instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule that is located in the rules section of this **Federal Register**.

Dated: February 27, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–4178 Filed 3–7–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1094–AA53

Interior Board of Land Appeals Procedures

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is proposing to amend several existing procedural regulations governing appeals to the Interior Board of Land Appeals (IBLA) and to adopt new regulations governing consolidation, extensions of time, intervention, and motions.

DATES: You should submit your comments by May 7, 2007.

ADDRESSES: You may submit comments, identified by the number 1094–AA53, by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

—*Fax:* 703–235–9014.

—*E-mail: John_Strylowski@ios.doi.gov.* Include the number 1094–AA53 in the subject line of the message.

—*Mail:* Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

—*Hand delivery:* Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 400, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Robert S. More, Director, Office of Hearings and Appeals, U.S. Department of the Interior, Phone 703–235–3750. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comments

If you wish to comment on this proposed rule, you may submit your comments by any of the methods listed in the **ADDRESSES** section above. We will consider all comments received by the deadline stated in the **DATES** section above.

Please make your comments as specific as possible and explain the reason for any changes you recommend. Where possible, your comments should refer to the specific section or paragraph of the regulations you are addressing.

Our practice is to make comments, including the names of respondents and their home addresses, phone numbers, and e-mail addresses, available for public review during regular business hours. To review the comments, you may contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Individual respondents may request that we withhold their names and home addresses, etc. But if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information that demonstrates that disclosure would constitute a clearly unwarranted invasion of personal privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documented circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

Based on its experience in recent years, OHA has determined that certain of its existing procedural regulations in 43 CFR part 4, subparts E and L, need to be updated, clarified, or otherwise revised to promote expeditious administrative review. (Subpart E contains regulations governing public land hearings and appeals; subpart L contains regulations governing surface coal mining hearings and appeals.) For example, we propose to amend the existing regulations governing service of documents, reconsideration, statements of reasons for appeal, answers, and requests for hearings.

In addition, OHA has decided to add regulations to subpart E to provide procedures governing motions for consolidation, extensions of time, and intervention, and for serving and responding to any other motions. These subjects are not currently covered in OHA's regulations, and questions have arisen about whether and how these procedures are conducted by IBLA. The amendments and additions are explained in the following section-by-section analysis.

III. Section-by-Section Analysis

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

Section 4.400 Definitions

We propose to define ''BLM'' to mean ''Bureau of Land Management,'' and revise the definition of ''bureau'' to include the Minerals Management Service, 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. We propose to add IBLA's address to the definition of ''Board,'' so we do not have to repeat it in other sections of the regulations. And we would add a definition of ''last address of record'' because this phrase appears in proposed Sections 4.401(c)(1) and 4.422(c)(1), the regulations governing service of documents.

The regulations would specify that ''party'' includes a party's representative(s) where the context so requires, *e.g.*, in the service regulations where service must be made by or upon a party. The regulations would also specify that ''office'' or ''officer'' includes an administrative law judge or

the Board where the context so requires, *e.g.*, in Section 4.411(a)(1) requiring that a notice of appeal be filed in the office of the officer who made the decision being appealed.

Section 4.401 Documents

In 2003 we amended Section 4.401(c)(2) to allow a party to certify service of a document on other parties by signing a written statement at the end of a document that service has been or will be made, rather than requiring the party to file proof of service in the form of a written statement or a Postal Service return receipt. 68 FR 33794, 33803 (June 5, 2003). We did so as a step towards ''bringing IBLA's practice into line with current rules in Federal and state courts.'' 68 FR 33801 (June 5, 2003).

Existing Section 4.401(c)(1) provides that service ''may be made by delivering [a copy of a document] personally to [a person] or by sending the document by registered or certified mail, return receipt requested, to [the person's] address of record in the Bureau.'' We now propose to revise Section 4.401(c)(1) 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. ''Last address of record'' is defined in Section 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 decision under appeal.

This change would make IBLA's service regulation more consistent with Rule 5(b)(2)(B) of the Federal Rules of Civil Procedure (FRCP). That rule permits service of a document (other than the complaint that commences a civil action) by mailing a copy of it to the last known address of the person to be served.

Under the proposed rule, it will remain a party's responsibility to assure that service is made, and to certify under Section 4.401(c)(3) when and how it was or will be made. One who chooses a means of delivery of a document must accept responsibility for and bear the consequences of delay or nondelivery, *National Wildlife Federation,* 162 IBLA 263, 266 (2004); and the presumption of regularity that officials have properly discharged their duties and have not lost or misplaced a document will prevail over the presumption that a properly addressed letter with sufficient postage will be delivered. *Marathon Oil Co.,* 128 IBLA 168, 172 (1994); *Robert J. King,* 72 IBLA 72, 75 (1983). However, it is not necessary to prescribe, except for a notice of appeal that initiates an appeal, that service occur only by personal delivery or by registered or certified mail. Because delivery services cannot deliver to post office boxes, we propose that service by a delivery service may not be made if the person's last address of record is a post office box.

This regulation governing service would apply to any document filed in a proceeding under subpart E. The regulation would also provide that service must occur concurrently with filing, *i.e.*, that copies of a document would be delivered, mailed, or given to a delivery service for delivery to adverse parties at the same time the document is delivered or mailed or given to a delivery service for delivery to the Board. These provisions are comparable to those in subpart L governing service in proceedings under the Surface Mining Control and Reclamation Act. *See* Section 4.1109.

Comparable to existing Section 4.401(c)(3), proposed Section 4.401(c)(4) states that service is complete when delivery takes place, whether by personal service, regular mail, registered or certified mail, or a delivery service. Service will also be complete when the Postal Service or a delivery service returns a document undelivered. A party should be able to rely on another party's address of record in the bureau; and if a document sent to that address comes back undelivered, the party has fulfilled its service obligation.

Proposed Section 4.401(c)(5) states that, in the absence of evidence to the contrary, delivery by regular mail, registered or certified mail, or a delivery service will be deemed to take place 3 business days after the document was sent. Contrary evidence could include a return receipt from the Postal Service or the delivery service, or a certification from a party's representative as to the actual date on which the party received a document sent by regular mail.

We propose corresponding revisions to existing Section 4.422(c).

Section 4.403 Finality of Decision; Reconsideration

The existing regulation provides that IBLA ''may reconsider a decision in extraordinary circumstances for sufficient reason.'' This language is not defined, and the preamble to the regulation explained only that ''the Board does not intend to enlarge the scope of its reconsideration practice to make it a routine feature of adjudication. This provision reinforces the Board's expectation that parties will make complete submissions in a timely manner during the appeal, not afterward on reconsideration.'' 52 FR 21307 (June 5, 1987). Although these statements are still true, IBLA has had sufficient experience with the regulation to enable it to identify circumstances that have frequently been found ''extraordinary,'' as well as those that have not. Because petitions for reconsideration are often granted by order rather than by published decision, and are therefore less available to the public, we propose to amend the regulation to provide guidance based on this experience.

We propose revising the language in paragraph (b) to state that the Board may reconsider a decision ''in extraordinary circumstances,'' rather than ''in extraordinary circumstances for sufficient reason,'' because ''for sufficient reason'' does not add any meaning. That is, IBLA may grant reconsideration if it finds extraordinary circumstances; it does not also need to determine whether the extraordinary circumstances provide sufficient reason to do so.

Paragraph (b)(1) would clarify that a party files a motion for reconsideration (rather than a ''petition'' for reconsideration, as in the existing regulation) with the Board.

Proposed paragraph (b)(3) is a revision of the language of the existing regulation, which states that ''[n]o answer to a petition is required unless so ordered by the Board.'' The proposed regulation would allow parties to file an answer if they wish and would provide 15 days for doing so. *See June I. Degnan (On Reconsideration),* 114 IBLA 373, 376 (1990).

Paragraph (b)(4) would add that the Board may stay the effectiveness of its decision, in response to a motion for reconsideration, ''for good cause.''

Paragraph (d) lists some of the circumstances that may warrant IBLA's granting a motion in its discretion.

For examples of cases in which reconsideration has been granted because of an error of fact, see *Joan Chorney (On Reconsideration),* 109 IBLA 96, 97 (1989); *State of Alaska (Elliot R. Lind) (On Reconsideration),* 104 IBLA 12, 15 (1988); and *Marathon Oil Co. (On Reconsideration),* 103 IBLA 138, 140 (1988).

For an example of IBLA's granting reconsideration based on a recent judicial development, see *Amoco Production Co.,* 143 IBLA 45, 54A–54E (1998).

For examples of the kind of change in Departmental policy that might warrant reconsideration under paragraph (d)(3), see *Conoco, Inc.,* 164 IBLA 237, 241 (2005); *Conoco, Inc.,* 115 IBLA 105, 106 (1990); and *Ladd Petroleum Corp.,* 107 IBLA 5, 8 (1989).

The second sentence of paragraph (d)(4) is intended to reinforce the expectation mentioned above that parties will make complete submissions during the appeal. A party that relies on newly-submitted evidence must explain why the evidence was not provided previously. If it does not, the Board may find the motion does not show extraordinary circumstances. *See Ulf Teigen (On Reconsideration),* 159 IBLA 142, 144 (2003); *Dugan Production Corp.,* 117 IBLA 153, 157–58 (1990).

Paragraph (e) is intended to discourage a party from re-arguing its reasons for appeal in a motion for reconsideration, in the absence of demonstrable error. *See, e.g., Dona Jeanette Ong (On Reconsideration),* 166 IBLA 65 (2005). Nor should a party file a motion for reconsideration when a statute or regulation prescribes consequences that IBLA has no authority to alter, *e.g.*, 43 U.S.C. 1744(c) or 30 U.S.C. 28i. *See, e.g., Lee H. and Goldie Rice,* 128 IBLA 137, 141 (1993).

Section 4.404 Consolidation

The Board does not have a regulation providing that it may consolidate appeals, so we propose to add one. If the facts or legal issues involved in two or more appeals are the same or substantially similar, it may be more efficient to consider them together. The Board may consolidate appeals on its own initiative or on motion of a party. It may do so at any time before the appeals are decided; thus, it is possible to consolidate recently-docketed appeals with those that have been pending longer. Parties would have 15 days after service of a motion to consolidate to file a response, in accordance with new Section 4.407(b).

For examples of cases that IBLA has consolidated, see *San Carlos Apache Tribe,* 149 IBLA 29, 30 (1999); *Murphy Exploration and Production Co.,* 147 IBLA 386, 387 (1999); *Elaine D. Berman,* 140 IBLA 173 (1997); and *Coastal Oil and Gas Corp.,* 108 IBLA 62, 63 (1989).

Section 4.405 Requests for Extension of Time

Several regulations require parties to file documents with the Board within specified times, *e.g.*, Section 4.412(a) (statement of reasons within 30 days after filing of the notice of appeal) and Section 4.414 (answer within 30 days after service of a notice of appeal or statement of reasons). *See also* Section 4.413(a) (service of a notice of appeal or a statement of reasons or other pleading within 15 days after filing the document). Failure to comply with Sections 4.412 and 4.413 may subject an appeal to summary dismissal. Section 4.402.

Although parties frequently request extensions of time for filing statements of reasons or answers, the only regulation governing how they do so is Section 4.22(f). IBLA's experience indicates a need for a regulation that establishes a standard for when such requests may be granted. As noted by the former Administrative Conference of the United States:

> Time extensions should be granted only upon strong, documented justification. While procedural fairness mandates that deadlines may be extended for good cause, presiding officers should be aware that casual, customary extensions have serious negative effects on an adjudicatory system, its participants, and those wishing access thereto. Stern warnings accompanying justified extensions have had good success in curtailing lawyers' requests for additional time.

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure, Recommendation No. 86–7, 51 FR 46985, 46990 (Dec. 30, 1986).

Accordingly, we propose a new regulation that would require a party to show good cause for requesting any extension. Consent of opposing counsel, standing alone, would not constitute good cause; but conducting settlement negotiations in good faith would constitute good cause for a reasonable extension of time. ''Good cause'' would be more difficult to show with additional requests or requests for longer extensions.

A party that foresees it will need an extension is strongly encouraged to file a motion requesting it as early as possible, in order to give the Board time to consider the motion. Under the proposed regulation, the deadline for filing a request for an extension is the day before the date the document is due, absent compelling circumstances. For example, if a document is due on a Friday, the motion requesting an extension would be due no later than Thursday; if it is due on Monday, the motion would be due on the previous Friday. *See* Section 4.22(e). A party may file and serve such a motion by facsimile.

Any party that objected to a motion requesting an extension would have to file its reasons for objection with the Board within 2 business days. A party may likewise file and serve such an objection by facsimile.

A Board order granting or denying a motion requesting an extension will state when the document must be filed. 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. For example, if a document were due on the 10th of the month, a motion for extension of time is filed by the 9th, but the Board has not issued an order by the 10th, the document would be due on the 25th unless, after the 10th, the Board issued an order providing a different date. *See* Section 4.22(e). The Board fully intends to rule on all motions it receives for an extension of time. But since we are proposing to allow such motions to be filed up to the close of business on the day before a document is due and to allow objections to be filed within 2 business days thereafter, in many cases it will not be possible for the Board to rule on such motions before the original document due date. We are therefore proposing this 15-day automatic extension period, which can be either shortened or lengthened when the Board does rule on the motion, generally within 1 or 2 business days after the time for filing an objection has expired.

Section 4.406 Intervention; Amicus Curiae

There is currently no regulation governing intervention in appeals to IBLA under 43 CFR part 4, subpart E, although there is such a regulation in subpart L, Section 4.1110. As a result, there are no established standards for when a person may intervene. As a related matter, there is no regulation in subpart E governing when a person may appear as an amicus curiae, although there is a general regulation in Section 4.3(c). We are therefore proposing a regulation that would govern these matters.

IBLA decisions state that a person who ''could independently maintain the action in which he seeks to participate'' may intervene. *See*, *e.g.*, *Sierra Club—Rocky Mountain Chapter*, 75 IBLA 220, 221 n. 2 (1983); *United States* v. *United States Pumice Co.*, 37 IBLA 153, 157 (1978). Similarly, IBLA has granted intervention to a person who would be adversely affected if the agency decision were reversed or modified on appeal, *e.g.*, the proponent of a project approved by the agency. *See*, *e.g.*, *Las Vegas Valley Action Committee*, 156 IBLA 110, 112 (2001); *Bear River Land & Grazing* v. *BLM*, 132 IBLA 110, 113–14 (1995).

When the Board has denied a petition to intervene, it has often allowed the person to participate as an amicus curiae. *See*, *e.g.*, *Southern Utah Wilderness Alliance*, 161 IBLA 15, 18 n. 4 (2004); *Sanguine Limited*, 157 IBLA 277, 281 n. 4 (2001).

We propose that the Board may grant a motion to intervene that is timely filed by a person who would have a right of appeal under Section 4.410 or would be adversely affected if the decision under review were reversed, vacated, set aside, or modified by the Board on appeal. Whether a motion to intervene is timely would depend on the potential intervenor's relationship to the case.

Specifically, if the person would be adversely affected if the decision under review were reversed, vacated, set aside, or modified by the Board on appeal, a motion to intervene must be filed within 30 days after the person knew or should have known that the decision under review had been appealed. If, however, the person wishing to intervene would have a right of appeal under Section 4.410, the motion must be filed within 30 days after the person was served with the decision or, if not served, knew or should have known of the decision. See *Independent Petroleum Association of Mountain States*, 136 IBLA 279, 281 (1996) (Board will deny motion to intervene where granting it would circumvent the requirement in Section 4.411(a) that an appeal be filed within 30 days after service of a decision).

The burden of showing a motion to intervene is timely filed is on the person filing the motion. The motion must state the basis for the proposed intervention.

The Board could deny the motion if granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal, *e.g.*, if the motion is filed after all briefs have been submitted and the appeal is ripe for adjudication. Alternatively, the Board could grant the motion but limit the extent of the person's participation in the appeal.

Under the proposed regulation, any person could file a motion to file a brief as an amicus curiae. The motion must state what interest the person has in the appeal and how its brief would be relevant to the issues involved. The Board could grant or deny the motion in its discretion. The Board may also allow a person whose motion to intervene is denied to file a brief as an amicus curiae.

Section 4.407 Motions

There is currently no regulation that deals with motions filed with the Board, *e.g.*, that states when the parties may file responses or provides when the Board is to act. In order to standardize practice and facilitate prompt rulings, we are proposing a regulation requiring a party that files a motion with the Board to support it with reasons. The regulation would allow other parties to respond within 15 days and states that the Board would rule ''as expeditiously as possible.''

The 15-day response time in Section 4.407(b) would apply to any motion filed in a proceeding under this subpart, unless another regulation or the Board by order sets a different response deadline. For example, Section 4.407(b) would normally apply to a motion under Sections 4.403, 4.404, or 4.406, discussed above, or to a motion to dismiss, to refer for hearing (Section 4.415), to suspend consideration or expedite consideration, to file a further pleading or exceed page limits (see amended Sections 4.412 and 4.414, discussed below), to request a remand, etc. Section 4.407(b) would not apply to a motion requesting an extension of time, since Section 4.405(d) sets a shorter response time for such motions.

If a party needs more than 15 days to file a response, it may request an extension of time under Section 4.405.

Section 4.411 Appeal; How Taken, Mandatory Time Limit

IBLA does not have jurisdiction over an appeal unless a notice of appeal is timely filed with the office of the officer who made the decision. Under Section 4.22(a), a document is filed when it is received, not when it is sent. Recently, cases have arisen in which an appellant has transmitted a notice of appeal via facsimile. Although the appellant attempted to transmit the notice so that it would be filed within 30 days, the office either did not receive it or did not receive it on time. *See*, *e.g.*, *National Wildlife Federation*, 162 IBLA 263, 264–66 (2004) (affirming dismissal of a request for State Director review because, although the appellant submitted the log of transmissions from its facsimile machine, there was no evidence that the request was received by the State Director by the time it was due). *See also Underwood Livestock, Inc.*, 165 IBLA 128, 130–31 (2005). In order to avoid such issues, we propose to amend existing Section 4.411(a) to clarify that transmitting a notice of appeal by facsimile would not constitute filing. The Board generally considers any document it receives by facsimile only a courtesy or advance copy; it does not consider the document filed until the original is received by the Board. (As noted above with respect to Section 4.405(b), however, we are proposing to make an exception for motions for extension of time and objections to such motions.)

We propose to amend Section 4.411(b) to reflect IBLA decisions that require authorization for a person to represent more than one party, *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.''); *The Wilderness Society*, 109 IBLA 175, 176 (1989) (''[A] party that wishes to join in another's appeal is well advised to file its own notice of appeal and statement of reasons, sign the appeal documents along with the other party, or authorize the other party's attorney, in advance, to represent it as well.'') *See also Klamath Siskiyou Wildlife Center*, 155 IBLA 347, 350–51 (2001). If an attorney or other person eligible under Section 1.3(b) to practice before the Department wishes to represent more than one appellant, the notice of appeal must state that he or she is authorized to do so.

Section 4.412 Statement of Reasons, Statement of Standing

Section 4.412(a) requires an appellant to file a statement of reasons for appeal with the Board within 30 days after the notice of appeal is filed if the notice of appeal did not include a statement of reasons. The next sentence states: ''In any case, the Board will permit the appellant to file additional statements of reasons and written arguments or briefs within the 30-day period after the notice of appeal was filed.'' This sentence, together with existing Section 4.414 (which requires an answer be filed within 30 days after service of a statement of reasons and then again if additional reasons are filed by the appellant) means a party that wishes to participate in the appeal potentially must file two answers.

We propose to allow an appellant to file a statement of reasons within 30 days after filing the notice of appeal (as it may under the existing regulation), but to revise Section 4.414 to state that any party that is served with a notice of appeal and that wishes to participate will have 60 days after service of the statement of reasons to file a single answer. We also propose that an appellant's statement of reasons may not exceed 30 pages (excluding exhibits, declarations, or other attachments) unless the appellant files a motion under Section 4.407 to obtain leave of the Board by showing good cause. We propose that an appellant must also show good cause for leave to file any additional pleading, e.g., a reply to an answer. We propose the same page limit on answers.

In IBLA's experience, because the agency's decision should contain a supporting rationale (*see Larry Brown &*

Associates, 133 IBLA 202, 205 (1995)), it is sufficient for the Board's purposes to receive a statement of reasons for appeal and an answer. More than this becomes costly and time-consuming to the parties and delays ripeness of the appeal for adjudication by the Board without providing additional useful argument.

These proposals provide adequate opportunity for all parties to state their arguments and authorize the Board to allow longer or additional pleadings if a need for them is shown.

We expect these pleadings will generally conform to the form requirements of Federal Rule of Appellate Procedure 32, *e.g.*, be double-spaced, have adequate margins, and be in a standard type style.

Section 4.413 Service of Notice of Appeal

We propose to revise Section 4.413(a) to require service of a notice of appeal in accordance with Section 4.401(c)(2)(i), *i.e.*, by personal delivery or by registered mail or certified mail, return receipt requested. Under Section 4.401(c), all other documents filed with the Board must also be served.

Several of the addresses of the Office of the Solicitor on which a copy of a notice of appeal and statement of reasons must be served under existing Section 4.413(c)(2) are out of date. The regulation would be revised to provide the current addresses.

Section 4.414 Answers

43 CFR 4.414 currently provides that a party served with a notice of appeal that wishes to participate in an appeal must file an answer to an appellant's statement of reasons within 30 days after service of the statement. In its second sentence, the regulation provides, ''If additional reasons, written arguments, or briefs are filed by the appellant, the adverse party shall have 30 days after service thereof on him within which to answer them.''

As discussed above under Section 4.412, we believe it is normally sufficient for each party to file only one brief unless it can show good cause for a further brief. We therefore propose to revise this regulation to require filing of 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. The time for answer would be increased from 30 to 60 days to make it the same as 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 Section 4.411(a)(3) plus 30 days under Section 4.412(a)).

If settlement negotiations promise to extend beyond 60 days, a person wishing to participate could file a motion requesting an extension of time to file an answer or motion under Section 4.405. An answer must respond to the statement of reasons for appeal and, if a person is representing more than one party, must state that the person is authorized to do so. Like an appellant, a party may not file a further pleading unless the Board grants a motion showing good cause to do so. Nor may an answer or motion exceed 30 pages (excluding exhibits, declarations, or other attachments) unless the Board grants a motion showing good cause.

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

Existing 43 CFR 4.415 authorizes the Board, in its discretion, to refer a case to an administrative law judge (ALJ) for a hearing on an issue of fact, either on its own initiative or in response to a request from an appellant or an adverse party. The regulation provides that such a request must be filed within 30 days after an answer is due, and that, if the Board orders a hearing, it will specify the issues upon which the hearing is to be held.

IBLA has found that the requirement in Section 4.415 that a request for a hearing be filed within 30 days after an answer is due is neither necessary nor advisable. Sometimes the need for a hearing does not become apparent until later. Because it is not necessary that a hearing be requested within 30 days after an answer is due, we propose to delete this requirement.

When a party has requested a hearing without specifying the issues of fact involved or the reasons why a hearing is necessary, IBLA has found it helpful to issue an order requesting the party to list what specific material issues of fact require a hearing, what evidence concerning these issues must be presented by oral testimony, what witnesses need to be examined, and what evidence could be presented in documentary form, e.g., by affidavit, rather than by oral testimony. *See*, *e.g.*, *W.J. and Betty Lo Wells*, 122 IBLA 250, 252 (1992).

We propose to amend Section 4.415 to require a party that requests a hearing to specify in a motion what the material issues of fact are, what evidence must be presented, what witnesses need to be examined, and what documentary evidence needs to be explained, if any.

Although IBLA has established standards for exercising its discretion in favor of granting such a request, they are not set forth in 43 CFR 4.415. The IBLA has regularly stated that a hearing is not necessary in the absence of a material issue of fact that, if proven, would alter the disposition of the appeal. *Kim C. Evans*, 82 IBLA 319, 323 (1984).

> A hearing is necessary only where there is a material issue of fact requiring resolution through the introduction of testimony and other evidence. In the absence of such an issue, no hearing is required. *See United States* v. *Consolidated Mines & Smelting Co.*, 455 F.2d 432, 453 (9th Cir. 1971).

Ben Cohen (On Judicial Remand), 103 IBLA 316, 321 (1988). The Board has also said it '' 'should grant a hearing when there are significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them.' '' *Woods Petroleum Co.*, 86 IBLA 46, 55 (1985), quoting *Stickelman* v. *United States*, 563 F.2d 413, 417 (9th Cir. 1977).

We propose to include the standards for referral for a hearing in the regulation: that there is a material issue of fact which, if proven, would alter the outcome of the appeal or that there are significant factual or legal issues remaining to be decided and the record without a hearing would not be sufficient for resolving them. ''Material'' means ''tending to prove or disprove a matter in issue.'' B. Garner, *A Dictionary of Modern Legal Usage*, (Oxford University Press, 1987), at 354.

The existing regulation provides that the hearing will be held in accordance with Sections 4.430 to 4.439 and the general rules in subpart B of 43 CFR Part 4. Section 4.439 in turn states that, upon completion of the hearing, the ALJ will send the Board the record and proposed findings of fact on the issues presented at the hearing. Thus, Section 4.415 does not in terms authorize IBLA to refer a case to an ALJ either for a recommended decision or for a decision that would be final unless appealed to IBLA, although IBLA has long done both. *See, e.g., Samedan Oil Corp.*, 163 IBLA 63, 71 (2004); *Elizabeth B. Archer*, 102 IBLA 308, 310 (1988); *Hondoo River and Trails*, 91 IBLA 296, 304 (1986). In recent years, IBLA's prevailing practice has been to refer the case to an ALJ for a hearing and issuance of a decision that will be final in the absence of an appeal.

Another of OHA's appeals boards, the Interior Board of Indian Appeals (IBIA), also has regulations providing for the referral of a case to an ALJ for an evidentiary hearing. Those regulations specify that, following the hearing, the ALJ is to issue recommended findings of fact and conclusions of law. 43 CFR 4.337, 4.338 (2004). IBIA does not refer cases to an ALJ for a hearing and issuance of a final decision.

Recently, the OHA Director issued a decision which concluded that IBLA's regulations at Sections 4.415 and 4.430 through 4.439 provide authority only

> for the Board to refer a case for a hearing on one or more issues of fact that the Board is required to specify, and for the ALJ to conduct a hearing and make proposed findings of fact on the issues so referred. The Board is not authorized to refer a case to an ALJ for a recommended decision on the merits or for a decision that will be final in the absence of an appeal. If considerations of judicial economy favor expanding the authority of the Board and the ALJs to dispose of cases that involve disputed issues of fact, the solution is to amend the regulations.

Samedan Oil Corp., 32 OHA 61, 70 (2005)

Accordingly, we propose to make explicit the Board's authority to refer a matter for a hearing followed by (1) proposed findings of fact on specified issues, (2) a recommended decision, or (3) a decision that will be final in the absence of an appeal. As discussed below, 43 CFR Sections 4.433 and 4.439 would be revised to give ALJs the corresponding authority. We welcome comments on the appropriateness and relative advantages of the three options, and whether the final regulations should include all three.

Finally, the proposed regulation would provide that the Board may suspend the effectiveness of the decision under review pending a final decision on the appeal if, considering factors including those set forth in Section 4.21(b), it finds good cause to do so.

Section 4.421 Definitions

Because ''administrative law judge,'' ''Board,'' ''bureau,'' and ''Secretary'' are defined in Section 4.400, it is not necessary to repeat them in this regulation, and we propose to remove those definitions. We would alphabetize the remaining definitions and revise them to reflect the revisions to the definitions in Section 4.400.

Section 4.422 Documents

As discussed above under Section 4.401, we propose to revise existing Section 4.422(c) to allow service by first-class mail and by a delivery service and to provide that service will be complete when a document is delivered or returned undelivered.

Section 4.433 Authority of the Administrative Law Judge

As discussed above under Section 4.415, we propose to revise Section 4.433 to provide authority to an administrative law judge to issue 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. This authority is set forth in proposed Section 4.433(a)(4).

Section 4.434 Conduct of Hearing

We propose to revise this regulation to substitute ''administrative law judge'' for ''examiner'' and to substitute ''bureau,'' as defined in Section 4.400, for ''Bureau of Land Management.''

Section 4.438 Summary of Evidence

We propose to remove this regulation because the procedure described has not been used for many years and is unnecessary, since all hearings are transcribed. We would redesignate existing Section 4.439 as Section 4.438.

Section 4.438 Action by Administrative Law Judge

As discussed above under Section 4.415, we propose to revise this regulation to authorize an administrative law judge to issue a recommended decision or 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. An administrative law judge's decision that would be final for the Department absent appeal would not, however, be precedential.

> [D]ecisions of Administrative Law Judges, while certainly worthy of respectful consideration, are not Departmental precedents and are not binding on this Board nor are they binding upon other Administrative Law Judges, unless they are adopted by the Board in adjudication of an appeal.

McLean v. *BLM*, 133 IBLA 225, 235 n. 16 (1995); *see also United States* v. *Mansfield*, 35 IBLA 95, 100 (1978).

We propose to delete the second sentence of the regulation, and to require the administrative law judge to serve on the parties the proposed findings, recommended decision, or decision that would be final absent appeal. We also propose to add a provision that the parties may file exceptions to proposed findings or a recommended decision with the Board.

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

OHA recently published amendments to its regulations that authorized an administrative law judge 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 Section 4.478(a), but did not specify a time or place for filing the appeal. *See Western Watersheds Projects* v. *Bureau of Land Management*, 166 IBLA 30, 37 (2005). We propose to amend Section 4.478(a) to provide that an appeal may be filed with the administrative law judge in accordance with Section 4.411(a).

B. Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

Section 4.1117 Reconsideration

In subpart L, 43 CFR 4.1276(a) provides that a party may ''move for reconsideration under Section 4.21(d); however, the motion shall be filed with the Board within 30 days after the date of the decision'' (rather than ''filed promptly,'' as provided in Section 4.21(d)). Because Section 4.1276 is in the part of subpart L headed ''Appeals to the Board from Decisions or Orders of Administrative Law Judges,'' the question has arisen whether Section 4.1276(a) governs reconsideration of other Board decisions under subpart L, *e.g.*, in appeals of decisions of the Director of the Office of Surface Mining Reclamation and Enforcement under Section 4.1280 *et seq*.

In order to provide a regulation governing reconsideration of any Board decision under subpart L and to make that regulation consistent with the revisions to Section 4.403, discussed above, we propose to add a regulation to the general provisions of subpart L stating that a petition for reconsideration may be filed within 60 days after the date of the decision and that the provisions of Section 4.403 will apply.

Section 4.1270 Petition for Discretionary Review of a Proposed Civil Penalty

When Section 4.1270(f) was amended recently, 67 FR 61506, 61511 (Oct. 1, 2002), the first sentence mistakenly referred to ''the rules in Sections 4.1273 through 4.1277.'' There is no Section 4.1277, so we are correcting the amendment of Section 4.1270(f) to refer to 4.1273 through 4.1275.

Section 4.1276 Reconsideration

This regulation will be removed because of the addition of Section 4.1117, discussed above.

Section 4.1286 Motion for a Hearing

Like Section 4.415, Section 4.1286 provides that a party may request a hearing before an administrative law judge ''to present evidence on an issue of fact,'' and that the Board, either in

response to a request or on its own motion, may refer a case to an administrative law judge ''for a hearing on an issue of fact.'' Also like Section 4.415, Section 4.1286 provides that the Board ''will specify the issues upon which the hearing will be held.'' In Section 4.415, this language is followed by the statement that ''the hearing will be held in accordance with Sections 4.430 to 4.439 and the general rules in subpart B of this part.''

As discussed above in connection with the proposed amendment to Section 4.415, Section 4.439 provides that after a hearing the administrative law judge will send the Board the record and proposed findings of fact; therefore, Section 4.415 has been construed as authorizing the Board to refer a matter for a hearing only for proposed findings of fact, not for a recommended decision or a decision that will be final in the absence of an appeal. *Samedan Oil Corp.*, 32 OHA 61, 70 (2005).

Unlike Section 4.415, there is no statement in Section 4.1286 referring to the authority under which a hearing will be conducted. To ensure there is no ambiguity in the Board's authority under Section 4.1286 in light of the decision in *Samedan*, we are proposing an amendment similar to that proposed for Section 4.415.

Paragraph (e) would provide that hearings under Section 4.1286 will be conducted under the regulations of subpart L that provide specific standards, deadlines, and procedures for other proceedings under the Surface Mining Control and Reclamation Act, including regulations governing discovery and the conduct of evidentiary hearings. In the absence of such a provision, those regulations would not apply, since hearings under Section 4.1286 are not required to be conducted under 5 U.S.C. 554 (2000).

IV. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget has determined that this document is not a significant rule. The Office of Management and Budget has not reviewed this rule under Executive Order 12866.

1. This rule would 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 proposed regulations would have virtually no effect on the economy because they would 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 would not create inconsistencies with or interfere with other agencies' actions because only OHA 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 would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These proposed regulations have to do 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 proposed 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.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations only revise or add procedural regulations governing appeals. A Small Entity Compliance Guide is not required.

C. 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 would not have an annual effect on the economy of $100 million or more. The proposed 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 would 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 would not affect costs or prices for citizens, individual industries, or government agencies.

3. It would 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.

D. 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 would not have a significant or unique effect on 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 would neither uniquely nor significantly affect these governments.

2. This rule would 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.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the rule would 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.

F. 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 Assessment is not required.

G. Civil Justice Reform (E.O. 12988)

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

H. Paperwork Reduction Act

This proposed rule would not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. The proposed 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.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). 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 proposed rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature . . . .'' In addition, the Department has determined that none of the extraordinary circumstances listed in 516 DM 2, Appendix 2, applies to the proposed rule.

The proposed 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, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these regulations on Federally recognized Indian tribes and has determined that there are no potential effects. These regulations would not affect Indian trust resources; 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.

K. Effects on the Nation's Energy Supply (E.O. 13211)

In accordance with Executive Order 13211, we find that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Revising OHA's procedural regulations governing appeals and adding regulations governing consolidation of appeals, requests for extensions of time, motions, and intervention would not affect energy supply or consumption.

L. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (and shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, *§ 4.403 Finality of decision; reconsideration.*) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 43 CFR Part 4

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

Dated: February 16, 2007.

R. Thomas Weimer,

Assistant Secretary—Policy, Management and Budget.

For the reasons set forth in the preamble, the Office of Hearings and Appeals proposes to amend 43 CFR part 4 as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

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

1. 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.

2. 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, Office of the Secretary, appointed under 5 U.S.C. 3105.

BLM means the Bureau of Land Management.

Board means the Interior Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. The address of the Board is 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

Bureau means BLM or the Minerals Management Service, 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.

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

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

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

3. In § 4.401, revise paragraph (c) 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 on:

(i) Each adverse party named in the decision, at the last address of record; and

(ii) The appropriate official of the Office of the Solicitor under § 4.413(c) and (d).

(2) 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; or (B) Registered or certified mail, return receipt requested.
(ii) Not a notice of appeal	(A) Personal delivery; (B) Registered or certified mail, return receipt requested; (C) First-class mail; or (D) Delivery service, if the last address of record is not a post office box.

(3) At the conclusion of any document that a party must serve under the regulations in this part, 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.

(4) Service 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 or its agent.
(ii) Registered or certified mail, return receipt requested	Delivered to the party or returned by the Postal Service unclaimed.
(iii) First-class mail	Delivered to the party or returned by the Postal Service undelivered.
(iv) Delivery service	Delivered to the party or returned by the delivery service undelivered.

(5) In the absence of evidence to the contrary, delivery under paragraphs (c)(4)(ii) through (iv) of this section is deemed to take place 3 business days after the document was sent.

4. 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 a 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 a 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 15 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 to alter legally binding consequences.

5. Add §§ 4.404 through 4.407 to subpart E 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) The deadline for filing a motion requesting an extension is the day before the date the document is due. 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) The party must support its motion requesting an extension of time by showing there is good cause to grant it.

(d) Any party that objects to a motion requesting an extension must file with the Board its reasons for objection within 2 business days after service of the motion. The objection may be filed and served by facsimile.

(e) A Board order granting or denying a motion requesting an extension will state when the document must be filed. 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.

§ 4.406 Intervention; amicus curiae.

(a) A person who wishes to intervene in an appeal must file a motion to intervene within the time shown in the following table:

If the person . . .	The person must file the motion within 30 days after the person . . .
(1) Would have a right to appeal under § 4.410 and was served with the decision.	Was served with the decision.
(2) Would have a right to appeal under § 4.410 and was not served with the decision.	Knew or should have known that the bureau had issued the decision.
(3) Would be adversely affected if the Board reversed, vacated, set aside, or modified the decision.	Knew or should have known that the decision had been appealed to the Board.

(b) A timely motion to intervene must set forth the basis under paragraph (a) of this section for the proposed intervention.

(c) The Board may:

(1) Deny the motion to intervene if granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or

(2) 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.

§ 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, any other party has 15 days after service of the motion to file a written response, unless a provision of this subpart, *e.g.*, § 4.405(d), or the Board by order provides otherwise.

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

6. In § 4.411, revise paragraphs (a) and (b) 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) A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the appropriate office within 30 days after the date of service.

(3) 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 filed in the appropriate office within 30 days after the date of publication.

(4) Transmitting a notice of appeal by facsimile does not constitute filing.

(b) The notice of appeal must give the serial number or other identification of the case. A person representing more than one appellant must state that he or she is authorized to do so. The notice of appeal may include a statement of reasons for the appeal, and a statement of standing if required by § 4.412(b).

* * * * *

7. In § 4.412, revise paragraph (a) to read as follows:

§ 4.412 Statement of reasons, statement of standing.

(a) An appellant must file a statement of reasons for appeal with the Board within 30 days after the notice of appeal was filed. Unless the Board orders otherwise, upon motion for good cause shown:

(1) The text of a statement of reasons may not exceed 30 pages (double-spaced, using standard margins and font size); and

(2) An appellant may not file any further pleading.

* * * * *

8. 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 adverse party 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)(2)(i).

(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 as shown in the following table.

If the appeal is taken from a decision of. . .	Then the appellant must serve the notice on. . .
(1) The Director, Minerals Management Service	Associate Solicitor, Division of Mineral Resources, U.S. Department of the Interior, Washington, DC 20240.
(2) 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 (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.
(3) A BLM State Office (including all District, Field, and Area Offices within that State Office's jurisdiction).	the appropriate office identified in paragraph (d) of this section.
(4) 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 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.

BLM state office	Mailing address
(2) Arizona	Field Solicitor, U.S. Department of the Interior, U.S. Courthouse, Suite 404, 401 W. Washington St. SP 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) If the decision concerns the use and disposition of public lands: Associate Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240. (ii) If the decision concerns the use and disposition of mineral resources: Associate Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.
(6) Idaho	Field Solicitor, U.S. Department of the Interior, University Plaza, 960 Broadway Avenue, Suite 400, Boise, ID 83706.
(7) Montana	(i) Deliveries by U.S. Mail: Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107–1394. (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	(i) Deliveries by U.S. Mail: Field Solicitor, U.S. Department of the Interior, P. O. Box 1042, Santa Fe, NM 87504–1042. (ii) All other deliveries: Field Solicitor, U.S. Department of the Interior, Paisano Building, 2968 Rodeo Plaza Drive West, Room 2070, Santa Fe, NM 87505.
(10) Oregon	Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, Lloyd 500 Building, Suite 607, 500 NE Multnomah Street, Portland, OR 97232.
(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	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) The appellant must serve either:

(i) The attorney from the Office of the Solicitor who represented the bureau 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)(3).

§ 4.414 Answers.

Any person or party served with a notice of appeal that wishes to participate in the appeal must file an answer or appropriate motion with the Board within 60 days after service of the statement of reasons for appeal.

(a) The answer must respond to the statement of reasons for appeal and, if a person is representing more than one party, must state that he or she is authorized to do so.

(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 (double-spaced, using standard margins and font size); 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).

§ 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 material issues of 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:

(1) There are any material issues of fact which, if proven, would alter the disposition of the appeal; or

(2) There are 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:

(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 4.439 and the general rules in subpart B of this part.

9. 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, the Associate Director, or an Assistant Director.

District manager means the supervising BLM officer of the grazing district in which a particular range lies, or an authorized representative.

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.

10. In § 4.422, revise paragraphs (c) and (d) and add new paragraphs (e) through (g) to read as follows:

§ 4.422 Documents.

* * * * *

(c) *Service of documents.* A party filing a document under this subpart must serve a copy of it concurrently on:

(1) Each adverse party named in the decision, at the last address of record; and

(2) The appropriate official of the Office of the Solicitor under § 4.413(c) through (e).

(d) *Acceptable methods of service.* Service may be made in any of the following ways:

If the document is . . .	Service may be made by . . .
(1) A notice of appeal	(i) Personal delivery; or (ii) Registered or certified mail, return receipt requested.
(2) Not a notice of appeal	(i) Personal delivery; (ii) Registered or certified mail, return receipt requested; (iii) First-class mail; or (iv) Delivery service, if the last address of record is not a post office box.

(e) *Required statement.* At the conclusion of any document that a party must serve under this subpart, the party must sign a written statement that:

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

(2) Specifies the date and manner of service.

(f) *Completion of Service.* (1) Service 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 or its agent.
(ii) Registered or certified mail, return receipt requested	Delivered to the party or returned by the Postal Service unclaimed.
(iii) First-class mail	Delivered to the party or returned by the Postal Service undelivered.
(iv) Delivery service	Delivered to the party or returned by the delivery service undelivered.

(2) In the absence of evidence to the contrary, delivery under paragraphs (f)(1)(ii) through (iv) of this section is deemed to take place 3 business days after the document was sent.

(g) *Extensions of time.* The Manager or the administrative law judge, as the case may be, may extend the time for filing or serving any document in a contest.

11. 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 will then present their evidence on such issues.

§ 4.438 [Removed]

12. § 4.438 is removed.

13. 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; 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.

14. 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.

* * * * *

Subpart L—Special Rules Applicable to Surface Mining Hearings and Appeals

15. 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

16. Add § 4.1117 to subpart L to read as follows:

§ 4.1117 Reconsideration.

A party may file a petition 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 petition filed under this paragraph.

17. 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]

18. Remove § 4.1276.

19. 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 material issues of 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:

(1) There are any material issues of fact which, if proven, would alter the disposition of the appeal; or

(2) There are 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 within 30 days of the date of receipt of the decision.

(d) If the Board orders a hearing, it may:

(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.

[FR Doc. E7–3774 Filed 3–7–07; 8:45 am]

BILLING CODE 4310–79–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7710]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet