



Interior Board of Land Appeals

Procedures and Practices Manual



Revised
November 2021

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INTRODUCTION AND PURPOSE OF THIS MANUAL

The Interior Board of Land Appeals (IBLA or Board) is one of the principal components of the Office of Hearings and Appeals (OHA). The Board decides finally for the Department of the Interior appeals from decisions rendered by Departmental officials relating to the use and disposition of public lands and their resources, mineral resources in certain acquired lands, mineral and energy resources on the Outer Continental Shelf, and the conduct of surface coal mining under the Surface Mining Control and Reclamation Act. The Board's mission is to provide an impartial forum within the Department of the Interior for the fair resolution of disputes involving public lands and natural resources under the Department's jurisdiction.

This manual sets forth the procedures and practices the Board follows in managing its adjudication of appeals to ensure objectivity, consistency, and transparency. The procedures and practices are intended to be consistent with the provisions of applicable statutes, regulations, and the OHA manual as amended by the Director of OHA. If there is an inconsistency between the procedures in this Manual and those authorities, the provisions in those authorities govern. If circumstances warrant, a procedure or practice in this manual may be varied at the direction of or with the approval of the Chief Administrative Judge.

The Board adjudicates appeals from decisions by the Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, Office of Natural Resources Revenue, Office of Surface Mining Reclamation and Enforcement, and the Departmental Cases Hearings Division. In this Manual, we will refer to any of these bureaus and offices as an "agency."

This Manual is made publicly available pursuant to 5 U.S.C. § 552(a)(2)(C) (2018). This is an administrative staff manual. It is not a regulation or final agency action. Nothing in this Manual is intended to conflict with or amend current statutes or regulations governing the Board and practice before the Board. This Manual does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person.

I. DOCKETING APPEALS

A. DOCKETING PROCEDURES

A person may appeal certain decisions of the Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental

Enforcement, Office of Natural Resources Revenue, Office of Surface Mining Reclamation and Enforcement, or any successor organization, as appropriate, or a decision of an administrative law judge, under the procedures set forth in 43 C.F.R. Part 4, subparts A, B, E, F, J, and L. An appeal, including any petition for a stay filed together with a notice of appeal, must be filed in the office of the officer who made the decision (not the Board), and an office that timely receives a notice of appeal is expected to forward the decision and the accompanying administrative record to IBLA promptly.

1. Usually, an appellant will send a notice of appeal and a copy of the decision being appealed to the Board at the same time it files a notice of appeal with the appropriate office. The Board will docket the appeal at that time; it need not wait for the agency to forward that documentation. An appellant is required by regulation to serve the Board with a notice of appeal and its stay petition when the appellant seeks a stay. If an appellant does not send the decision being appealed to the Board, then the Board will ask the agency to email a copy of it to the Board so that the matter can be accurately docketed.
2. Once the Board receives an appeal, the Docket Clerk assigns a docket number to the appeal. Docket numbers are assigned in the order the appeals are received and docketed. A new cycle of numbers begins at the beginning of each fiscal year, e.g., IBLA 2022-0001 for the first appeal received on or after October 1, 2021.
3. When an appeal is docketed, the Docket Clerk will enter the appeal in the Docket Management System (DMS).
4. If a petition for reconsideration of an IBLA decision or order or a request for attorney fees is filed, or a case on judicial review is remanded to the Board, the docket number previously assigned to the appeal will be assigned to the petition followed by a “-1,” “-2,” etc. indicating a further phase of the original appeal, e.g., IBLA 2022-0046-1. For example, the Board concludes IBLA 2022-0123, and the Appellant files a motion for reconsideration. The Board will docket the motion for reconsideration as IBLA 2022-0123-1. If, after the Board concludes IBLA 2022-0123-1, the appellant seeks judicial review and the court remands the matter back to the Board for further consideration, the Board will docket that judicial remand as IBLA 2022-0123-2. The Board strives to expedite its review of appeals docketed with a -1, -2, etc. in accordance with I.I.C.

B. MAINTAINING THE DOCKET CARD AND APPEAL FILE

1. After a docket number has been assigned to an appeal and DMS has been updated with all relevant data, the Docket Clerk will prepare a docketing notice that includes the date the appeal is docketed, the appeal's case title, the agency that issued the decision being appealed, the underlying case number, the appeal subject, the docket number, directions on how to file documents with the Board, and a link to the Board's website. The Docket Clerk will email the docketing notice to the appellant if the email address is known and will email it to the Solicitor's Office attorney or, if the Solicitor's Office attorney is not yet known, the proper Office of the Solicitor. If the appellant has not yet provided an email address, the Docket Clerk will mail the docketing notice to the appellant by regular mail.
2. Every incoming or outgoing document in a pending appeal must be recorded on the Docket Card in the DMS.
3. For each new appeal, the Docket Clerk will create an electronic appeal file, which contains all materials the Board receives and generates during an appeal, including a courtesy copy of the notice of appeal, the decision being appealed, briefs, interim Board orders, and the agency's administrative record if the Board receives it electronically.
4. Depending on when the appeal was filed, the appeal file may be paper, electronic, or both. The appeal file for any appeal docketed before Fiscal Year 2020 is in paper form and can be found in the Board's docket room. For all appeals filed after Fiscal Year 2020, the Board will maintain a complete electronic appeal file. Any documents, except the administrative record, that are not filed electronically will be scanned and converted to a digital format to ensure that the electronic appeal file is complete. After these paper documents have been scanned and included in the electronic appeal file, they will be two-hole punched and placed in a paper appeal file on the metal fasteners in reverse chronological order, with the most recent document on top. After Fiscal Year 2020, the Board will only maintain a paper appeal file for documents that are submitted only in paper form. The Board will not maintain paper filings that have also been submitted electronically; the Board will dispose of the paper filings when they are duplicates of what has already been filed electronically.

C. ADMINISTRATIVE RECORDS

1. The Board encourages the agencies whose decisions we review to submit their administrative records to the Board electronically, using OneDrive. The Board also accepts administrative records submitted on a CD, DVD, or thumb drive. When an administrative record is submitted in electronic form through OneDrive or on a CD, DVD, or thumb drive, it will be copied into the electronic appeal file for the appeal. Once the material from the CD, DVD, or thumb drive has been successfully uploaded to the electronic appeal file, those data storage devices may be recycled in accordance with OHA document retainment policies.
2. If an agency submits its administrative record in paper form, then the Docket Clerk will request the agency to submit an electronic version of the administrative record. The paper administrative record will be placed in a paper appeal file, or if it is too big to place in a paper file folder, the Docket Clerk will mark the box(es) containing it with the docket number, place the box(es) on the shelves in the docket room, and note on the docket card that the administrative record is shelved separately from the appeal file.
3. Under 43 C.F.R. § 4.411(d)(3), the agency's administrative record is "compiled during the officer's consideration of the matter leading to the decision being appealed." While the parties may supplement the administrative record to correct an inadvertent omission, they cannot supplement the administrative record with materials that the agency did not consider when it made the decision on appeal. Nevertheless, the Board may accept newly submitted information and, to the extent it is deemed reliable and relevant to the issue presented on appeal, consider that information during the Board's review of the appeal.

II. INITIAL REVIEW OF APPEALS

A. ASSIGNMENT OF APPEALS

The Chief Administrative Judge's role is set out in the Department's regulations, which provide as follows: "The Chief Administrative Judge of an Appeals Board may direct that an appeal may be decided by a panel of any two Administrative Judges of the Board, but if they are unable to agree upon a decision . . . may assign one or more additional Administrative Judges . . . to consider the appeal." 43 C.F.R. § 4.2(a).

1. In accordance with the direction of the Chief Administrative Judge, the Docket Clerk assigns appeals to 2-judge panels, generally on a rotational basis (designating the lead judge and the panel judge), taking into consideration statutory or regulatory deadlines, OHA priorities, recusals, and management considerations. When an appeal is assigned, it may also be assigned to a staff attorney at the same time the lead and panel judges are assigned.
 2. Normally, the Docket Clerk will assign petitions for reconsideration, requests for attorney fees, and director/judicial remands to the same panel that decided the appeal.
 3. The Chief Administrative Judge may reassign the lead or panel judge in the interest of efficiency, productivity of the Board, or any other relevant consideration.
- B. EARLY IDENTIFICATION OF JURISDICTIONAL ISSUES, STAY PETITIONS, AND MOTIONS
1. The Board will resolve jurisdictional issues, stay petitions, and motions at the earliest opportunity.
 2. The Docket Attorney (or his/her designee) will review all incoming appeals to check for potential lack of jurisdiction (e.g., late notice of appeal, standing, ripeness, etc.), stay petitions, and motions (e.g., motions to intervene, dismiss, or request an extension of time, expedited consideration, or consolidation).
 3. Based on the demands of the Board's docket, the Chief Administrative Judge will determine whether to assign stay petitions to a staff attorney and the Deputy Chief Administrative Judge, or another administrative judge. Jurisdictional questions or motions that are received in the same appeal with a pending stay petition will generally be assigned to the same staff attorney and the administrative judge for drafting and issuance of an order adjudicating those matters.
 4. The Docket Attorney or someone assigned by the Docket Attorney will author orders addressing jurisdictional defects and responding to motions for all unassigned appeals.

C. EXPEDITED APPEALS

1. The Board prioritizes the oldest assigned appeals for disposition. However, the Board expedites some appeals to meet timeframes established by statute or regulation. For example, under 43 C.F.R. § 4.416, the Board must decide wildfire management appeals within 60 days after all pleadings have been filed or within 180 days after the appeal was filed, whichever is earlier. Under 43 C.F.R. § 4.478, the Board must decide appeals concerning stay orders in a grazing appeal “promptly” after issuing an expedited briefing schedule. Under 43 C.F.R. § 4.904, the Board loses jurisdiction of certain royalty appeals after 33 months, and the Board endeavors to issue a decision before it loses jurisdiction. SMCRA appeals regarding orders of cessation must be decided in 30 days under 43 C.F.R. § 4.1187(g), and SMCRA appeals concerning permit suspension or revocation must be decided in 60 days under 43 C.F.R. § 4.1197. The Board expedites other appeals as a matter of policy: for example, interlocutory appeals from the Departmental Cases Hearings Division, motions for reconsideration of the Board’s dispositive orders and decisions, and mining fee appeals.
2. When a judge is assigned as lead on an appeal that is designated for expedited review, the judge should prioritize its disposition ahead of other assignments when the appeal becomes ripe, unless otherwise directed by the Chief Administrative Judge. The Chief Administrative Judge may also set deadlines for the lead judge to provide a draft order or decision to the panelist and for the panelist to review the draft.
3. The Board may expedite other appeals in its discretion, either in response to a motion from a party or on its own initiative, when the Board determines that circumstances warrant expedited consideration. For example, the Board may consider an appeal ahead of when it would normally be adjudicated if the Board’s ruling would impact other pending appeals or establish a precedent that would be helpful, or if a party is facing particularly exigent circumstances (e.g., a short construction season or contractual obligations).
4. In all other appeals, the Board strives to resolve all active pending appeals promptly after the parties have completed briefing of the issues on appeal. Based on Board resources and other relevant factors, the Chief Administrative Judge may establish yearly Board timing objectives for resolving pending and newly filed appeals.

D. ALTERNATIVE DISPUTE RESOLUTION

The Board is committed to providing parties with the opportunity to resolve appeals through Alternative Dispute Resolution (ADR) techniques. The use of ADR provides a framework that gives the parties to an appeal the flexibility to craft more durable and creative solutions to disputes. Using ADR techniques can also save time and money associated with appeals and increase satisfaction with the appeal process and outcome of the appeal. The ADR Program is voluntary; all parties must agree to the ADR process.

1. An ADR process may be initiated at the beginning of the appeals process or during the pendency of the appeal, and either at the parties' initiative or the Board's. If the Board identifies an appeal as appropriate for an ADR process, the Board may invite the parties to consider ADR through a docketing notice or an order.
2. Where the parties agree to an ADR process, the Board will provide information and assistance so that the parties can understand and effectively participate in the process. Assistance may be provided directly, by an ADR Judge/attorney or through a neutral third-party mediator chosen by the parties (or a combination of both), to help the parties resolve their disputed issues.
3. Upon notice from the parties that they have agreed to pursue ADR, the Board will issue a suspension order placing the appeal on our inactive docket and suspending consideration until further order. At any time, after consultation with the other parties, a party may move to return the appeal to the Board's active docket for adjudication.
 - a. The suspension order will require the parties to inform the Board promptly if ADR is unsuccessful, at which time we will lift suspension and return the matter to the Board's active docket. The parties must also inform the Board if ADR is successful, at which time we will issue an appropriate order addressing the matters left for the Board to resolve or dismissing the matter.
 - b. Within two weeks of the date of the suspension order, an ADR Coordinator assigned by the Chief Administrative Judge will contact the parties to schedule an initial phone conference to discuss the ADR options available to the parties, identify which ADR process the parties wish to pursue, and establish timeframes for completing the process.

4. If the ADR process is successful, the parties will typically file a joint motion to dismiss the appeal or a joint motion to set aside and remand the decision on appeal.

E. RECUSAL

1. It is the responsibility of each judge to decide whether to be recused from an appeal. A judge must be recused from participation in an appeal when required by 18 U.S.C. § 208 (2018) (Acts affecting a personal financial interest), 5 C.F.R. § 2635.402 (Disqualifying financial interests), 5 C.F.R. § 2635.502 (Personal and business relationships), and 5 C.F.R. § 2635.702 (Use of public office for private gain). Each judge should also consult the relevant state bar rules for applicable requirements.
 - a. Examples of situations in which recusal is required include when the judge has personal knowledge of disputed evidentiary facts concerning the proceeding; the judge has participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular appeal in controversy; or the judge knows that the judge, the judge's spouse, or the judge's minor child has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.
 - b. There may be exceptions to these recusal requirements in specific situations. To invoke an exception, the judge must consult with the Ethics Office and receive its approval to participate in a particular proceeding.
 - c. If a judge has any questions about applying this standard to a particular appeal, the judge should contact the Departmental Ethics Office at DOI_Ethics@sol.doi.gov or (202) 208-7960.
2. The judge must report a recusal on a case-by-case basis to the Chief Administrative Judge, Deputy Chief Administrative Judge, and the Docket Attorney. The Docket Attorney will record the recusal on the Docket Card for the appeal in the Board's case management system. The judge will then be excluded from participating in any aspect of the appeal, including deliberation as a lead or panel judge, review and comment during circulation of any draft orders and decisions, and any Board meetings concerning the appeal.

3. When the Chief Administrative Judge is recused from a matter, the Deputy Chief Administrative Judge will assume the responsibilities of the Chief Administrative Judge for that matter, unless the Deputy Chief Administrative Judge is also recused. In such circumstances, the Docket Attorney will assign responsibilities to another judge.
4. The Board will identify judges who are recused from a matter in the order or decision resolving the appeal. The footnote will identify the recused administrative judge and state that the judge “took no part in the consideration or decision of this appeal.” In published decisions, the footnote may follow the header, “OPINION BY ADMINISTRATIVE JUDGE ...” In orders, the footnote may follow the header “ORDER.”

III. CONSOLIDATING APPEALS

When issues of fact or law in different appeals are the same or similar and it would be more efficient to consider those issues together, the Chief Administrative Judge (if the appeals are unassigned) or the lead judge may consolidate the appeals at any time upon motion of a party or on the Board’s initiative, pursuant to 43 C.F.R. § 4.404. The Chief Administrative Judge or assigned judge may also unconsolidate appeals at any time if it would promote the clear or efficient resolution of the appeals.

IV. PETITIONS FOR STAY

By regulation, the Board must generally grant or deny a petition for stay within 45 calendar days of the expiration of the time for filing a notice of appeal. 43 C.F.R. § 4.21(b)(4). If the Board does not rule on a petition for a stay within the 45-day deadline, the appellant may seek judicial review of the underlying decision. The regulations specify four criteria that are to be considered in ruling on a stay: (i) the relative harm to the parties if the stay is granted or denied; (ii) the likelihood of the appellant’s success on the merits; (iii) the likelihood of immediate and irreparable harm if the stay is not granted; and (iv) whether the public interest favors granting a stay. *Id.* § 4.21(b)(1).

A. ASSIGNMENT

The Docket Attorney (or his or her designee) will review all incoming appeals to determine if the appeal includes a petition for a stay of the agency decision. If it does, the Docket Clerk will assign the stay petition to the Deputy Chief Administrative Judge or as directed by the Chief Administrative Judge and enter the assignment on the Stay Petitions Spreadsheet, which is maintained in a shared

file. The Docket Clerk will inform the assigned attorney and judge of the date by which a stay must be granted or denied.

B. TIMEFRAME AND CRITERIA FOR RESOLVING A STAY

1. If a petition for stay is filed at the same time as the notice of appeal, the assigned judge will issue an order adjudicating the petition on or before 45 days after the end of the deadline for filing a notice of appeal.
2. If a stay petition is filed later in an appeal, the Board will adjudicate the petition, but the 45-day deadline does not apply.
3. If the agency opposes a stay, the judge must apply the stay criteria set forth at 43 C.F.R. § 4.21(b)(1)(i)-(iv) and (2). If one criterion is not satisfied, the petition will be denied. .
4. If the agency consents to a stay or affirmatively states it does not oppose the stay, the Board's practice is to grant the stay without considering the regulatory criteria.

C. HOLDING A STAY IN ABEYANCE

1. When a party has requested a stay but it is not clear that the Board has jurisdiction over the appeal, the lead judge must try to resolve both the jurisdictional issue and the stay within the regulatory 45-day deadline. If the 45-day stay deadline cannot be met, the lead judge must resolve the jurisdictional issue and the stay as soon as possible.
2. For transparency, the lead judge may issue an order holding the stay in abeyance, and tolling all filing deadlines, explaining that the Board must resolve the jurisdictional issue first.
3. Issuing such an order does not excuse the lead judge from meeting the 45-day deadline or, if not possible, resolving the jurisdictional issue and the stay as soon as possible.

V. EXPEDITIOUS ACTION ON REQUESTS AND MOTIONS

The Board has a regulatory requirement to resolve motions "expeditiously," 43 C.F.R. § 4.407(c), and will normally resolve requests and motions at the earliest opportunity. The Chief Administrative Judge may, in his or her discretion, impose deadlines for resolving motions.

A. TYPES OF MOTIONS AND REQUESTS

A variety of motions may be filed in an appeal before the Board. The following are examples and the relevant regulatory authority:

1. Motion for extension of time, 43 C.F.R. § 4.405
2. Motion to dismiss, 43 C.F.R. § 4.407(a) (motions generally), also 43 C.F.R. § 4.402
3. Motion to withdraw appeal, 43 C.F.R. § 4.407(a) (motions generally)
4. Motion to strike, 43 C.F.R. § 4.407(a) (motions generally)
5. Motion to compel, 43 C.F.R. § 4.407(a) (motions generally)
6. Motion to suspend consideration of an appeal, 43 C.F.R. § 4.407(a) (motions generally)
7. Motions to intervene or file amicus brief, 43 C.F.R. §§ 4.406, 4.1110 (appeals under the Surface Mining Control and Reclamation Act of 1977)
8. Motion for a hearing, 43 C.F.R. § 4.415
9. Motion to expedite consideration, 43 C.F.R. 4.407(a) (motions generally)
10. Requests to limit disclosure of confidential information, 43 C.F.R. § 4.31
11. Motion to exceed page limits, 43 C.F.R. §§ 4.412(a), (d)(2), 4.414(b)(1)
12. Motion to supplement the record, 43 C.F.R. 4.407(a) (motions generally)
13. Requests for oral argument, 43 C.F.R. § 4.25.

B. RESPONSES TO MOTIONS

Generally, parties to the appeal have 15 days after service of a motion to file a response. 43 C.F.R. § 4.407(b). The Board is not obligated to wait until the 15-day response period has run before ruling on a motion for an extension of time or other procedural motion subject to the Board's discretion.

VI. ORDERS TO SHOW CAUSE AND ORDERS FOR SUPPLEMENTAL BRIEFING

The Board has discretion to issue orders to show cause and orders for supplemental briefing when necessary to resolve a jurisdictional issue or any other issue in an appeal. The judge should resolve any issues the judge raises through one of these orders as soon as the Board receives the ordered briefing.

VII. STATUS CONFERENCES AND ORAL ARGUMENT

A. ORDERING STATUS CONFERENCES

The Board may order parties to appear at telephonic or video status conferences when appropriate to expedite resolution of the appeal. A lead judge may issue an order setting a status conference only in consultation with the panelist and with approval from the Chief Administrative Judge. Telephonic conferences will not be recorded or transcribed absent a prior request by one of the parties. All video conferences will be conducted on Microsoft Teams and recorded. For all status conferences, an order will be issued following the conference describing what occurred and any resulting directive from the Board.

B. GRANTING ORAL ARGUMENT

1. The Board may grant oral argument in its discretion, either at the request of a party or on its own initiative. But the Board typically does not provide for oral argument and instead may request additional briefing if necessary to fully adjudicate an appeal.
2. An order granting oral argument must be approved by the Chief Administrative Judge.

C. PROCEDURES FOR ORAL ARGUMENTS

1. Oral argument may be conducted in person, telephonically, or by video conference. If the Board has the equipment and capability to do so, oral argument may be transcribed or recorded for the record. The lead judge will issue an order to the parties at least 10 days in advance stating the time, place, and method of the argument.
2. If oral argument is conducted in person, it will normally be conducted in Arlington, Virginia, unless it involves a land selection under the Alaska Native Claims Settlement Act, in which case it will be conducted in Alaska

“for good cause shown.” *See* Hearings and Appeals Procedures, 47 Fed. Reg. 26,390 (June 18, 1982) (interim rule in response to Secretarial Order No. 3078 (Apr. 29, 1982), abolishing the Alaska Native Claims Appeal Board and consolidating the functions of that Board under the jurisdiction of the IBLA). The Chief Administrative Judge must approve oral arguments at locations other than Arlington.

VIII. DRAFTING ORDERS AND DECISIONS

A. GENERAL PROTOCOLS

1. Judges and attorneys will prepare decisions and orders using IBLA templates found on a shared drive and in accordance with the IBLA Formatting, Style, and Citation Manual. The Chief Administrative Judge will resolve disagreements concerning the proper style, citation, etc.
2. The lead judge may choose whether to draft an opinion as an order or decision. Generally, the lead judge should choose to issue an order instead of a decision unless the opinion addresses an issue of first impression, is necessary to reflect recent developments in Federal case law, or would update the law in an area the Board has not recently addressed (e.g., in the last five years).
3. The most common dispositions that the Board uses are affirmed, affirmed as modified, dismissed, reversed, vacated and remanded, and set aside and remanded.
4. Attorneys and judges must draft all decisions and orders so that they accurately state the material facts, legal issues, and applicable law. Decisions and orders must be concise, discuss only matters relevant to the issues presented by the appeal, and contain logical and clear analysis that is understandable by a wide audience.
5. No attorney or judge may use in an order or decision ad hominem, derisive, intemperate, or other language not consistent with judicial demeanor. Decisions and orders must be professional, neutral, and respectful in tone.
6. As a guideline, no decision or order should exceed 20 pages single-spaced.
7. A judge’s opinion may be adopted in whole or in part in a Board order or decision.

8. In deciding the merits of an appeal, the Board may adopt a previous analysis of the merits of the same appeal from a stay order that was based on an evaluation of the likelihood of success on the merits.

B. SAFEGUARDING CONFIDENTIAL MATERIAL AND PREVENTING THE DISCLOSURE OF PROTECTED INFORMATION

1. When the Board issues an order identifying and protecting confidential information, the Board places a “Confidential” sticker on the paper appeal file or in the folder or document name in the electronic appeal file. This practice alerts the staff attorneys and judges that there is a protective order in place.
2. It is the attorneys’ and judges’ responsibility to review the docket card for each assigned appeal to understand what orders have issued in that appeal and follow any protective orders that may have been issued in that appeal.
3. If there is no protective order in place, but an attorney or judge determines that there is material in the record that might be confidential (e.g., personally identifiable information, trade secrets, proprietary information, etc.), then the attorney or judge should show the information to the Docket Attorney and ask the Docket Attorney to place a “Confidential” sticker on the appeal file or add the word “Confidential” to a file name when it is in digital format.
4. When drafting an order or decision in an appeal in which confidential information is part of the file, the staff attorney and judges should only rely upon and reference the confidential information when necessary. If the confidential information is not necessary for the disposition of the appeal, it should not be relied upon or referenced in the order or decision.
5. A draft order or decision containing confidential information should so state when it goes into circulation. The lead judge must insert a Footer in the document that states: Not for Public Disclosure.
6. As soon as the panel signs the order or decision, the lead judge must issue to the parties a briefing order, attaching an unredacted copy of the order or decision, and inviting them to suggest specific redactions by a date certain. The final order or decision will not be issued until the parties respond and the panel determines what information, if any, will be redacted from the final order or decision.

7. The assigned staff attorney or the Docket Attorney's designate must redact anything from the final order or decision that the panel deems confidential by converting the Word document into an Adobe PDF and using the redaction tool. The staff attorney or designate should include in the footer of the document the following message: "Certain information in this [Order or Decision] has been withheld from public disclosure in accordance with the Freedom of Information Act."
8. It is the lead judge's responsibility to review the redactions and then give the Docket Clerk a redacted version of the order or decision for publication.

IX. REVIEW AND DISPOSITION OF APPEALS

A. DOCKET ATTORNEY AND COUNSEL TO THE BOARD RESPONSIBILITIES

1. The Docket Attorney maintains overall supervision of the Board's paralegals, docket clerks, legal assistants, and interns. The Chief Administrative Judge may designate another Board staff attorney to assist the Docket Attorney in supervising interns.
2. The Docket Attorney assures that appeals are docketed, assigned, and processed in accordance with the regulations, Board procedures, and precedent. The Docket Attorney monitors appeal status and ensures completion of required docket reports.
3. The Docket Attorney drafts procedural orders and summary dispositions.
4. The Docket Attorney answers procedural questions from parties and the public and communicates with parties about filings and appeal status as appropriate.
5. The Docket Attorney drafts responses to inquiries from the press and members of Congress and responds to requests filed with the Board under the Freedom of Information Act.
6. The Docket Attorney also holds the position of Counsel to the Board. As Counsel to the Board, the Docket Attorney advises the Board about developments in the law, Departmental practice, and appeal status; recommends the appropriate disposition of pending motions and appeals; and completes special projects as assigned.

B. ATTORNEY RESPONSIBILITIES

1. A staff attorney is assigned to an appeal for the duration of appeal processing, unless informed otherwise, and will help the assigned judges adjudicate the appeal during all phases of appeal processing.
2. Staff attorneys will review appeal files and administrative records, conduct legal research, and draft procedural orders, memoranda, and dispositive orders and decisions. Staff attorneys should email draft orders, decisions, and memoranda to the lead judge and save a copy of the draft on the J drive or another designated shared file.
3. The staff attorney should communicate with the assigned lead judge frequently to ensure their work aligns with the judge's chosen path for each appeal.
4. Staff attorneys should provide drafts in a timely manner, allowing sufficient time for review and circulation before any statutory or regulatory deadlines.
5. Staff attorneys should make any revisions the judge requests and, if requested, proofread and cite-check final orders and decisions to ensure consistency with the Board's Formatting, Style, and Citation Manual.

C. LEAD JUDGE RESPONSIBILITIES

1. After an appeal has been assigned, the lead judge will respond to any incoming motions and may issue non-dispositive orders without the signature of the panel judge, although consultation with the panel judge is encouraged, as appropriate. Any procedural issue that is resolved in a decision must be signed by both judges. A dispositive order requires the signature of both judges. An order referring an appeal for hearing by an Administrative Law Judge is considered a dispositive order.
2. The lead judge is responsible for ensuring that all timelines for appeal processing are met, including ensuring that the panel judge has sufficient time to review the draft, other Board judges have a full circulation period to review the draft, and the Board meets any applicable regulatory or statutory deadlines.
3. The lead judge is responsible for drafting the order or decision (which may entail working with an attorney draft) and for the initial editing and proofreading. The draft order or decision will be properly formatted, at 1.5

spacing, mostly free of typographical and grammatical errors, and generally consistent with the Board's Formatting, Style, and Citation Manual.

4. After the lead judge finalizes a draft order or decision, the judge will provide the appeal file and an electronic version of the draft to the panel judge. The lead judge is encouraged to also provide the panel judge copies of documents and research frequently cited or relied upon in the draft. Attorneys and lead judges are encouraged to create a folder in the proper digital appeal file for legal research. The lead judge will immediately notify the Docket Clerk by email of the date the draft was submitted to the panel judge.
5. When a draft is placed in circulation, the lead judge should make every effort to make the appeal file available to the other judges. In newer appeals, the file should be available to the Board members electronically. In older appeals, the lead or panel judge may place the file in the docket room on the circulating shelf or scan and make available electronically the file or important documents from the file. In a paper appeal file, all documents that are not part of the file (e.g., research, reference copies of filings) should be labeled and placed in a separate, colored folder in the appeal file.
6. The lead judge is responsible for responding to the panel judge's comments and suggestions, circulating the order or decision, responding to comments received during circulation (in consultation with the panel judge), and sending the document to the assigned staff attorney for proofing and cite-checking.
7. When transferring a draft order or decision to a panel judge, the lead judge should send the panel judge an electronic calendar reminder consistent with IX.D.3. below.

D. PANEL JUDGE RESPONSIBILITIES

1. The panel judge is responsible for reviewing the draft order or decision from the lead judge. If the panel judge is in general agreement with the draft, the panel judge should provide comments and suggestions (if any) for improving the draft, in writing, including any applicable research and analysis. The panel judge's comments may also include suggestions and edits for organization, content, grammar and usage, spelling, and punctuation. The panel judge must provide any suggested change to the draft in track changes.

2. If the panel judge disagrees with the initial draft with respect to the outcome of the appeal or the legal analysis, the judges should attempt to resolve their differences before proceeding in accordance with section IX.E.
3. For draft orders or decisions consisting of up to 25 pages of text, the panel judge initially has up to 10 working days to respond. For draft orders or decisions consisting of more than 25 up to 50 pages of text, the panel judge initially has up to 15 working days to respond. For draft orders or decisions consisting of more than 50 pages of text, the panel judge initially has up to 20 working days to respond.
4. The panel judge must make all efforts to meet the deadline for providing the lead judge with comments on a draft order or decision. If the panel judge needs an extension of time, the panel judge must ask the lead judge for additional time and inform the Chief Administrative Judge of any extension agreed upon. As a guideline, the panel judge should complete subsequent reviews and actions with respect to revised drafts within one week of receipt from the lead judge.
5. In the absence of any significant disagreement, the panel judge and lead judge should ensure the draft order or decision is promptly put into circulation upon completion of the panelist's review.

E. DIVIDED PANEL

1. If the panel judge disagrees with the lead judge's analysis or outcome, the panel judge must provide, in writing, their reasoning with citations to the record and applicable authorities within the timeframes in section IX.D.3.
2. The lead judge and panel judge will make a good faith effort to resolve disagreements with respect to the analysis or outcome of an appeal. If, however, within 10 working days after the lead judge receives the initial response from the panel judge, the panel is unable to resolve disagreements, the lead judge or panel judge should notify the Chief Administrative Judge, who will assign an additional judge, consistent with II.A.1., to the panel to consider the appeal. Notwithstanding the 10-day limit on efforts to resolve disagreements, at any time after the initial response of the panelist, either the lead judge or the panelist may request that the Chief Administrative Judge assign an additional judge to the panel. Before making such an assignment, the Chief Administrative Judge may meet with the panel to attempt to resolve their disagreement or call a Board meeting to discuss the appeal.

3. The additional judge will review the draft or drafts and the appeal record and provide their view of the appeal, in writing, to the panel within 10 working days or when the Chief Administrative Judge specifies.
4. When a majority decision is reached, either the original lead judge will remain the lead with the additional judge as panel, or the panel judge will become the lead judge with the additional judge as panel, as appropriate. The majority opinion must be completed as soon as possible and circulated no later than within 10 working days of reaching the majority decision.
5. Concurring and dissenting opinions are discouraged. However, on a case-by-case basis, the Chief Administrative Judge may allow the minority judge to issue a concurring or dissenting opinion in rare circumstances. Only a member of the original panel may write a concurrence or dissent. A dissent must address only the area(s) of disagreement and include supporting law and analysis. The concurrence or dissent will circulate with the majority opinion, within 10 working days of reaching the majority decision.
6. If a minority judge does not write a concurrence or dissent, that judge may nonetheless share their views with the rest of the Board during circulation or at a Board meeting at the discretion of the Chief Judge.

F. CIRCULATING DRAFT ORDERS AND DECISIONS FOR COMMENT

1. The lead judge must ensure that drafts are properly formatted, at 1.5 spacing, reviewed for proper grammar and style, and then submitted for circulation no later than 4:00 pm for the following business day to be counted as the first day of circulation. The lead judge submits a draft for circulation by sending an electronic version of the draft to the Docket Clerk, who places the draft in a designated shared file and notifies the Board via an electronic calendar notice that the draft is in circulation and identifies the deadline for comments.
2. The circulation period begins the day after a draft has been submitted for circulation, and the circulation period ends on the final day at the close of business (5:00 pm).
3. For draft dispositive orders consisting of up to 15 pages of text, the circulation period will be 4 working days. For draft dispositive orders consisting of 16 to 25 pages of text, and draft dispositive decisions up to 25 pages of text, the circulation period will be 5 working days. For draft dispositive orders and decisions consisting of 26 to 50 pages of text, the

circulation period will be 7 working days. For draft dispositive orders and decisions consisting of more than 50 pages of text, the circulation period will be 10 working days.

4. For draft stay orders and denials of motions to dismiss, the circulation period will be 2 working days. For draft stay decisions, the circulation period will be 4 working days. The Chief Administrative Judge may identify other procedural orders that must circulate and the length of circulation for those orders.
 5. The Chief Administrative Judge may determine that a shorter circulation period is necessary to meet a deadline, or a longer circulation period is necessary for a particularly complex draft order or decision. Also, if a panel has substantially revised a draft that has already circulated, the Chief Administrative Judge may require recirculation for a period to be determined on a case-by-case basis.
 6. Judges not assigned to the panel will review and provide comments on the drafts before the close of the circulation period. Judges may review the appeal file to assist in their review of the circulating draft. Judges will provide comments by track changes.
 7. If a reviewing judge needs more time to review a circulating draft, the judge should request an extension by emailing the lead judge and copying panel judge and the Chief Administrative Judge before the original deadline. If a judge submits comments after the close of the circulation period without an extension, the panel is not required to consider them.
- G. COMMENTING ON CIRCULATING DRAFTS AND RESPONDING TO COMMENTS
1. Reviewing judges who comment on a circulating draft should focus their comments on whether they agree with the outcome and analysis. Commenters may include suggestions for language and organization when deemed necessary for improving the clarity of the draft. Reviewing judges who provide a comment relating to the outcome or analysis of a draft must provide analysis and support for their comments, including appropriate legal and record citations.
 2. The lead judge will confer with the panel judge about all comments received.

- a. The panel may accept, reject, or modify any comments about grammar and usage, spelling, punctuation, etc., without any response to the commenter.
 - b. The panel must provide a response to all substantive comments, indicating what changes to the draft, if any, the panel proposes to make to satisfy the comments and explaining the reasons for its response.
 - c. The panel must place a track changes version of the document showing all changes in the designated shared file. The lead judge must notify all the judges by email of the revised document (an email transmitted after 5:00 pm will be treated as sent the next day for computing the response time). If there were substantive comments, judges will have one full working day after notification to review the revisions and responses to comments and notify the panel whether they have any remaining concerns. For appeals involving petitions for stay, the recirculation period may be shortened at the discretion of the lead judge to ensure the order or decision is timely issued.
3. If all commenters are satisfied, or if the panel receives no timely replies, the panel may issue the order or decision.
 4. If a commenter finds that his or her comments were not resolved, the commenting judge may notify the panel and the Chief Administrative Judge by the end of the one-day review period and request a Board meeting.

H. RESOLVING DISAGREEMENTS ON CIRCULATING DRAFTS

1. Upon receipt of a request for a Board meeting, the Chief Administrative Judge may call a meeting of all the judges on the Board to discuss the draft or may first meet with the requesting judge(s) and panel to see if a proposed resolution may be reached without a Board meeting. The Chief may also call a Board meeting on his or her own initiative.
2. If the Chief Administrative Judge calls a Board meeting, the Chief will provide all judges an opportunity to express their views. The Chief may require Board members to provide their views in writing to the other Board members in advance of the meeting. The outcome of an appeal will be determined by a majority of the judges on the Board.
3. If the majority of judges concurs during the Board meeting that the panel draft should be issued without further revision, the Chief Administrative

Judge will authorize the opinion to be issued. If the majority of judges believes further revisions should be considered, the Chief Administrative Judge will determine whether the appeal can most effectively be disposed of (1) by the current panel, (2) by assigning an additional judge to consider the appeal, or (3) by assigning all administrative judges attending the meeting to consider the appeal (en banc). The Chief Administrative Judge may also direct additional research, drafts, and meetings.

4. If a revised draft or dissent is prepared, it will be circulated for comment by all judges upon a schedule established by the Chief Administrative Judge.

X. FINAL ORDERS AND DECISIONS

A. PROOFING

1. The lead judge is responsible for sending the final order or decision for proofing and cite-checking. When the lead judge sends the order or decision for proofing and cite-checking, the judge will also provide the appeal file. The lead judge is encouraged to also provide copies of documents and research frequently cited or relied upon in the final order or decision.
2. Typically, the paralegal or attorney who drafted the order or decision will proof it. If the paralegal or attorney who drafted the order or decision is unavailable, or if no attorney has been assigned to the appeal, then the lead judge should ask the Docket Clerk to assign another staff member (an attorney, a legal intern, a paralegal, or a legal assistant, as specified by the Docket Attorney), to proof the order or decision, which the Docket Clerk will do on a rotational basis.
3. A judge should expect that a final order or decision will be proofed within three working days for any draft containing up to 25 pages (1.5 spaced) and 5 working days if the draft is longer than 25 pages (1.5 spaced) once the proofing attorney or paralegal has been provided all necessary documents and files.. The lead judge, in consultation with the Chief or Deputy Chief if necessary, may approve adjustments to these timeframes on a case-by-case basis, depending on priorities and workload.
4. Staff must proof and cite-check any order or decision in accordance with the Board's Formatting, Style, and Citation Manual and any proofing instructions.

5. The staff member should then email the proofed order or decision, in track changes, to the lead judge. A copy of the proofed document should be saved to the Proofing folder on the designated shared drive. The staff member will also return the appeal file to the lead judge.

B. PREPARING, SIGNING, AND ISSUING FINAL ORDERS AND DECISIONS

1. For orders, the lead judge prepares the final draft for signature. For decisions, the lead judge sends the final draft to the Docket Clerk, who inserts volume and page numbers and provides the final version to the lead and panel judges for signature.
2. The lead judge and panel judge will sign the final version of the order or decision. Both signatures will be made electronically to a PDF of the final order or decision on the date of issuance.
3. The lead judge must submit the final signed version of an order or decision, along with the appeal file, to the Docket Clerk or Legal Assistant for issuance and distribution no later than 4:00 pm to be dated and credited as of that day. If a lead judge submits a final order or decision after 4:00 pm, it will have to be resubmitted the next day with new electronic signatures.

C. DISTRIBUTION OF FINAL ORDERS AND DECISIONS

The Docket Clerk or Legal Assistant will distribute all final Board orders and decisions. The Docket Clerk or Legal Assistant will email all final Board orders and decisions to the parties and others listed in DMS or other case management system. Orders and decisions will be mailed to a party who does not have an email address of record. The original of the order or decision will be placed in the file.

D. RECORD-KEEPING AND CERTIFYING THE RECORD

1. The lead judge is responsible for closing the appeal file. If an attorney was assigned to the appeal and completed a draft dispositive order or decision, the lead judge may direct that attorney to close the appeal file. If the appeal file is electronic, nothing needs to occur.
2. If the appeal file is paper, then the lead judge must ensure that it and the agency's administrative record are organized as they were originally received: all pleadings are two-hole punched and placed on the right-hand side of the appeal file in reverse chronological order, with the most recent

document on top, and the agency's administrative record, if provided on a CD, DVD, or thumb drive, is placed in an envelope on the metal fastener on the left-hand side of the Board's appeal file. All documents that are not part of the appeal file or administrative record (e.g., research, reference documents) must be removed.

3. The lead judge must give the Board's paper file and agency's administrative record to the Docket Clerk with the signed order or decision disposing of the appeal. The Docket Clerk will ensure that all contents are accounted for and the record can be certified.
4. Once an appeal has been decided, the Docket Clerk closes it in DMS. Unless the parties stipulated to dismissal, the file is retained for 70 calendar days until expiration of the time for filing a petition for reconsideration or a petition for attorney's fees. If the parties stipulated to dismissal, the file may be returned immediately; no certification is necessary.
5. Unless the parties stipulated to dismissal, the Board will certify that the record is complete; the file will not be returned to the agency without a record certification. The Docket Attorney signs all record certifications.
6. If the Secretary or Director exercises jurisdiction over an appeal in accordance with 43 C.F.R. § 4.5, and the file is in the possession of the Board, the Docket Clerk will ensure that the file is timely transmitted to the appropriate office and that evidence of receipt by that office is maintained by the Board.

XI. MOTIONS FOR RECONSIDERATION

A party may file a motion for reconsideration within 60 days of the date of a decision or order under 43 C.F.R. § 4.403. The regulation provides that any other party to the original appeal has 21 days from the date of service of the motion for reconsideration to file a response. The Board docket motions for reconsideration as new appeals, using the original appeal number and adding "-1" after it. Typically, the Docket Clerk will assign a motion for reconsideration to the same attorney and panel of judges who worked on the original appeal. The Board's policy is to expedite motions for reconsideration as specified under II.C.

XII. EX PARTE COMMUNICATIONS

A. DEFINITION OF EX PARTE COMMUNICATIONS

1. 43 C.F.R. § 4.27(b) prohibits any communication concerning the merits of a proceeding between (1) any party to the proceeding, or any person interested in the proceeding, or any representative of a party or interested person and (2) any Office of Hearings and Appeals personnel involved or who may reasonably be expected to become involved in the decision-making process of that proceeding unless the communication is made in the presence of all other parties or their representatives (if it is an oral communication) or it is furnished to all other parties (if it is written).
2. “Proceedings,” “interested person,” and “person interested in the proceeding” are defined in 43 C.F.R. § 4.27(b). Proceedings include pending appeals, rulemakings that might affect a pending appeal, and requests for reconsideration or review by the Director.
3. 43 C.F.R. § 4.27(b) does not prohibit communications concerning appeal status or advice concerning compliance with procedural requirements unless the area of inquiry is an area of controversy in the proceeding.

B. PROCEDURES FOR HANDLING EX PARTE COMMUNICATIONS

1. When an oral ex parte communication occurs, it must be documented with a memorandum to the file written by the OHA staff member who made or received the communication. A copy of the memorandum must be included in the record and provided to all parties, who must be given an opportunity to respond.
2. Any written ex parte communication must be included in the record and a copy provided to all parties, who must be given an opportunity to respond. Normally, an order (“*Ex parte* communication provided”) is prepared giving the parties time to respond to the memorandum or written communication if they wish to do so.
3. If it is not clear from a document that service was provided in accordance with 43 C.F.R. §§ 4.401(c) and 4.413, then the Docket Attorney may prepare an order (“Completion of service”) that includes a copy of the document or directs a party to serve it. Depending on the document that does not conform, the Board can set a briefing schedule giving the served parties an opportunity to respond.

XIII. EXTERNAL COMMUNICATION

A. RESPONDING TO PUBLIC REQUESTS TO REVIEW AN APPEAL FILE AND OTHER FOIA REQUESTS

Nonparties to an appeal must file a Freedom of Information Act (FOIA) request with the Board (foia@oha.doi.gov) if they wish to access documents filed in a pending appeal. The Docket Attorney responds to all FOIA requests in accordance with the Department's implementing regulations at 43 C.F.R. Part 2. The Docket Attorney will coordinate responses with the Director's Office as appropriate, consistent with the procedures in the OHA Manual.

B. RESPONDING TO MEDIA REQUESTS

1. Anyone on the Board who receives a request from the media about the Board or a pending appeal should send the request or, if the request was not in writing, a summary of the request to the Docket Attorney. The Docket Attorney will inform the requester that the Department's Office of Communications will respond to the request.
2. The Docket Attorney will prepare a response to the request and forward it with the incoming request to the Chief Administrative Judge with a copy to the Deputy Chief.
3. The Chief Administrative Judge will forward the media request and draft response to the Director and Deputy Director of OHA, who will in turn forward the request and response to the Department's Office of Communications.
4. The Office of Communications will respond directly to the requester on the Board's behalf.

C. RESPONDING TO CONGRESSIONAL INQUIRIES

1. Anyone on the Board who receives a request or other communication from Congress or a member of Congress about the Board or a pending appeal should send the request or, if the request was not in writing, a summary of the request to the Docket Attorney.
2. The Docket Attorney will prepare a response to the request and forward it with the incoming request to the Chief Administrative Judge with a copy to the Deputy Chief.

3. The Chief Administrative Judge will forward the request and draft response to the Director and Deputy Director of OHA for their review and approval. The Director or Deputy Director will determine who should sign the response and whether they or IBLA should consult with the Department's Office of Congressional and Legislative Affairs.

D. RESPONDING TO OTHER CORRESPONDENCE

Generally, the Docket Attorney drafts responses to correspondence for the Chief Administrative Judge's signature. The Chief Administrative Judge will forward the request and draft response to the Director and Deputy Director of OHA for their review and approval.

XIV. INTERNAL MANAGEMENT

A. CHIEF'S AUTHORITY

"The Chief Administrative Judge . . . is responsible for the internal management and administration of the Board, and . . . is authorized to act on behalf of the Board in conducting correspondence and in carrying out such other duties as may be necessary in the conduct of routine business of the Board." 43 C.F.R. § 4.2(c). This includes the functions described in this Manual; judge and staff attorney assignments; approval of any office-related travel or training; approval of administrative judges' leave and Quicktime; and responding to communications from the public, the Department, or members of Congress. The Chief Administrative Judge may delegate any of these duties to the Deputy Chief Administrative Judge. The Chief Administrative Judge may refer inquiries concerning the status of appeals to the Docket Attorney.

The Chief Administrative Judge will hold periodic staff meetings to share news about OHA policies and procedures, management initiatives, and any other office developments.

B. CASE MANAGEMENT

Administrative judges are expected to manage their case load, balance competing priorities, and meet all deadlines set by statute, regulation, or the Chief Administrative Judge. The Chief Administrative Judge has discretion to reassign appeals and impose deadlines to enhance the Board's productivity and efficiency.

C. PROFESSIONALISM

All Board staff must comply with the OHA Manual. All Board staff are expected to treat each other collegially and respectfully to ensure a positive and productive working environment.

XV. MANUAL REVISIONS AND AMENDMENTS

The Chief Administrative Judge may revise or amend this Manual by memorandum to the Board or by issuing a revised Manual. The Manual and any revisions or amendments will be available on a shared drive.