rule to adopt the interim final rule (IFR) published on January 10, 2025, with a few changes made to respond to public comments, to clarify procedures, and to correct typographical errors. The IFR was originally set to go into effect February 10, 2025, but the effective date was delayed several times until July 21, 2025, to provide time for review pursuant to the memorandum of January 20, 2025, from President Donald J. Trump, entitled Regulatory Freeze Pending Review. The IFR became effective on July 21, 2025.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: *Comments Related to Information Collection Requirements:* Send your comments on the information collection request to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior, Jeffrey Parrillo, 1849 C Street, NW Washington, DC 20240; or by email to DOI-PRA@ios.doi.gov. Please

reference OMB Control Number 1094–New/RIN 1094–AA57" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Paul Kienzle, 202-208-3350 . Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

On January 10, 2025, OHA published an IFR titled Practices Before the Department of the Interior, with an effective date of February 10, 2025. OHA also invited the public to submit comments by February 10, 2025, indicating it would consider the comments received and consider further revisions, if appropriate. OHA received three sets of comments.

OHA later published a Rule Correction on June 2, 2025, at 90 FR 23290. The Rule Correction corrected the IFR to address: two technical errors in the amendatory instructions for §§ 4.845 and 4.1301, typographical errors in §§ 4.1, 4.26, and 4.27(a), and additional typographical errors in the amendatory instructions for §§ 4.845 and 4.1301 and the instructions provided for submitting comments on the Information Collection Review. The Rule Correction also removed the IFR's two references to an Executive Order that was revoked on January 20, 2025.

On January 20, 2025, the President issued a Memorandum titled "Regulatory Freeze Pending Review." The President's Memorandum directed executive departments to "consider postponing for 60 days from the date of [the] memorandum the effective date for any rules that have been published in the *Federal Register*, or any rules that have

been issued in any manner but have not taken effect, for the purpose of reviewing any questions of fact, law, and policy that the rules may raise."

In order to conduct this review, OHA delayed the effective date of the IFR to March 21, 2025 (90 FR 9222), again to May 5, 2025 (90 FR 12461), again to June 4, 2025 (90 FR 18927), and again to July 21, 2025 (90 FR 24231). Pursuant to the President's Memorandum, the Department reviewed the IFR and identified a few changes to be made in response to public comments, including restoring provisions in OHA's regulations that the IFR had changed. The IFR went into effect on July 21, 2025. This final rule adopts the IFR with changes that respond to public comments, provide clarification, and correct typographical errors.

OHA is placing the final rule in immediate effect because good cause exists under 5 U.S.C. 553(d)(3) to forgo the 30-day delay of the effective date that would otherwise be required. Because the IFR, which went into effect on July 21, 2025, contains provisions that OHA is now removing or clarifying based on public comments, it is necessary to make the final rule immediately effective to limit the time the IFR remains in effect without these changes and to reduce public confusion about which regulations govern proceedings before OHA. Consequently, it is contrary to the public interest to wait 30 days before the final rule becomes effective.

II. Summary of Comments and Responses

A. *Compliance with Administrative Procedure Act Standards for Rulemaking*

Under the Administrative Procedure Act (APA), federal agencies must provide the public with notice of a proposed rule and the opportunity to submit comments on it, with a few exceptions. One of the exceptions is for interpretive rules, general statements of policy, and rules of organization, procedure, or practice. See 5 U.S.C. 553(b)(A). In the IFR, OHA explained that the rule is subject to this exception because it "only makes changes to OHA's rules of agency organization, procedure, or practice." We explained

that OHA's rules describe procedures that parties and OHA must follow during administrative adjudication of a case and are similar to provisions of the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure. 90 FR 2335-36. We welcomed additional suggestions for improvements from the public, explaining that "OHA will consider comments received and consider further revisions, if appropriate." Id. at 2336.

Two entities commented that portions of the IFR should have been subject to notice and comment because they are not appropriate changes to make in an IFR. One of these commenters focused on changes to the standards for petitions for stays in § 4.171 (DCHD provision) and § 4.405 (IBLA provision), specifically, removal of the public interest criterion and the requirement that the petitioner's harm be immediate. The commenter asserted that the revised criteria "impose[] substantive burdens, encode[] a substantive value judgment, encroach[] on substantial private rights and interests, and materially alter[] the rights and interests of the parties." The commenter stated that, under these situations, the Court of Appeals for the D.C. Circuit has held that the exception to the requirement for notice-and-comment rulemaking for "rules of agency organization, procedure, or practice" does not apply, citing, among other cases, *James V. Hurson Assocs.* v. *Glickman*, 229 F.3d 277, 280 (D.C. Cir. 2000). The commenter concluded that the portions of the IFR adjusting the stay criteria do "not fall under the APA's procedural exception to notice and comment rulemaking and should be removed from the revisions to OHA's otherwise procedural amendments."

The second commenter asserted more generally that the IFR "negates the notice and comment provisions for rulemaking as prescribed by the Administrative Procedure Act" because it "very much implicates 'substantive rights or interests'" and is therefore not a rule of agency procedure or practice under 5 U.S.C. 553(b)(A).

The process OHA has used for this rulemaking fully complies with the APA, not only satisfying the procedural rule exception but also the requirements for notice-and-comment rulemaking. As emphasized by the D.C. Circuit, the procedural rule exception "covers agency actions that do not themselves alter the rights or interest of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency." *James V. Hurson Assocs.*, 229 F.3d at 280. The IFR falls within these parameters because it does not change existing rights but instead updates the adjudication processes used by OHA and codifies pre-existing precedent. For example, with respect to stays of decisions pending appeal, eliminating the process for obtaining a stay (akin to the elimination of an entire type of approval process as presented in *Hurson*) would constitute an alteration of a substantive right. But the IFR only modifies the procedure for asserting a stay and codifies pre-existing precedent governing the stay criteria. Nevertheless, as explained in more detail in the section of this final rule addressing the stay criteria, OHA has decided to remove the changes to the stay criteria in sections § 4.171 and § 4.405 in the final rule.

In addition, the process used by OHA to develop this final rule satisfies the notice-and-comment requirements of the APA. By addressing comments received on the IFR in this final rule, OHA also meets all the APA-required elements for notice-and-comment rulemaking. The IFR and its preamble provided the public with all the information required by the APA: a reference to legal authority, as required by 5 U.S.C. 553(b)(2) (Section V); a description of the terms and substance of the rule, as required by 5 U.S.C. 553(b)(3) (Section V); and a request for public comment, as required by 5 U.S.C. 553(c) (Section IV).

B. *Hearings (§§ 4.5, 4.126, 4.150, 4.151, 4.703)*

While the commenters did not take specific exception to the hearing rules, one commenter raised concerns about how recent legal developments might impact the

statutory hearing requirements. With respect to the comments pertaining to the Supreme Court's opinion in *Securities and Exchange Commission* v. *Jarkesy*, 603 U.S. 109 (2024), it would be premature and outside the scope of this rulemaking to render an advisory opinion about how that holding might affect specific types of proceedings adjudicated by the Departmental Cases Hearings Division (DCHD). Any motions raising *Jarkesy*-related arguments will be addressed and decided on a case-by-case basis.

The other concerns raised by the commenter relate to apparent "omissions," and more specifically, the implications of an opinion issued by an Acting Deputy Secretary. Again, it would be outside the scope of this rulemaking to render an advisory opinion about how similar issues might be resolved in the future. Any cases raising similar issues will be addressed and decided on a case-by-case basis.

C. *Definitions and Acronyms (§ 4.6)*

One commenter took exception to the definition of an administrative law judge (ALJ) as it relates to being "appointed." While we appreciate the commenter's observations, the process for appointing ALJs after *Lucia* v. *Securities and Exchange Commission*, 585 U.S. 237 (2018), is outside the scope of this rulemaking.

D. *Service (§§ 4.32, 4.102, 4.109, 4.170, and 4.407)*

Although OHA received favorable feedback about the new electronic filing and service rules, one commenter raised concerns about the availability of current mailing and email addresses for permittees, applicants, and others that hold authorizations from the Department. The commenter suggested that the Bureau of Land Management (BLM) be required to annually update its lists to include applicable email addresses so that appellants can email "each person or entity" rather than being required to mail documents. Alternatively, the commenter suggested that BLM expand its eplanning submission options so that appeals can be uploaded to BLM's website for access by

"each person or entity." Because these suggestions relate to BLM's procedures, they are beyond the scope of this final rule.

In addition, one commenter advocated for adding a provision to create consequences for appellants who neglect to serve "each person or entity named in the decision" to ensure that potential intervenors are aware of appeals that could affect them. Both DCHD and IBLA have authority to address any failure to comply with service requirements. This authority is inherent in each unit's authority to manage its docket and enforce its regulations.

Finally, one commenter noted that appeals typically include supporting exhibits that exceed 20 megabytes and that OHA should "account for this challenge" by identifying a method to file and serve those supporting exhibits. For documents filed electronically with OHA, parties will have the option of dividing filings into multiple subparts that will facilitate the filing and service of large submissions.

E. *Pleading Form (§ 4.103)*

One commenter asked that the provision authorizing an ALJ to strike and not consider any pleading or document that fails to comply with § 4.103 be removed. As noted by the commentor, the rule includes the word "may." Consequently, an ALJ retains the discretion to determine the appropriate remedy, which could include allowing an amendment to a pleading or striking a pleading when a party consistently fails to conform to the standards. This provision has been included to encourage compliance with formatting standards because proper filings enable an ALJ to rule on motions and other requests for relief more expeditiously.

F. *Page Limits (§§ 4.105, 4.111, 4.130, 4.410)*

We received comments urging OHA to remove default page limits for briefs. Those default page limits have been included in the rules to expedite adjudication. Although the commenter argues that these page limits are arbitrary and unreasonable, the

page limits serve as useful starting points. An ALJ or the IBLA has discretion to modify the limits in appropriate circumstances. This may include allowing longer page limits (or no limits) in more complex cases. Parties may also request permission to file overlength briefs when a more detailed analysis is warranted. Given this built-in flexibility, it is unnecessary to remove the default page limits. ALJs and the IBLA can address individual circumstances on a case-by-case basis.

G. *Reply Briefs (§§ 4.105, 4.111)*

OHA received comments urging DCHD to authorize reply briefs. Although the rules do not allow automatic replies, the rules also do not prohibit reply briefs. Instead, the rules authorize ALJs to use their discretion to allow replies in appropriate circumstances on a case-by-case basis. In the past, routinely allowing replies has led to unnecessary delays in case processing and has resulted in tight scheduling deadlines when the requested relief is time sensitive. DCHD has also found that some parties wait to raise key arguments until they file their reply briefs, which has led to additional rounds of time-consuming briefing. By setting the expectation that replies must be requested, we have found that parties tend to submit more complete briefing during the initial stages so that replies often become unnecessary.

H. *Stipulated dismissal (§ 4.110)*

One commenter stated that, while it does not take exception with the stipulated dismissal provision, the section should also provide as follows: "If BLM or another agency of the U.S. Department of the Interior requests DCHD or any Board via a stipulation to approve a stipulated settlement, including one that may modify the underlying appealed decision, then DCHD or the applicable Board should do so to ensure finality of agency decision-making." As the commenter notes, the IBLA recently held in Petan Company of Nevada, Inc., IBLA 2024-0079, a non-precedential order dated January 16, 2025, that "[t]he Board encourages settlement and will grant a motion to

dismiss an appeal without ruling on the merits when the parties have resolved their dispute and there is no longer any controversy between them." However, "absent an exceptional circumstance, the Board will not itself order modification of an appealed decision, particularly when the Board is asked to do so without independently confirming the legality of the modification." The principle that OHA will not typically modify a decision absent review of the merits reflects the fact that OHA exists to ensure the legality and finality of agency decisions, and OHA's authority, like that of the Attorney General, "does not include license to agree to settlement terms that would violate the civil laws governing the agency." *Exec. Bus. Media* v. *U.S. Dep't of Defense*, 3 F.3d 759, 762 (4th Cir. 1993). The language of § 4.110 allows the ALJ to consider the facts of any stipulated dismissal and issue an appropriate order in response. We decline to add language requiring an ALJ to approve stipulated settlements.

I. *Summary judgment (§ 4.111)*

One commenter explained that while it does not take exception with DCHD's use of the Federal Rules of Civil Procedure (FRCP) as guidance when adjudicating summary judgments, the rule needed to "go a significant step further." By way of example, the commenter pointed to the standard for review in grazing cases. While OHA appreciates the commenter's focus on grazing cases, this summary judgment provision establishes a rule of general applicability. As written, this rule broadly encompasses all the various types of cases adjudicated by DCHD's ALJs. This rule does not attempt to address specific standards that may apply in certain types of cases, such as grazing appeals. Instead, this rule adopts the same summary judgment standard used in Federal District Court proceedings and explicitly relies on FRCP 56 as guidance. It is outside the scope of this summary judgment rule to address long-standing case law and precedent surrounding the specific standards for reviewing different types of cases and issues.

J. *Discovery (§ 4.112 through § 4.119)*

We received one comment about the discovery provisions in subpart C. The general procedural rules in subpart C are designed to function like the FRCP but have been simplified and tailored to administrative proceedings. As such, the discovery rules mirror the methods of discovery allowed in the FRCP with an important qualification—discovery must be authorized by the ALJ. Some cases before DCHD require discovery and others require little, or no, discovery. Because the discovery procedures have been drafted to be generally applicable to all case types adjudicated by DCHD, it remains the responsibility of the parties and the ALJ to assess the discovery needs of each individual case.

For this reason, an ALJ would not authorize discovery in cases where it would not aid in the resolution of the proceeding. And even when the ALJ does authorize discovery, the ALJ could limit the scope of authorized discovery to ensure that the requests are "proportional to the needs of the case." While the commenter specifically objects to depositions, that form of discovery is more appropriate in certain types of proceedings and less appropriate in others. By maintaining rules modeled after the FRCP, ALJs will have the flexibility to respond to the discovery needs of each individual case.

K. *Sanctions (§ 4.121 and § 4.411)*

One commenter asked that the sanctions provisions in § 4.121 (for DCHD proceedings) and § 4.411 (for IBLA appeals) be deleted or revised because they are not needed and could be viewed as "ominous and draconian." As we explained in the preamble to the IFR, these provisions merely codified the long-standing authority of ALJs and administrative judges to regulate the conduct of parties in hearings and appeals so that the administrative process proceeds in a fair and efficient manner that complies with applicable laws and orders. Nonetheless, because §§ 4.121 and 4.411 merely codify existing authority, they are not necessary additions to these procedural rules. We therefore have eliminated both sanctions provisions.

OHA has replaced the sanctions provisions with sections codifying DCHD's and IBLA's general authority to manage the proceedings and appeals before them. These sections use language similar to the language describing the authority and duty given to ALJs to conduct hearings in an orderly and judicial manner in § 4.126(b). The IBLA has the same general authority for appeals, but that fact is not reflected in the existing rules. To ensure regulatory consistency, we have replaced § 4.121 and § 4.411 in the IFR with § 4.121, titled "Case Management," and § 4.411, titled "Management of Appeals." These sections codify OHA's general authority to regulate the course of proceedings and appeals to ensure they are resolved in a fair and orderly manner. Consistent with the change to § 4.121, we have eliminated §§ 4.104(g) and 4.126(b)(12) as unnecessary.

L. *Transcripts (§ 4.128)*

One commenter raised concerns about transcript costs and the time period for proposing corrections to the official transcript prepared by a court reporter. While OHA appreciates the concerns about the cost of a written transcript, OHA's budget is insufficient to provide parties with a verbatim copy of written transcripts for hearings and other proceedings. OHA makes every effort to contract for a favorable rate, but we were unaware that court reporting companies did not always charge the same per page rate to parties. Going forward, OHA will endeavor to contract in advance to ensure the same per page transcript costs apply to the Department as well as the parties and will disclose that contract amount in advance of any hearing for transparency.

With respect to the regulatory time frame for making corrections, this rule merely establishes a default deadline that serves as a guide for proposing corrections. For lengthy, more complex proceedings, the ALJ retains discretion to establish an appropriate deadline on a case-by-case basis and can allow more time to identify and propose corrections to the official transcript as needed. Given this built-in flexibility, OHA declines to modify the default time period contained in § 4.128(c).

M. *Petitions for Stay (§ 4.171 and § 4.405)*

The IFR included two changes to the standards for stay petitions. First, the IFR removed the "public interest" criterion from the four criteria in the previous versions of § 4.21(b)(1) and § 4.471(c). DCHD and IBLA explained that removing this criterion is consistent with Federal court opinions holding that when the Federal Government is the party opposing the stay, the balance of harms and public interest "merge." See *Nken* v. *Holder,* 556 U.S. 418, 435 (2009) (holding that, in the context of a stay, assessing the harm to the opposing party and weighing the public interest "merge when the Government is the opposing party."). The merged test has been applied in challenges to natural resources permitting decisions, see, e.g., *Drakes Bay Oyster Co.* v. *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014), and it is based on the principle that when the government is the defendant, the public interest and the balance of harms are best analyzed in tandem. A separate element is unnecessary because balancing the harm to the government includes assessing whether there is harm to the public interest.

Second, in § 4.171(a)(1)(i) and § 4.405(b)(4)(i), the IFR eliminated the word ''immediate'' from the criterion requiring an appellant to show "[t]he likelihood of immediate and irreparable harm if the stay is not granted.'' Instead, the IFR required a showing that the irreparable harm will likely occur "pending resolution of the appeal." This modification was intended to promote the purpose of a stay, which is to prevent or minimize irreparable harm at any time while an appeal is being considered. The IBLA made corresponding changes in § 4.405(b)(2) and (b)(8) to require any stay petition to be filed at the same time the appellant files its notice of appeal, eliminating the option to file a stay petition later, while the appeal is pending. With the expectation that a petition for a stay, filed at the beginning of an appeal, would seek to address harm that could occur at any time while the appeal was pending, OHA removed the immediacy requirement from the stay criterion in both § 4.171(a)(1)(i) and § 4.405(b)(4)(i).

One commenter stated that the removal of the public interest criterion is substantive and does not fall under the APA's procedural exception. The commenter stated that this rationale ignores the cases where a bureau or office has granted a permit or authorization, and an outside party challenges the permit or authorization. In that situation, the person or entity holding the permit or authorization that is the subject of the appeal usually participates as an intervenor. The commenter explained that "permits or authorizations may generate significant 'public interest' that is separate and apart from the permitting agency's interest." For example, where a bureau or office issues a permit or other authorization for construction and operation of a mine, a power line, or a pipeline, some public interest is related to local or state economic impacts, which can total millions of dollars. The commenter asserted that intervenors are in the best position to calculate these impacts and present these impacts to OHA for adjudication of a stay petition.

The merged test would not have the negative effects feared by the commenter, but after our required review of this regulatory action, we nonetheless believe it best to retain the four-criteria test in the final rule to avoid confusion and eliminate any unnecessary concern. Whether using a four-factor or three-factor test, an intervenor-defendant's harm—as well as related harm to parties not before OHA—may be presented by the intervenor and considered as part of the balance of harms. As recently stated by the Court of Federal Claims, "When the Government is the opposing party in a case, concerns over injury to the defendant, defendant-intervenor, and the public interest merge." *Sci. and Tech. Corp.* v. *United States*, 2025 U.S. Claims LEXIS 174 at *32 (Feb. 20, 2025) (citing *Nken*). Nonetheless, we have returned to the four-criteria test in the final rule so that it remains explicit that a stay may be granted only when it is in the public interest to do so.

The same commenter stated that removal of the immediacy requirement in the "immediate and irreparable harm" criterion will cause substantive harm to the holder of a

permit or authorization given the typical duration of appeals at the IBLA. The commenter explained that granting a stay for harm that can occur any time during an appeal "could potentially have a project stayed at the outset and then hear nothing for years," impacting "investment, economic viability, and jobs." The commenter stated that "OHA provides no mechanism for the holder of a stayed permit or authorization to move the merits consideration along," and therefore, "this aspect of the Interim Rule is also substantive and consideration of it under the procedural exception violates the APA."

OHA appreciates the commenter's perspective as an intervenor in OHA proceedings. We note that, although the IBLA does not have a specific procedural rule about motions to expedite, parties use the IBLA's general motions rule to file such motions, and the IBLA has expedited appeals when a party requested expedited review and showed compelling circumstances for advancing an appeal ahead of other pending cases. See, e.g., *Simpson*, 199 IBLA 32, 36 (2024). We also observe that another commenter stated that "The proposed rule correctly refines the standards of stay to irreparable harm, balance of harms, and likelihood of success."

Although the impact of removing the "immediacy" requirement might not be as impactful as the commenter predicts, and despite the different views of the commenters, upon review OHA nevertheless has eliminated the changes we made to the stay petition criteria in § 4.405(b)(4) and § 4.171(a)(1). Specifically, we withdraw the changes that removed the public interest criterion and the requirement that the petitioner's harm be immediate.

With the reintroduction of "immediate" in the stay criterion for "immediate and irreparable harm," OHA has made two other conforming changes to § 4.405: (1) We have omitted § 4.405(b)(2), "When to file a petition for stay," and renumbered the remaining paragraphs accordingly; and (2) In § 4.405(b)(8), we have omitted the sentence that reads, "The Board will deny any petition for a stay that is not filed at the same time the

appellant filed its notice of appeal." We have also clarified in § 4.405(b)(8) that the 45-day time frame for resolving petitions for stay applies only to petitions that are filed at the same time as a notice of appeal.

One commenter objected to the wording of the "balance of harms" criterion in § 4.171(a)(1)(ii) and § 4.405(b)(4)(ii), which references the irreparable harm "to the United States or other parties from a stay being granted." The commenter questioned who the other parties are: "Sometimes they are known, but most of the time they are not known. Neither BLM nor any Appellant nor any Intervenor should be saddled with such type of obligation to have to argue for/against some unknown or unstated harm to 'other parties.'" In both the original text of §4.21(b)(1)(i)—"relative harm to the parties"—and the text of § 4.171(a)(1)(ii) and § 4.405(b)(4)(ii), "parties" refers to the named parties to an appeal, not to unknown persons or entities. Because the commenter did not otherwise object to the revised wording of this criterion, we will retain the descriptions in § 4.171(a)(1)(ii) and § 4.405(b)(4)(ii) consistent with the IFR. With the changes to the "balance of harms" criterion, the reordering of the criteria, and the addition of a label for each, the stay criteria in § 4.405(b)(4) and § 4.171(a)(1) are substantively the same as those in previous § 4.21(b)(1).

The same commenter urged OHA to make an additional change to § 4.171 and § 4.405 to incorporate a "sliding scale" because the burden on the person seeking a stay to show all stay criteria are met "raises the bar too high to get a stay and is unlawful according to some commentary." Instead, the commenter asserted that OHA should adopt a "sliding scale" among the irreparable harm, balance of harms, and likelihood of success criteria "to ensure a fair and equitable opportunity to stay (in whole or in part) decisions which commonly have significant, immediate, and irreparable harm to an appellant." We appreciate the commenter's suggestion that DCHD and IBLA adopt a "sliding scale" when adjudicating stay petitions, where a stronger likelihood of harm may compensate

for uncertainty about the merits of an appeal. OHA considered adopting this practice during development of the final rule and determined that it was beyond the scope of this rulemaking.

Finally, we appreciate the comment we received in response to the request for comments on an alternative procedure for how the IBLA would adjudicate petitions for stay. See 90 FR at 2366. Under this alternative procedure, decisions that are placed into immediate effect pursuant to a statute or regulation would remain in effect pending resolution of the appeal unless both the appellant and bureau or office that issued the decision on appeal filed a joint petition for stay. Id. The commenter "is generally supportive of this alternative procedure" but states that an operator or permit holder should be required to concur with the petition for the stay to be implemented. We appreciate the commenter's views on the alternative procedure we proposed for adjudicating stays, and we will consider this change and others if OHA proposes further revisions to subpart E in a future rulemaking.

N. *Burden of Proof and Standard of Review (§ 4.413)*

We received one comment addressing § 4.413, which set forth the scope of the IBLA's review (§ 4.413(a)), the appellant's burden to show error in the decision on appeal (§ 4.413(b)), and the IBLA's standard of review (§ 4.413(c)). The commenter expressed concern with § 4.413(b), stating that it is contrary to the APA, 5 U.S.C. 556(d), which provides that the proponent of a rule or order has the burden of proof. The commenter also expressed concern with § 4.413(c), stating that it "elevated" OHA and imposed a new standard of review by conforming to the APA review standards found in 5 U.S.C. 706(2).

We explained in the IFR that the provisions in § 4.413 codified IBLA case law and historical practice to provide clarity and consistency for those bringing and responding to appeals. Section 4.413(b) provided that in appeals before the IBLA, the

appellant has the burden to show error in the decision on appeal. The IBLA has imposed this burden on appellants since its creation, and we have long held that the APA's language specifying that the proponent of a rule or order bears the burden of proof applies only to formal hearings on the record; it does not apply to appeals before the IBLA. See, e.g., *Stone Energy Corp.*, 185 IBLA 342, 351 n.12 (2015) (explaining that section 556(d) of the APA "is only applicable in the case of administrative hearings"); *see also United States Steel Corp.* v. *Train*, 556 F.2d 822, 834 (7th Cir. 1977) (noting that the applicant for a permit under the Clean Water Act, rather than the agency issuing the permit, is the "proponent" who bears the burden of proof). Nevertheless, to account for any law that imposes a different burden of proof in a specific type of appeal, we have inserted the phrase "Except as otherwise provided by law" at the beginning of § 4.413(b).

In addition, § 4.413(c) reflected the IBLA's long-standing practice of reviewing decisions under a standard that reflects 5 U.S.C. 706(2) as interpreted by Federal courts. See, e.g., *Larry Marker*, 194 IBLA 283, 290 (2019) ("[T]he Board will uphold [a decision] which has a rational basis that is stated in the decision and supported by facts of record demonstrating that the decision is not arbitrary, capricious, or an abuse of discretion."); Desert Sportsman's Rifle and Pistol Club, Inc., 188 IBLA 339, 346 (2016) ("The Board will therefore set aside a BLM decision if we conclude it is arbitrary, capricious, an abuse of discretion, or lacks a rational basis supported in the record."); David L. Antley, 178 IBLA 194, 197 (2009) ("BLM's exercise of its discretionary authority . . . must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion."). It is unclear what the commenter meant by suggesting either that application of APA standards would be new or somehow inappropriately "elevate" the IBLA.

The comment reflects potential confusion about the differences between adjudicatory hearings under the APA and appellate review. Nevertheless, because the

provisions in § 4.413(c) codify long-standing IBLA practice and precedent, they are not necessary additions to these procedural rules. We therefore have eliminated paragraph (c) from the rule.

O. *What happens if no timely objection to the preliminary decision is filed? (§ 4.744)*

Section 4.744 states: "If no written objection to a preliminary decision is timely filed in accordance with § 4.743(a) the presiding officer will issue a final decision." The commenter argued that the term "timely filed" could be interpreted differently by different parties. The commenter suggested instead: "If no written objection to a preliminary decision is filed within the 40-day period specified in § 4.743(a) the presiding officer will issue a final decision." We appreciate the commenter's suggestion to clarify, and we will consider this change if OHA proposes further revisions to this section. For now, the provision contains an adequate cross-reference for parties appearing in White Earth Reservation Land Settlement Act (WELSA) proceedings.

P. *How will the presiding officer decide a petition for reconsideration? (§ 4.763)*

Section 4.763 states: "The presiding officer may take any action listed in § 4.732(b) to resolve any issues of fact and will issue an order upon reconsideration resolving the petition." The commenter noted that the reference to actions in § 4.732(b) might not be immediately clear without consulting that section and suggested instead: "The presiding officer may take any of the actions listed in § 4.732(b) such as requesting additional information or scheduling a hearing to resolve any issues of fact and will issue an order upon reconsideration resolving the petition." We appreciate the commenter's suggestion to clarify, and we will consider this change if OHA proposes further revisions to this section. For now, the provision contains an adequate cross-reference for parties appearing in WELSA proceedings.

Q. *How do I request an extension of time? (§ 4.909)*

A commenter recommended revising § 4.909, which states, "The IBLA has the discretion to decline any motion for an extension of time," by adding at the end, "if it finds that the extension is unwarranted or would unduly delay the proceedings." The commenter stated that, without this addition, "[i]t's not clear under what circumstances the IBLA might decline a motion."

We appreciate the commenter's suggestion to clarify this paragraph, but the proposed addition is too narrow. The IBLA may deny an extension for reasons not encompassed by the commenter's proposal, such as untimeliness or prejudice to other parties. Rather than try to describe all reasons an extension may be denied, we believe it is preferable to retain this longstanding and noncontroversial provision. The only change OHA made to this paragraph of § 4.909 in the IFR was to replace the word "request" with the word "motion."

III. Additional Clarifying Changes to the IFR

A. *Grazing Procedures (§§ 4.172, 4.174, and 4.175)*

Although we did not receive comments suggesting modifications to the grazing procedures at § 4.172 and § 4.175, we are making clarifying changes. For § 4.172, we are adding language to paragraph (b), directing that the BLM shall produce its entire record for the grazing decision within 45 days of receiving the notice of appeal, automatically without further order or request. This addition will provide clarity to parties who anticipate seeking judicial review by notifying those parties that they will obtain a copy of BLM's underlying record more expeditiously without filing a motion. We are also making a clarifying change to §4.174(b) and § 4.175(a)(1) to remind parties that they are not required to appeal an ALJ's stay petition order to the IBLA to exhaust administrative remedies.

B. *Correction of Typographical Errors. (§§ 4.403, 4.409)*

We correct two typographical errors in the IFR. First, we delete an extra comma in § 4.403(b)(2)(ii). Second, we delete duplicative words at the end of § 4.409(b)(4).

IV. Procedural Requirements

Regulatory Planning and Review (E.O. 12866 and E.O. 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules as defined by the E.O. OIRA determined this final rule is not significant as defined by E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It does not change current funding requirements and will not impose any economic effects on small business, small governmental entities, and small organizations.

Small Business Regulatory Enforcement Fairness Act

The Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2), subtitle E of the Small Business

Regulatory Enforcement Fairness Act of 1996. It does not add to, change, or diminish any substantive rights of any parties or the public. It provides parties to OHA proceedings the option to file documents electronically, removes outdated information and references, and authorizes the use of OHA Standing Orders as the means of communicating current information on contract information, electronic filing, and other procedural matters. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630. Therefore, a takings implication assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and held three Tribal consultation sessions with federally recognized Indian Tribes, including with the White Earth Nation.

Paperwork Reduction Act

This final rule contains existing information collections in use without OMB approval. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). We may not conduct, or sponsor, and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to seek OMB approval of the information collections described below. This input will help us assess the impact of our information

collection requirements and minimize the public's reporting burden. It will also help the public understand our information collection requirements and provide the requested data in the desired format.

We solicited comments in an interim final rule published on January 10, 2025, and no comments were received on the information collection requirements aspects of the rule.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Comments that you submit in response to this final rule are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly

available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The existing information collection requirements identified below require approval by OMB:

(1) ***Appeals (43 CFR part 4)***—To initiate an appeal, an appellant is required to submit a Notice of Appeal or Request/Petition for Hearing, identifying the bureau or office decision that they are appealing to the relevant OHA unit. There are no specific forms required. In most instances, the basic contact information of the appellant and a statement that they are appealing the relevant bureau or office decision will suffice. However, some regulations will require more specificity such as the rules governing grazing appeals to DCHD (§ 4.170(d)) and the rules governing appeals to the IBLA (§ 4.403(a)). Those rules will require the appellant to provide a copy of the decision being appealed along with a statement of standing and timeliness. For grazing appeals to DCHD, an appellant will also be required to submit a statement that clearly and concisely describes the reasons why the appellant believes the grazing decision is incorrect. The appellant must also serve a copy of the Notice of Appeal on the bureau or office that issued the decision, and in some cases must also serve a copy on a specific office of the DOI Solicitor or Assistant Secretary, if required to do so by the regulations. Filing a Notice of Appeal or Request/Petition for Hearing is voluntary but is required to initiate a hearing or appeal. Once initiated, an OHA unit will open a hearing or appeal case file, and any subsequent filings will be associated with that file. Our burden estimates are broken down between hard-copy and electronic submissions.

(2) ***Amendments – Appeals (43 CFR part 4)***—Amendments to appeals are extremely rare. An appellant may amend their appeal to correct a misstatement or to update basic name and contact information, for example.

Title of Collection: Office of Hearings and Appeals Procedural Regulations (43 CFR part 4).

OMB Control Number: 1094–New.

Form Number: None.

Type of Review: Existing collection in use without OMB approval.

Respondents/Affected Public: Individuals/households, private sector, and State/local/Tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $584.

Requirement	Annual Number of Respondents	Number of Responses Each	Total Annual Responses	Completion Time per Response (Hours)	Total Annual Burden Hours (Rounded)
Appeals 43 CFR part 4 *(Hardcopy)*					
Individuals – Recordkeeping	47	1	47	.75	59
Individuals – Reporting				.5	
Private Sector – Recordkeeping	2	1	2	.75	3
Private Sector – Reporting				.5	
Government – Recordkeeping	2	1	2	.75	3
Government – Reporting				.5	
Appeals 43 CFR part 4 *(Electronic)*					
Individuals – Recordkeeping	38	1	38	.5	38
Individuals – Reporting				.5	
Private Sector – Recordkeeping	324	1	324	.5	324
Private Sector – Reporting				.5	
Government – Recordkeeping	24	1	24	.5	24
Government – Reporting				.5	
Amendment – Appeals 43 CFR part 4 *(Hardcopy)*					
Individuals – Recordkeeping	1	1	1	.5	1

Requirement	Annual Number of Respondents	Number of Responses Each	Total Annual Responses	Completion Time per Response (Hours)	Total Annual Burden Hours (Rounded)
Individuals – Reporting				.5	
Private Sector – Recordkeeping	1	1	1	.5	1
Private Sector – Reporting				.5	
Government – Recordkeeping	1	1	1	.5	1
Government – Reporting				.5	
Amendment – Appeals 43 CFR part 4 *(Electronic)*					
Individuals – Recordkeeping	1	1	1	.25	1
Individuals – Reporting				.5	
Private Sector – Recordkeeping	1	1	1	.25	1
Private Sector – Reporting				.5	
Government – Recordkeeping	1	1	1	.5	1
Government – Reporting				.5	
Totals	**443**		**443**		**457**

Send your written comments and suggestions on this information collection by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** to the Departmental Information Collection Clearance Officer, U.S. Department of the Interior, Jeffrey Parrillo, 1849 C Street NW, Washington, DC 20240; or by email to DOI-PRA@ios.doi.gov. Please reference: ``OMB Control Number 1094-New/RIN 1094-AA57" in the subject line of your comments.

National Environmental Policy Act

This rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental categorical exclusion because it is an administrative and procedural regulation that does not involve any of the extraordinary circumstances listed in 43 CFR 46.215. Therefore, it is categorically excluded from the requirements to prepare an environmental impact statement or environmental assessment under the National Environmental Policy Act of 1969 (NEPA).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation (Plain Language)

We are required by Executive Orders 12866 (sec. 1(b)(12)), and 12988 (sec. 3(b)(1)(B)), and 13563 (sec. 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Claims.

Regulation Promulgation

Accordingly, the interim rule amending 43 CFR Part 4, which was published at 90 FR 2332 on January 10, 2025, is adopted as final with the following changes:

PART 4—DEPARTMENT OF THE INTERIOR HEARINGS AND APPEALS PROCEDURES

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

Authority: 5 U.S.C. 301, 503-504; 25 U.S.C. 9, 372-74, 410, 2201 et seq.; 43 U.S.C. 1201, 1457; Pub. L. 99-264, 100 Stat. 61, as amended.

§ 4.104 [Amended]

2. Amend § 4.104 by removing paragraph (g).

3. Revise § 4.121 to read as follows:

§ 4.121 Case Management.

An ALJ is vested with the general authority to regulate the course of the proceedings and the conduct of parties to ensure that cases are resolved fairly, efficiently, and in compliance with applicable laws and orders.

§ 4.126 [Amended]

4. Amend § 4.126 by removing paragraph (b)(12) and redesignating paragraph (b)(13) as (b)(12).

5. Amend § 4.171 by revising paragraphs (a)(1) and (2) to read as follows:

§ 4.171 Petitions for stay.

(a) * * *

(1) *Stay criteria.* The appellant must demonstrate that issuance of a stay is warranted based on the following four criteria:

(i) *Immediate and irreparable harm*. The likelihood of immediate and irreparable harm if the stay is not granted;

(ii) *Balance of harms.* Whether the harm to the appellant absent a stay exceeds the harm to the United States or other parties from a stay being granted;

(iii) *Likelihood of success*. The likelihood of the appellant's success on the merits; and

(iv) *Public interest*. Whether the public interest favors granting the stay.

(2) *Burden of proof*. The person or entity seeking a stay bears the burden of demonstrating that a stay should be granted, in whole or in part, under all four criteria set forth in paragraph (a)(1) of this section.

* * * * *

6. Amend § 4.172 by revising paragraph (b) introductory text and paragraph (b)(1) to read as follows:

§ 4.172 BLM document filing requirements and initial disclosures.

* * * * *

(b) *BLM initial disclosures*. BLM shall serve a copy of its entire record for the grazing decision on all parties to the proceeding within 45 days of receiving the notice of appeal. Failure of BLM to comply with the substance of and/or time limits set forth in paragraphs (a) and/or (b) of this section shall constitute, if proven by a preponderance of the evidence, good grounds for sanctions under § 4.121. The foregoing shall not deprive any party of the discovery procedures set forth in the general procedural rules for practice before DCHD at §§ 4.112 through 4.119 of this subpart.

(1) BLM's entire record for the grazing decision shall contain a copy of any nonprivileged, discoverable materials that the deciding official considered when taking the action at issue in the proceeding.

* * * * *

7. Amend § 4.174 by revising paragraph (b) to read as follows:

§ 4.174 Effect of decision pending appeal; exhaustion and finality.

* * * * *

(b) *Exhaustion and finality of grazing decision*. To exhaust administrative remedies, a petition for a stay must be filed concurrently with a timely notice of appeal of the BLM grazing decision unless BLM has made the decision immediately effective. The BLM grazing decision will not be considered final and subject to judicial review unless it has been made effective pending a resolution of the appeal in the manner provided by paragraphs (a)(2) or (a)(4) of this section. Exhaustion does not require an appeal of a denial of a petition for a stay.

8. Amend § 4.175 by revising paragraph (a)(1) introductory text to read as follows:

§ 4.175 Appeal and review.

(a) * * *

(1) *Appeal of stay petition order.* Although not required for the exhaustion of administrative remedies, any person or entity adversely affected by the ALJ's order granting or denying a petition for a stay may file an appeal with the IBLA in accordance with § 4.403. Unless the IBLA orders otherwise, an appeal of the stay petition order under this section:

* * * * *

§ 4.403 [Amended]

9. In § 4.403, amend paragraph (c)(2)(ii) by removing the second comma after the word "decision".

10. Revise § 4.405 to read as follows:

§ 4.405 Effect of decision pending appeal; petitions for stay.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law:

(1) A decision will not be effective during the time in which a person or entity adversely affected may file a notice of appeal; however, when the public interest requires or to protect trust resources, the Board may provide that a decision, or any part of a decision, will be effective immediately.

(2) A decision will become effective on the day after the expiration of the time during which a person or entity adversely affected may file a notice of appeal unless a petition for a stay pending appeal is filed at the same time as a timely notice of appeal.

(3) A decision, or that portion of a decision, for which a stay is sought but not granted will become effective immediately after the Board denies or partially denies the petition for a stay or fails to act on the petition within the time specified in paragraph (b)(7) of this section.

(b) *Petitions for Stay*—(1) *Who may file a petition for a stay.* Only an appellant who properly files an appeal may petition to stay the effect of a decision during an appeal.

(2) *Filing and service.* An appellant seeking a stay must file a petition for a stay with the Board and serve the petition on the bureau or office that made the decision being appealed, the proper Office of the Solicitor, and each party named in the decision. Filing and service must be made as specified in § 4.407 of this subpart.

(3) *Stay criteria.* Except as otherwise provided by law, an appellant seeking a stay must demonstrate that issuance of a stay is warranted based upon the following criteria:

(i) *Immediate and irreparable harm*. The likelihood of immediate and irreparable harm if the stay is not granted;

(ii) *Balance of harms.* Whether the harm to the appellant absent a stay exceeds the harm to the United States or other parties from a stay being granted;

(iii) *Likelihood of success*. The likelihood of the appellant's success on the merits; and

(iv) *Public interest*. Whether the public interest favors granting the stay.

(4) *Burden of proof.* An appellant seeking a stay has the burden to demonstrate that a stay should be granted in whole or in part, under all four criteria set forth at paragraph (b)(3) of this section.

(5) *Responses to a petition for a stay.* Any party may file a response to a petition for a stay within 14 days after service; failure to file a response will not be construed as an admission that the Board should grant the petition.

(6) *Replies.* No replies to a response will be accepted.

(7) *Ruling on a petition for stay.* The Board will grant or deny a petition for a stay that is filed at the same time as a notice of appeal, in whole or in part, within 45 days of the expiration of the time for filing a notice of appeal. If the Board fails to act on a petition for a stay within 45 days of the expiration of the time for filing a notice of appeal, the petition will be deemed denied.

(8) *Effect of consent or lack of opposition.* The Board may summarily grant a petition for a stay, in whole or in part, without considering the criteria listed in paragraph (b)(3) of this section if all parties to the appeal consent to the stay or file responses to the petition affirmatively stating no opposition to the petition.

§ 4.409 [Amended]

11. In § 4.409, amend paragraph (b)(4) by removing the words "to file a response".

12. Revise § 4.411 to read as follows:

§ 4.411 Management of appeals.

The Board is vested with the general authority to regulate the course of appeals and the conduct of parties to ensure that appeals are resolved fairly, efficiently, and in compliance with applicable laws and orders.

13. Revise § 4.413 to read as follows:

§ 4.413 Scope of review and burden to show error.

(a) *Scope of review.* The Board has authority to review decisions on appeal as fully and finally as might the Secretary, subject to any limitations on its authority imposed by the Secretary. The Board may at any time before issuance of its decision raise or consider any matter that it deems material, whether or not raised by the parties. The Board may affirm, modify, vacate, set aside, or reverse any decision properly brought before it for review, and may remand the matter as may be just under the circumstances.

(b) *Burden to show error.* Except as otherwise provided by law, the party appealing a decision of a bureau, office, or ALJ has the burden to show that an error was made.

Troy W. Finnegan
Deputy Assistant Secretary,
Exercising the Delegated Authority of the Assistant Secretary – Policy, Management and Budget

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