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DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1090–AA63

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior's Office of Hearings and Appeals is proposing to amend its rules to provide that, except as otherwise provided by law or other regulation, a decision will be stayed, if it is appealed, until there is a dispositive decision on the appeal.

DATES: Comments are due on or before September 29, 1997.

ADDRESSES: Send written comments to Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Comments received will be available for inspection during regular business hours (9 a.m. to 5 p.m.) in the Office of the Director, Office of Hearings and Appeals, 11th Floor, 4015 Wilson Blvd., Arlington, VA. Persons wishing to inspect comments are requested to call in advance at 703-235-3810 to make an appointment.

FOR FURTHER INFORMATION CONTACT: James L. Byrnes, Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: 703-235-3750.

SUPPLEMENTARY INFORMATION: The Department of the Interior (Department) proposes to amend the regulation contained at 43 CFR 4.21. The regulation now provides that, except as provided by law or other pertinent regulation, anyone who appeals a decision of an authorized officer may request a stay of that decision pending completion of administrative review by the Office of Hearings and Appeals (OHA) at the time the appeal is filed. If a stay is not requested, the decision goes into effect the day after the time in which a party adversely affected may file a notice of appeal. If a stay is requested, the decision is stayed automatically for an additional 45 days while the Director of OHA or an appeals board considers the request for a stay. If the Director or board denies the stay or fails to act on the petition within these 45 days, the decision goes into effect. Only if the stay request is granted is the effect of the decision stayed while the appeal is pending.

The current regulation was adopted on January 19, 1993. 58 FR 4942 (1993). Prior to that regulation all decisions subject to section 4.21, except as provided in other pertinent regulations, were stayed pending a decision on appeal unless placed into effect by the Director of OHA or an appeals board.

Based on experience with the 1993 amendment to section 4.21, the Department proposes to amend the rule to provide that some decisions should be stayed automatically pending a decision on appeal, rather than requiring an appellant to file a stay request and requiring an appeals board to issue a decision or order on the stay petition. This would be particularly appropriate when it is in the interest of both the Government and the appellant

to have the decision stayed pending appeal. For example, in instances where the Department takes an enforcement action against a party who has an asserted property interest of some kind, such as a lessee or mining claimant, the action would best be stayed while an appeal is pending if the lessee's or claimant's activity is not endangering health, safety, or the environment. Staying such as action would prevent the Department from taking an enforcement action which may be reversed on appeal. It also would permit an appellant from going directly to district court.

This proposed regulation would automatically stay decisions when appealed unless otherwise provided by law or regulation. The rule would also provide a means for parties to petition OHA to place a decision stayed by this rule into effect. Finally, the rule would allow appellants to petition for a stay of a decision which is in effect under a regulation in Title 30 or Title 43 of the Code of Federal Regulations unless that regulation specifically provides that section 4.21 does not apply.

It has been the Department's experience that the 1993 amendment to section 4.21 has caused a significant paperwork burden on OHA. The amendment has led to large numbers of stay requests which have had the adverse effect of slowing adjudication of other appeals, and of having more recent appeals to OHA decided before older pending appeals where stays were not requested. This revision of section 4.21 would speed up the adjudication of appeals and reduce the paperwork burden on appellants and OHA.

This proposed revision is undertaken in conjunction with an effort by the Bureau of Land Management (BLM) to review and consolidate various appeal and protest regulations contained in title 43 of the CFR. On October 17, 1996, the Department of the Interior published a proposed rule to amend 43 CFR Part 1840, 61 FR 54120 (1996), which deals with appeals procedures for BLM. If this proposed amendment to section 4.21 is published in final, the Department may consider amending the proposed rule for 43 CFR Part 1840 by revising section 1844.11(a)(1) to state that, except as provided in later paragraphs of that section, if an adversely affected party appeals a decision, the decision will be stayed under the new 43 CFR 4.21. Section 1844.11(b) in the proposed rule for part 1840 lists specific regulations that would continue to be excepted from the stay-pending-appeal rule proposed here.

Executive Order 12866

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and, accordingly, is not subject to review by the Office of Management and Budget.

National Environmental Policy Act

The Department has determined that this proposed rule will have no significant effect on the quality of the human environment and will not involve unresolved conflicts concerning alternative uses of resources.

This rule is categorically excluded from environmental review under section 102(2)(c) of the National Environmental Policy Act on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

This proposed rule contains no information collection requirements subject to OMB approval under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

This proposed rule does not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order No. 12630 of March 15, 1988.

The Regulatory Flexibility Act

This proposed rule does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act because the rule relates to agency procedure. 5 U.S.C. 601 *et seq.*

Unfunded Mandates Reform Act of 1995

This proposed rule will not impose an unfunded mandate of \$100 million or more in any given year on local, tribal, and State governments in the aggregate, or on the private sector in accordance with the Unfunded Mandates Reform Act. 2 U.S.C. 1501 *et seq.*

Drafting Information

The primary author of this proposed rule is James L. Byrnes, Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure and public lands.

For the reasons set forth in the preamble, the Department of the Interior proposes to amend 43 CFR 4.21 as described below.

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

Authority: R.S. 2478, *as amended*, 43 U.S.C. sec. 1201, unless otherwise noted.

2. Section 4.21 is amended by revising paragraphs (a) and (c) to read as follows:

§ 4.21 General provisions.

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

(1) A decision will not be effective during the time in which a party adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending a decision on the appeal. However, any party or agency official may request, in writing, that the Director or an Appeals Board place the decision, or any part of it, into effect immediately when the public interest requires.

(2) An appellant may petition for a stay of a decision which is in effect under a regulation in this title or Title 30. The stay request may be filed during the time in which a notice of appeal may be filed. The stay request must be filed with the Director or an Appeals Board in accordance with the standards in paragraph (b)(1) and (b)(2) of this section.

* * * * *

(c) *Exhaustion of administrative remedies* No decision that at the time of its issuance is subject to appeal to the Director or an Appeals Board will be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective pending a decision on appeal under paragraph (a)(1) of this section or other applicable regulations.

Dated: August 19, 1997.

Robert J. Lamb,

Acting Assistant Secretary—Policy, Management and Budget.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7226]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations 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 base flood elevations 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 following table.

FOR FURTHER INFORMATION CONTACT:

Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations 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 base flood and modified base flood elevations, 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 the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are

made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows: