

BLM Grazing Regulation Scoping Comments
Seth Flanigan, Project Manager
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Via email to: BLM_WO_grazing_email@blm.gov

March 6, 2020

Re: Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision of Grazing Regulations for Public Lands (Federal Register/Vol. 85, No. 13/Tuesday, January 21, 2020)

Dear Mr. Flanigan:

Please accept on behalf of the undersigned organizations the following comments in response to the January 21, 2020 Federal Register notice (85 FR 3410) soliciting public comments on the Bureau of Land Management's (BLM) proposed revisions to the grazing regulations (43 CFR § 4100 et seq.).

I. Submission of An Alternative

The undersigned respectfully submit an alternative for revised grazing regulations and request that the alternative be fully analyzed in the environmental impact statement (EIS). The alternative is a set of revisions to the BLM grazing regulations that will address the scope of issues noted in the January 21, 2020 Federal Register *Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Revision of Grazing Regulations on Public Lands*.

In its workshop document regarding desired comments during the scoping period ending March 6, "Commenting on BLM Grazing Regulation Updates," the BLM urges commenters in this scoping period to "Offer an [sic] alternative solutions and ideas." We intend for the BLM to publish our proposed regulations revisions as one among the range of alternatives in the Draft Environmental Impact Statement (DEIS). Because the BLM did not provide in the Notice of Intent a specific format by which the BLM will propose grazing regulations revisions in the DEIS, we request that BLM feature and consider our proposed revisions in a parallel format as other alternatives, without altering any of the proposed revisions we are submitting on March 6, 2020.

The alternative we provide in these scoping comments is within the scope of this revisions process and proposes reasonable, prudent and well-thought-out grazing administration and grazing use provisions. As discussed in further detail below (Section III), the National Environmental Policy Act (NEPA) requires that the agency consider reasonable alternatives in the EIS for BLM grazing regulations revision. This range of alternatives is not limited to only those crafted by the agency, but must also include approaches and alternatives proposed by the public, stakeholders, cooperating agencies,

as well as other interested parties, so long as those alternatives fall within the scope of the analysis, are reasonable, and accomplish the management goals and obligations of the agency.

II. The alternative is within the scope of this revisions process

The Notice of Intent seeks proposals to address the following:

- **Updating and modernizing the regulations**, including revising definitions to provide more accurate and concise descriptions of the terms, and to align with current statutory, and regulatory authorities; rewording certain sections to improve readability and understanding; and considering ways to improve grazing permit administration, such as: transfers of grazing preference; provisions that allow for greater flexibility for using livestock grazing to address fuel loads and protect areas with high quality habitat from wildfire; continued Resource Advisory Committee review of rangeland improvements and allotment management plans; and emergency public consultation.
- **Improving permitting efficiency**. This could include, for example, changing how the BLM issues decisions for crossing permits, temporary nonrenewable permits, and authorizing grazing to reduce wildfire risk, expanded or clarified use of NEPA categorical exclusion authorities, and streamlining protest and appeal processes.
- **Promoting land health**. Considering where and how the BLM will evaluate the Land Health Fundamentals and Standards. Explore ways to use livestock grazing to reduce wildfire risk and improve rangeland conditions.
- **Public participation**. The BLM seeks to ensure adequate participation of all stakeholders without unduly burdening administrative processes. [Bold added for emphasis]

The alternative we are submitting falls within the scope of the proposed revision issues. It is reasonable and feasible for the BLM and permittees/lessees, revises and adds definitions, rewords certain sections in readable language, and suggests ways to improve permit administration to ensure both public participation of all stakeholders and efficient administration. Its emphasis on native species, provisions for annual conservation use authorization, and mandatory evaluations of allotment conditions at least once every ten years promote land health. Permitting efficiencies will be obtained through provisions for increased non-use; permittee responsibilities such as confirming that all range improvements are maintained prior to turnout; a uniform utilization standard of 30%; and more consistency around data management, inventory, and evaluations. While some may argue that enhanced participation of stakeholders (e.g., bird watchers, predator advocates, hunters, independent scientists, campers) encumbers rather than streamlines process, we assert that enhanced stakeholder participation opportunities earlier in the process results in time and cost savings overall; it builds trust, identifies conflicts and problems early, and provides the time to identify resolutions. Stakeholder engagement produces more robust decisions.

The alternative should remain intact for presentation within the Draft EIS. While the BLM proposal(s) are likely internally consistent, we have likewise proposed an internally consistent set of grazing regulation revisions. The alternative deserves agency and public comparison of its social and environmental consequences with the BLM proposal(s). The proposed alternative (**Attachment 1**) is followed by the rationale for its major elements (**Attachment 2**).

III. A range of reasonable alternatives is required by CEQ regulation

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a), 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env'tl. Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. See, e.g., *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). The consideration of more environmentally protective alternatives is also consistent with FLPMA’s requirement that BLM “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §1732(d)(2)(a).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e., the applicant’s proposed project).” *Col. Env'tl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999), citing *Simmons v. U.S. Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the EIS from becoming “a foreordained formality.” *City of New York v. Dep’t of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983). See also *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).

Further, in defining what is a “reasonable” range of alternatives, NEPA requires consideration of alternatives “that are practical or feasible” and not just “whether the proponent or applicant likes or is itself capable of carrying out a particular alternative”; in fact, “[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable.” Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, Questions 2A and 2B, available at <https://www.energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>; 40 C.F.R. §§ 1502.14, 1506.2(d).

Thank you for the opportunity to submit a comprehensive, reasonable alternative. We look forward to meeting with you to discuss the format of alternatives within the upcoming Draft EIS.

Sincerely,

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Attachment 1: An Alternative Set of Grazing Regulation Revisions
Attachment 2: Rationale for Major Elements in the Alternative

Attachment 1. An Alternative Set of BLM Grazing Regulation Revisions

43 CFR 4100

Proposed Grazing Regulations Revisions

A reasonable alternative emphasizing
efficiency, public accountability, science, and native species
on BLM lands

[Code of Federal Regulations]

[Title 43, Volume 2, Parts 1000 to END]

[Revised as of October 1, 1996]

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[CITE: 43CFR4100]

TITLE 43--PUBLIC LANDS: INTERIOR

DEPARTMENT OF THE INTERIOR

PART 4100--GRAZING ADMINISTRATION--EXCLUSIVE OF ALASKA

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Subpart 4180--Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

- 4180.1 Fundamentals of rangeland health.
- 4180.2 Standards and guidelines for grazing administration.

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

Source: 43 FR 29067, July 5, 1978, unless otherwise noted.

Subpart 4100--Grazing Administration--Exclusive of Alaska; General

Sec. 4100.0-1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska.

[49 FR 6449, Feb. 21, 1984]

Sec. 4100.0-2 Objectives.

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, **conservation** and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; ~~and to provide for the sustainability of natural ecosystems and the integrity of watersheds that are dependent upon productive, healthy public lands; to provide management that over the long term ensures the productivity of the land and the quality of the environment are not impaired;~~ and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740); **the Endangered Species Act of 1973, as amended (16 U.S.C. Chapter 35); the Clean Water Act of 1970, as amended (33 U.S.C. §1251 et seq.); and the National Environmental Policy Act of 1970 (42 U.S.C. Chapter 55).**

[60 FR 9960, Feb. 22, 1995]

Sec. 4100.0-3 Authority.

- (a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C.315, 315a through 315r);
- (b) The Federal Land Policy and Management Act of 1976 (43 U.S.C.1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);
- (c) Executive orders transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.
- (d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 118(d));
- (e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.)
- (f) the Clean Water Act of 1970, as amended (33 U.S.C. §1251 et seq.);**
- (g) the National Environmental Policy Act of 1970 (42 U.S.C. Chapter 55);**
- (h) the Endangered Species Act of 1973, as amended (16 U.S.C. Chapter 35); and**

(i) Public land orders, Executive orders, and agreements authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6449, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984; 50 FR 45827, Nov. 4, 1985; 61 FR 4227, Feb. 5, 1996]

Sec. 4100.0-5 Definitions.

Whenever used in this part, unless the context otherwise requires, the following definitions apply:

The Act means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r).

Active use means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

Actual use report means a report of the actual livestock grazing use submitted by the permittee or lessee.

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term "control" means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

Allotment means an area of land designated and managed for grazing of livestock.

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month, **based on current livestock weights.**

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

Authorized officer means any person authorized by the Secretary to administer regulations in this part.

Base property means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for ~~a~~the specified period of the year **when they are not on public lands**, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

Cancelled or cancellation means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

Class of livestock means ages and/or sex groups of a kind of livestock.

Chiefly valuable for grazing and raising forage crops means public lands not within

(1) designated critical habitat for a species protected under the Endangered Species Act where domestic livestock grazing has been found to be a factor contributing to the decline of the species;

(2) the National Landscape Conservation System (16 U.S.C. 7201 et seq.);

(3) an Area of Critical Environmental Concern; or

(4) other public lands designated in a land use plan as not being available for grazing, based on, but not limited to:

- other uses for the land;
- terrain characteristics;
- soil, vegetation, and watershed characteristics;
- the presence of undesirable vegetation, including significant invasive weed infestations; and
- the presence of other resources that may require special management or protection, such as special status species and special recreation management areas.

Conservation use means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of--

(1) Protecting the land and its resources from destruction or unnecessary injury;

(2) Improving ~~rangeland conditions~~; or **native vegetation and** wildlife habitat;

(3) Enhancing resource values, uses, or functions;

(4) Improving water quality and/or quantity; or

(5) Aiding in the conservation of species, or the ecosystems upon which they depend, that are listed, proposed for listing, or being considered for listing under the Endangered Species Act and special status species as defined in Bureau of Land Management Manual 6840.

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

Control means being responsible for and providing care and management of base property and/or livestock.

District means the specific area of public lands administered by a District Manager.

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing.

Grazing district means the specific area within which the public lands are administered under section 3 of the Act. Public lands outside grazing district boundaries are administered under section 15 of the Act.

Grazing fee year means the year used for billing purposes, which begins on March 1, of a given year and ends on the last day of February of the following year.

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference or preference means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Interested public means an individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decisionmaking process for the management of livestock grazing on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 et seq.) and establish management direction for resource uses of public lands.

Livestock or kind of livestock means species of domestic livestock--cattle, sheep, horses, burros, goats, and privately owned bison.

Livestock carrying capacity means the maximum stocking rate possible without inducing damage to vegetation, riparian areas, soils or related resources. This is the allocation within an allotment of a maximum of 25% to permitted livestock use. It may vary from year to year on the same area due to fluctuating forage production.

Monitoring means the periodic observation and orderly collection of data based on scientific principles by the Bureau, the public, or the permittee to evaluate:

(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives.

Permitted use means the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs. **Permitted use cannot exceed the livestock carrying capacity.**

Public lands means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands held for the benefit of Indians.

Range improvement means an authorized physical modification or treatment which is designed to improve production of **native** forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means. **No treatment projects or use of mechanical devices to achieve modifications shall be authorized as range improvements: 1) unless there is a demonstrable net benefit to natural ecological systems and native vegetation; or 2) where removal of native vegetation is the primary goal of the physical modification or treatment.**

Rangeland studies means any study methods ~~accepted by the authorized officer~~ **based on objective, repeatable methods** for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met **based on the best available science**

Secretary means the Secretary of the Interior or his authorized officer.

Service area means the area that can be properly grazed by livestock watering at a certain water.

State Director means the State Director, Bureau of Land Management, or his or her authorized representative.

Supplemental feed means a feed which supplements the forage available from the public lands. ~~and is provided to improve livestock nutrition or rangeland management.~~

***Supplements* mean salt, minerals and protein blocks which are provided to improve livestock nutrition or rangeland management.**

Suspension means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the permitted use in a grazing permit or lease.

Temporary nonuse means the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to a request of the permittee or lessee.

Trend means the **measurable** direction of change over time, either toward or away from management objectives.

Unauthorized use (trespass) means livestock in a pasture or allotment, or at a time not permitted, or in numbers that exceed the permitted use. Unauthorized use can either be non-willful or willful. Non-willful trespass is trespass due to circumstances beyond the control of the owner of the unauthorized livestock (e.g., in the immediate aftermath of a natural disturbance causing significant destruction of fences). Willful trespass is trespass due to permittee negligence or failure to comply with permit terms and conditions.

Unauthorized leasing and subleasing means--

- (1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;
- (2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;
- (3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of Sec. 4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or
- (4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of Sec. 4130.7(f), to graze livestock on public lands under a pasturing agreement ~~without the approval of the authorized officer~~ **or similar instrument**.

Utilization means the portion of forage that has been consumed **or trampled** by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use. **Utilization shall not exceed 30% of the current year's production.**

[43 FR 29067, July 5, 1978, as amended at 46 FR 5788, Jan. 19, 1981; 53 FR 10232, Mar. 29, 1988; 60 FR 9961, Feb. 22, 1995]

Sec. 4100.0-7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

[60 FR 9962, Feb. 22, 1995]

Sec. 4100.0-8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall identify public lands chiefly valuable for grazing and raising forage crops as required by the Taylor Grazing Act (43 U.S.C.315, 315a through 315r) and public lands available or unavailable for grazing as required in the Bureau of Land Management Handbook 1601-1 and consistent with the Federal Land Policy and Management Act (16 U.S.C Subchapter II).. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

[53 FR 10233, Mar. 29, 1988]

Sec. 4100.0-9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004-0005, 1004-0019, 1004-0020, 1004-0041, 1004-0047, 1004-0051, and 1004-0068. The information would be collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: Clearance number 1004-0005 is estimated to average 0.33 hours per response, clearance number 1004-0019 is estimated to average 0.33 hours per response, clearance number 1004-0020 is estimated to average 0.33 hours per response, clearance number 1004-0041 is estimated to average 0.25 hours per response, clearance number 1004-0047 is estimated to average 0.25 hours per response, clearance number 1004-0051 is estimated to average 0.3 hours per response, and clearance number 1004-0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0005, -0019, -0020, -0041, -0047, -0051, or -0068, Washington, DC 20503.

[60 FR 9962, Feb. 22, 1995]

Subpart 4110--Qualifications and Preference

Sec. 4110.1 Mandatory qualifications.

(a) Except as provided under Secs. 4110.1-1, 4130.5, and 4130.6-3, to qualify for grazing use on the public lands an applicant must own or control land or water base property **sufficient to support the applicant's livestock herd for the period when they are not permitted or authorized on public lands**, and must be:

- (1) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or
- (2) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or
- (3) A corporation authorized to conduct business in the State in which the grazing use is sought.

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) *Renewal of permit or lease.* (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in ~~substantial~~ compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in ~~substantial~~ compliance with permit or lease terms and conditions and applicable rules and regulations.

(iii) The authorized officer may not take into consideration temporary nonuse or conservation use by an applicant in determining whether the applicant and affiliate are in compliance with the permit or lease terms and conditions and applicable rules and regulations.

(iv) The authorized officer may not renew a permit or lease if an evaluation and determination that the allotment is in compliance with subpart 4180 has not been made within the past 10 years or since the last time the permit or lease was renewed if less than 10 years.

(2) *New permit or lease.* Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when--

(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation of the permit or lease within the ~~36 calendar months~~ **7 years** immediately preceding the date of application; or

(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the ~~36 calendar months~~ **7 years** immediately preceding the date of application; or

(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

(c) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(d) Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6450. Febr. 21, 1984; 60 FR 9962. Fe. 22, 1995]

Sec. 4110.1-1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of Sec. 4110.1.

[60 FR 9962, Feb. 22, 1995]

Sec. 4110.2 Grazing preference.

Sec. 4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see Sec. 4100.0-5) if:

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; ~~or during any period when livestock are neither authorized nor permitted on public lands nor supported on leased lands;~~ or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district ~~during any period when livestock are neither authorized nor permitted on public lands.~~

(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during ~~the~~ **any year, based on herd size, livestock forage and water consumption.**

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section. A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed **water developments at the same site** or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

(d) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2-3, to the new owner or person in control of that base property.

(e) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

Sec. 4110.2-2 Specifying permitted use.

(a) Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, and conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under Sec. 4110.3-3 **but in no case shall be greater than 25% of the forage production**, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands, **giving full consideration to the needs of native wildlife species.**

(b) The permitted use specified shall attach to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of permitted use attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

[53 FR 10233, Mar. 29, 1988, as amended at 60 FR 9963, Feb. 22, 1995; 61FR 4227, Feb. 5, 1996]

Sec. 4110.2-3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all qualifications and requirements of Secs. 4110.1, 4110.2-1, and 4110.2-2.

(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under Sec. 4120.3 and maintained in conjunction with the transferred preference (see Sec. 4120.3-5). The terms and conditions of the cooperative range improvement agreements and range improvement permits are binding on the transferee.

(3) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see Sec. 4130.2 approved by the authorized officer or with such modifications as may be required by the authorized officer.

(4) The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with the authorized officer a properly executed transfer application showing the base property and the amount of permitted use being transferred in animal unit months.

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. If the applicant leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

(d) At the date of approval of a transfer, the existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

(g) Failure of either the transferee or the transferor to comply with the regulations of this section may result in rejection of the transfer application or cancellation of grazing preference.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5788, Jan. 19, 1981; 47 FR 41709, Sept. 21, 1982; 49 FR 6450, Feb. 21, 1984; 53 FR 10233, Mar. 29, 1988; 60 FR 9963, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Sec. 4110.2-4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

[60 FR 9963, Feb. 22, 1995]

Sec. 4110.3 Changes in permitted use.

The authorized officer shall ~~periodically~~ review the permitted use specified in a grazing permit or lease **and the livestock carrying capacity prior to the expiration of each permit** and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part **and the maximum forage allocation of 25 percent.** ~~These changes-~~ **Any increase in permitted use** must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer **showing that actual use is resulting in compliance with rangeland health standards and conformance with guidelines, that permitted use does not exceed the livestock carrying capacity of the allotment, and forage utilization is no more than 30 percent.**

[60 FR 9963, Feb. 22, 1995]

Sec. 4110.3-1 Increasing permitted use.

Additional forage may be apportioned to qualified applicants for livestock grazing use consistent with **the livestock carrying capacity and** multiple-use management objectives.

(a) Additional forage temporarily available for livestock grazing use may be apportioned on a nonrenewable basis.

(b) Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of suspended permitted use to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.

(c) After consultation, cooperation, and coordination with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportioned in the following priority:

- (1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;
- (2) Permittee(s) or lessee(s) in proportion to the amount of their permitted use; and
- (3) Other qualified applicants under Sec. 4130.1-2 of this title.

[53 FR 10233, Mar. 29, 1988, as amended at 60 FR 9963, Feb. 22, 1995]

Sec. 4110.3-2 Decreasing permitted use.

(a) Permitted use ~~may~~ shall be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes that substantially decrease forage, or may be suspended in whole or in part to ~~or~~ facilitate installation, maintenance, or modification of range improvements. (b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or degradation of riparian areas or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

[53 FR 10234, Mar. 29, 1988, as amended at 60 FR 9963, Feb. 22, 1995]

Sec. 4110.3-3 Implementing reductions in permitted use.

(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing Sec. 4110.3-2 shall be issued as proposed decisions pursuant to Sec. 4160.1, except as provided in paragraph (b) of this section.

(b) When the authorized officer determines that the soil, vegetation, wetland-riparian areas, fish, wildlife, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees or

lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

[60 FR 9963, Feb. 22, 1995]

Sec. 4110.4 Changes in public land acreage.

Sec. 4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock ~~shall~~ **may** be made available to qualified applicants at the discretion of the authorized officer **and consistent with the governing land use plan**. Grazing use shall be apportioned under Sec. 4130.1-2 of this title.

[53 FR 10234, Mar. 29, 1988]

Sec. 4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see Sec. 4120.3-6).

[43 FR 29067, July 5, 1978, as amended at 49 FR 6451, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984; 54 FR 31485, July 28, 1989; 60 FR 9963, Feb.22, 1995]

Sec. 4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431 through 433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. The provisions of these laws are incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

[43 FR 29067, July 5, 1978. Redesignated at 49 FR 6451, Feb. 21, 1984]

Subpart 4120--Grazing Management

Sec. 4120.1 [Reserved]

Sec. 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans ~~intended to serve as~~ **that are** the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans ~~intended to serve as~~ **that are** the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall--

- (1) Include terms and conditions under Secs. 4130.3, 4130.3-1, 4130.3-2 4130.3-3, and subpart 4180 of this part;
- (2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;
- (3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and
- (4) Provide for **a monitoring plan, including a description of monitoring protocols, sites, thresholds for adaptive actions, and an implementation schedule** to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan

(b) Private and State lands may be included in allotment management plans or other activity plans that are the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans **in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.)**. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans ~~intended to serve as~~ **that are** the functional equivalent of allotment management plans **including the monitoring plan** shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans ~~intended to serve as~~ **that are** the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

[60 FR 9964, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

Sec. 4120.3 Range improvements.

Sec. 4120.3-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer ~~may~~ **shall** require a permittee or lessee to maintain and/or modify range improvements on the public lands under Sec. 4130.3-2 of this title **as a condition of the permit. Failure to maintain range improvements prior to turnout shall be a violation of the permit terms and conditions. The first violation shall result in suspension of 25% of the permit during the following year. Repeated violations shall require increasing suspensions (by additional 25% increments) of permits and may result in permit cancellation.**

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

(g) All vegetation treatments that involve seeding or planting shall use only species native to the region.

(h) All vegetation treatments shall have the objective of restoring fully functional native ecosystems within the natural range of variability.

(i) All fences will be designed, constructed, and maintained to facilitate wildlife migration and minimize disturbance to wildlife. Unnecessary fences will be removed.

(j) Range improvements shall be incorporated into the monitoring plan for the associated allotment. Monitoring shall be designed to examine the efficacy of the specific range improvement to meet objectives and to examine any impacts or cumulative effects. If monitoring indicates that the range improvement is not meeting objectives or is having significant impacts, the authorized officer shall consider removing the range improvement to the extent possible and/or consider restoration and rehabilitation of the associated site.

[49 FR 6452, Feb. 21, 1984, as amended at 60 FR 9964, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Sec. 4120.3-2 Cooperative range improvement agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. A permittee's or lessee's interest in contributed funds, labor, and materials will be documented by the Bureau of Land Management to ensure proper credit for the purposes of Secs. 4120.3-5 and 4120.3-6(c).

(c) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

[60 FR 9964, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

Sec. 4120.3-3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

~~(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse or conservation use has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).~~

~~(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.~~

~~(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.~~

~~(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.~~

[49 FR 6452, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 60 FR 9964, Feb. 22, 1995]

Sec. 4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

[49 FR 6452, Feb. 21, 1984, as amended at 61 FR 4227, Feb. 5, 1996]

Sec. 4120.3-5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under Sec. 4110.2-3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

[53 FR 10234, Mar. 29, 1988]

Sec. 4120.3-6 Removal and compensation for loss of range improvements.

- (a) Range improvements shall not be removed from the public lands without authorization.
- (b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under Sec. 4120.3-4 of this title.
- (c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.
- (d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative range improvement agreement to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

[49 FR 6452, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 61 FR 4227, Feb. 5, 1996]

Sec. 4120.3-7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

[49 FR 6452, Feb. 21, 1984]

Sec. 4120.3-8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian-wetland area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management to increase native vegetation, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which the Bureau of Land Management is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects, and rehabilitation or restoration following the removal of a range improvement or a determination that the range improvement project is not meeting objectives or causing significant impacts to other resources or the human environment.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

[60 FR 9965, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

Sec. 4120.3-9 Water rights for the purpose of livestock grazing on public lands.

Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

[60 FR 9965, Feb. 22, 1995]

Sec. 4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, ~~as appropriate,~~ and upon approval, shall become effective when published in the Federal Register as final rules. Special rules shall be published in a local newspaper.

(b) Where the Bureau of Land Management administers the grazing use of other Federal Agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply.

[49 FR 6452, Feb. 21, 1984]

Sec. 4120.5 Cooperation.

Sec. 4120.5-1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

[60 FR 9965, Feb. 22, 1995]

Sec. 4120.5-2 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including--

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

Sec. 4120.6 Cooperation with the Public.

The Bureau of Land Management shall solicit public input and facilitate public engagement in the decision-making and management of the Bureau of Land Management's grazing program, including:

(a) Upon receipt of specific information from a member of the public regarding natural resource damage due to livestock management on Bureau of Land Management-administered lands, the Bureau of Land Management shall respond within 20 days with applicable information and/or what corrective actions will be taken.

(b) The Bureau of Land Management shall cooperate with and provide reasonable access to members of the public who are intending to monitor, assess, or undertake research (e.g., exclosures that do not interfere with grazing operations, water quality sampling) on Bureau of Land Management-administered lands.

4120.7. Tracking of permanently retired grazing permits and leases.

The Bureau of Land Management will maintain a publicly available data base of grazing permits and leases and associated allotments where grazing has been terminated permanently subsequent to the acceptance of a donation of a grazing lease or permit.

[60 FR 9965, Feb. 22, 1995]

Subpart 4130--Authorizing Grazing Use

Sec. 4130.1 Applications.

Sec. 4130.1-1 Filing applications.

Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6453, Feb. 21, 1984.
Redesignated at 60 FR 9965, Feb. 22, 1995]

Sec. 4130.1-2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the authorized officer may authorize grazing use of such land or forage on the basis of Sec. 4110.3-1 of this title or on the basis of any of the following factors:

(a) Historical use of the public lands (see Sec. 4130.2(e));

- (b) Proper use of rangeland resources;
- (c) General needs of the applicant's livestock operations;
- (d) Public ingress or egress across privately owned or controlled land to public lands;
- (e) Topography;
- (f) Other land use requirements unique to the situation.
- (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and
- (h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 53 FR 10234, Mar. 29, 1988; 60 FR 9965, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Sec. 4130.2 Grazing permits or leases.

- (a) Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits and leases shall also specify terms and conditions pursuant to Secs. 4130.3, 4130.3-1, ~~and 4130.3-2~~, and 4180.1.
- (b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.
- (c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.
- (d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless--
 - (1) The land is being considered for disposal;
 - (2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

(e) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease;

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease.

(f) The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.

(g) Temporary nonuse and conservation use ~~may~~ requested by the permittee or lessee shall be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, allotment management plan or other activity plans and the provisions of subpart 4180 of this part.

~~(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed use will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or~~

(1) An application by a permittee or lessee for conservation use of their grazing permit or lease shall be granted on an annual basis by the authorized officer for a period of up to 10 years, pending a determination by the authorized officer that the conservation use furthers one or more of the purposes for conservation use. Permittees or lessees applying for conservation use shall state the reasons supporting conservation use. If the authorized officer finds that one or more purposes of conservation use is furthered, conservation use shall be approved for the remainder of the permit or lease.

(2) Temporary nonuse for reasons including but not limited to financial conditions or ~~annual~~ fluctuations of livestock shall ~~maybe~~ approved ~~on an annual basis for no more than three~~ for up to 5 consecutive years. This term may be extended by the authorized officer. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.

(h) Application for nonrenewable grazing permits and leases under Secs. 4110.3-1 and 4130.6-2 for areas for which conservation use has been authorized will not be approved. ~~Forage made available as a result of temporary nonuse may be made available to qualified applicants under Sec. 4130.6-2.~~

(i) Permits or leases may incorporate the percentage of public land livestock use (see Sec. 4130.3-2) or may include private land offered under exchange-of-use grazing agreements (see Sec. 4130.6-1).

(j) Provisions explaining how grazing permits or authorizations may be granted for grazing use on state, county or private land leased by the Bureau of Land Management under “The Pierce Act” and located within grazing districts are explained in 43 CFR part 4600.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41711, Sept. 21, 1982; 49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984; 53 FR 10234, Mar. 29, 1988; 53 FR 22326, June 15, 1988; 60 FR 9965, Feb. 22, 1995; 61 FR 29031, June 7, 1996; 61 FR 4227, Feb. 5, 1996]

Sec. 4130.3 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure **permitted use does not exceed the livestock carrying capacity and 30% utilization, and to ensure** conformance with the provisions of subpart 4180 of this part.

[60 FR 9966, Feb. 22, 1995]

Sec. 4130.3-1 Mandatory terms and conditions.

(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

(d) Permits and leases shall incorporate a requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;

(e) Permits and leases shall incorporate a requirement that permittees or lessees confirm that all range improvements are fully maintained and functional prior to livestock turnout

(f) Permits and leases shall provide for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of native vegetation, provide

for the improvement of riparian-wetland areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans.

- (g) Permits and leases shall provide for the temporary modification of livestock grazing to reduce disturbance to denning and nesting wildlife.
- (h) Permittees and lessees must notify the BLM and state wildlife agencies as soon as practicable of any predation on livestock or conflicts between large carnivores and livestock
- (i) Permits and leases shall include guidelines for and require removal and/or disposal of livestock carcasses such that the carcass will not attract carnivores or scavengers. If removal and/or disposal of the carcass is not possible due to its location, utilize other remedies that will eliminate the attractant.
- (j) Where predator presence is known or likely, permits and leases shall require the use of range riders, shepherds, or other forms of human presence as appropriate for the type of livestock that are trained and equipped to prevent predator-livestock conflict using appropriate non-lethal techniques.
- (k) Permits and leases shall prohibit the turnout of sick or injured livestock and require the removal of sick and injured livestock to reduce the risk of attracting predators.

[49 FR 6453, Feb. 21, 1984, as amended at 53 FR 10234, Mar. 29, 1988. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995]

Sec. 4130.3-2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

- (a) The class of livestock that will graze on an allotment;
- (b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;
- (c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;
- (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;
- ~~(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;~~

~~(f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;~~

(ge) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee; and

~~(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.~~

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995]

Sec. 4130.3-3 Modification of permits or leases.

Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer ~~may~~ **shall** modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, **exceeds the livestock carrying capacity** or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

[60 FR 9966, Feb. 22, 1995]

Sec. 4130.4 Approval of changes in grazing use within the terms and conditions of permits and leases.

(a) Applications for changes in grazing use should be filed with the authorized officer before the billing notices for the affected grazing use have been issued. Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued and which require the issuance of a replacement or supplemental billing notice shall be subject to a service charge under Sec. 4130.8-3 of this title.

(b) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer. Permittees and lessees may apply to activate forage in temporary nonuse or

conservation use or to place forage in temporary nonuse or conservation use, and may apply for the use of forage that is temporarily available on designated ephemeral or annual ranges.

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995; 61FR 4227, Feb. 5, 1996]

Sec. 4130.5 Free-use grazing permits.

(a) A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to Sec. 4130.1-2. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

(b) The authorized officer may also authorize free use under the following circumstances:

(1) The primary objective of authorized grazing use or conservation use is the management of vegetation to meet **native** resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;

(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of **non-native invasive or** noxious weeds.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6453, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995]

Sec. 4130.6 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41711, Sept. 21, 1982. Redesignated at 60 FR 9965, Feb. 22, 1995]

Sec. 4130.6-1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under Sec. 4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

(b) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock carrying capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use.

[45 FR 47105, July 11, 1980, as amended at 49 FR 6453, Feb. 21, 1984; 53FR 10234, Mar. 29, 1988. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

Sec. 4130.6-2 Nonrenewable grazing permits and leases.

Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives, **is not detrimental to fish and wildlife, does not exceed the livestock carrying capacity and does not exceed 30% utilization**, and does not interfere with existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance of nonrenewable grazing permits and leases.

[47 FR 41711, Sept. 21, 1982. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

Sec. 4130.6-3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

[60 FR 9967, Feb. 22, 1995]

~~Sec. 4130.6-4 Special grazing permits or leases.~~

~~Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.~~

[43 FR 29067, July 5, 1978, as amended at 47 FR 41711, Sept. 21, 1982. Redesignated at 60 FR 9965, Feb. 22, 1995]

Sec. 4130.7 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands are located relating to branding of livestock, breed, grade, and number of bulls, health and sanitation.

(c) The authorized officer ~~may~~ shall require marking or tagging of all authorized livestock and may require counting (e.g., of sheep in the vicinity of bighorn) of all ~~and/or additional special marking or tagging of the~~ authorized livestock in order to promote the orderly administration of the public lands.

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized livestock use and is consistent with other terms and conditions of the permit or lease.

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 50 FR 45827, Nov. 4, 1985. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

Sec. 4130.8 Fees.

Sec. 4130.8-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by

the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$\text{FVI} + \text{BCPI} - \text{PPI}$$

$$\text{CF} = \$1.23 \times 100$$

CF=Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

\$1.23=The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI=Forage Value Index means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by \$3.65 and multiplied by 100;

BCPI=Beef Cattle Price Index means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by \$22.04 per hundred weight and multiplied by 100; and

PPI=Prices Paid Index means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than \$1.35 per animal unit month.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) Except as provided in Sec. 4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats, over the age of 6 months at the time of ~~entering~~ **entering** exiting the public lands or other lands administered by the Bureau of Land Management; by any such weaned animals regardless of age; and by such animals that

will become 12 months of age during the authorized period of use. No charge shall be made for animals under 6 months of age, at the time of ~~entering~~-~~exiting~~ public lands or other lands administered by the Bureau of Land Management, that are the natural progeny of animals upon which fees are paid, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period. In calculating the billing the grazing fee is prorated on a daily basis and charges are rounded to reflect the nearest whole number of animal unit months.

(d) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in Sec. 4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to ~~35~~ 50 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per animal unit month for the appropriate State as determined by the National Agricultural Statistics Service.

(e) Fees are due on the due date specified on the grazing fee bill. Payment will be made prior to grazing use. Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. If allotment management plans provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance. Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

(f) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within 30 days *may* be a violation of Sec. 4140.1(b)(1) and shall result in action by the authorized officer under Secs. 4150.1 and 4160.1-2.

[49 FR 6454, Feb. 21, 1984, as amended at 53 FR 2993, Feb. 2, 1988; 53 FR 10235, Mar. 29, 1988; 53 FR 22326, June 15, 1988. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Sec. 4130.8-2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or postpone fee payment for as long as the emergency exists.

[49 FR 6454, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995]

Sec. 4130.8-3 Service charge.

A service charge shall ~~may~~ be assessed for each **grazing permit**, crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)), calculation of the Bureau service charge assessed shall reflect both processing costs **of an application and the administrative cost for the life of the permit**, and shall be adjusted **no less than every four years** ~~periodically~~ as costs change. Notice of changes shall be published ~~periodically~~ in the Federal Register.

[49 FR 6454, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

Sec. 4130.9 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies ~~may~~ **may** be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, Provided, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

[43 FR 29067, July 5, 1978. Redesignated at 49 FR 6454, Feb. 21, 1984. Further redesignated at 60 FR 9965, Feb. 22, 1995]

Subpart 4140--Prohibited Acts

Sec. 4140.1 Acts prohibited on public lands.

The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under Sec. 4170.1:

- (1) Violating ~~special~~ **any** terms and conditions incorporated in permits or leases;
- (2) Failing to make ~~substantial~~ grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.
- (3) Placing supplemental feed on these lands ~~without authorization~~.

(4) Failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits;

(5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer **or as specified by the permit, lease, or other authorization or agreement.**

(6) Unauthorized leasing or subleasing as defined in this part.

(7) Engaging in lethal predator control with the exception of legal hunting and trapping authorized by state wildlife agencies.

(b) Persons performing the following prohibited acts related to rangelands shall be subject to civil and criminal penalties set forth at Secs. 4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under Sec. 4130.7(c) of this title.

(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing U.S. property without authorization;

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

(6) Littering;

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

(8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports and/or amendments thereto;

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) Performance of an act listed in paragraphs (c)(1), (c)(2) or (c)(3) of this section where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by the Bureau of Land Management, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, constitutes a prohibited act that ~~may~~ **shall** be subject to the civil penalties set forth at Sec. 4170.1-1.

(1) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources;

(2) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 et seq.), Endangered Species Act (16 U.S.C. 1531 et seq.), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(3) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5790, Jan. 19, 1981; 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984; 50 FR 45827, Nov. 4, 1985; 53 FR 10235, Mar. 29, 1988; 53 FR 22326, June 15, 1988; 60 FR 9968, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Subpart 4150--Unauthorized Grazing Use

Sec. 4150.1 Violations.

Violation of Sec. 4140.1(b)(1) constitutes unauthorized grazing use.

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

(b) Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock, and may be subject to civil penalties or criminal sanction for such unlawful acts.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41712, Sept. 21, 1982; 60 FR 9968, Feb. 22, 1995]

Sec. 4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under Sec. 4150.3.

(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

(c) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer ~~may~~ shall immediately proceed to impound the livestock under Sec. 4150.4.

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure shall ~~may~~ be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984; 60 FR 9968, Feb. 22, 1995]

Sec. 4150.3 Settlement.

Where violations are ~~willful or~~ repeated willful, the authorized officer shall take action under Sec. 4170.1-1(b) of this title. The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. Settlement for willful ~~or and~~ repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

- (1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;
- (2) The forage use is insignificant;
- (3) The public lands have not been damaged; and
- (4) Nonmonetary settlement is in the best interest of the United States.

(b) For willful violations: ~~Twice~~ **Ten times** the value of forage consumed as determined in paragraph (a) of this section.

(c) For repeated willful violations: ~~Three~~ **Twenty** times the value of the forage consumed as determined in paragraph (a) of this section.

(d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.

(e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer ~~may~~ **shall** take action under Sec. 4160-1 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.

[49 FR 6454, Feb. 21, 1984, as amended at 53 FR 10235, Mar. 29, 1988; 60 FR 9968, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Sec. 4150.4 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under Sec. 4150.2 ~~may~~ shall be impounded and disposed of by the authorized officer as provided herein.

[43 FR 29067, July 5, 1978. Redesignated at 47 FR 41712, Sept. 21, 1982]

Sec. 4150.4-1 Notice of intent to impound.

(a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.

(b) Where the owner and his agent are unknown, or where both a known owner ~~or and~~ his agent refuses to accept delivery, a notice of intent to impound shall be published in a local newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

[43 FR 29067, July 5, 1978. Redesignated and amended at 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984]

Sec. 4150.4-2 Impoundment.

After 5 days from delivery of the notice under Sec. 4150.4-1(a) of this title or any time after 5 days from publishing and posting the notice under Sec. 4150.4-1(b) of this title, unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of the notice.

~~[47 FR 41712, Sept. 21, 1982, as amended at 49 FR 6454, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984]~~

Sec. 4150.4-3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. Any known owners or agents, or both, shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

[43 FR 29067, July 5, 1982. Redesignated and amended at 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984]

Sec. 4150.4-4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under Sec. 4150.3 or adequate showing that there has been no violation.

[43 FR 29067, July 5, 1978. Redesignated at 47 FR 41712, Sept. 21, 1982]

Sec. 4150.4-5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed or otherwise disposed of under these regulations, or if a suitable agreement is in effect, in accordance with State Law.

[43 FR 29067, July 5, 1978. Redesignated and amended at 47 FR 41712, Sept. 21, 1982]

Subpart 4160--Administrative Remedies

Sec. 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be ~~sent to~~ served on the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under Secs. 4130.8 and 4150.3 and the action to be taken under Sec. 4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with Sec. 4110.3-3(b) or Sec. 4150.2(d).

[~~60 FR 9968, Feb. 22, 1995~~]

Sec. 4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under Sec. 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

[47 FR 41713, Sept. 21, 1982, as amended at 49 FR 6455, Feb. 21, 1984; 61 FR 4227, Feb. 5, 1996]

Sec. 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See Secs. 4.21 and 4.470 of this title for general provisions of the appeal and stay processes.

(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under Sec. 4110.3-1(a). ~~Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.~~

(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.

(f) Notwithstanding the provisions of Sec. 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with Sec. 4110.3-3(b) or Sec. 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in Sec. 4.21(a)(1) of this title.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5791, Jan. 19, 1981; 47 FR 41713, Sept. 21, 1982; 47 FR 46702, Oct. 20, 1982; 49 FR 6455, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984; 60 FR 9969, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Sec. 4160.4 Appeals.

Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in Sec. 4.470 of this title. As stated in that part, the appeal must be filed within 30

days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in Sec. 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.

[60 FR 9969, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

Subpart 4170--Penalties

Sec. 4170.1 Civil penalties.

Sec. 4170.1-1 Penalty for violations.

(a) The authorized officer ~~may~~ **shall** withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of Sec. 4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates Sec. 4140.1(b) of this title and has not made satisfactory settlement under Sec. 4150.3 of this title the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

(d) Any person found to have violated the provisions of Sec. 4140.1(a)(6) after August 21, 1995, shall be required to pay ~~twice~~ **ten times** the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.

[46 FR 5792, Jan. 19, 1981, as amended at 50 FR 45827, Nov. 4, 1985; 60 FR 9969, Feb. 22, 1995]

Sec. 4170.1-2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make ~~substantial~~ use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or

lessee and any lienholder of record, may cancel whatever amount of permitted use the permittee or lessee has failed to use.

[60 FR 9969, Feb. 22, 1995]

Sec. 4170.2 Penal provisions.

Sec. 4170.2-1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under Sec. 4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not ~~less more~~ than \$500.

[60 FR 9969, Feb. 22, 1995]

Sec. 4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), any person who knowingly and willfully commits an act prohibited under Sec. 4140.1(b) or who knowingly and willfully violates approved special rules and regulations ~~may~~ shall be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

[60 FR 9969, Feb. 22, 1995]

Subpart 4180--Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

The authorized officer shall ensure that evaluations and determinations under this subpart are completed for each allotment at a minimum of once in ten years. The authorized officer shall not issue any permit, lease, or other authorization for grazing use under subpart 4110 of this part if a determination under this subpart has not been made within the past 10 years.

Sec. 4180.1 Fundamentals of rangeland health.

The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their ~~native~~ upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.

[60 FR 9969, Feb. 22, 1995]

Sec. 4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of Sec. 4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are ~~significant~~ **contributing** factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. **The authorized officer must consider information on rangeland conditions submitted by the public pursuant to 4120.6.** Appropriate action means implementing actions **utilizing the best available science to reduce ecosystem stressors** pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. **Significant progress means measurable progress of key ecosystem parameters with the objective of meeting standards within**

10 years. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, State or regional standards developed under paragraphs (a) and (b) of this section must address the following:

- (1) Watershed function;
- (2) Nutrient cycling and energy flow;
- (3) Water quality;
- (4) Habitat for endangered, threatened, proposed, Candidate 1 or 2, or special status species; and
- (5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

- (1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;
- (2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;
- (3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;
- (4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;
- (5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;
- (6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;
- (7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;
- (8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(9) Restoring, maintaining or enhancing habitats of Federal Proposed, Category 1 and 2 Federal candidate, and other special status species to promote their conservation;

(10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;

(11) ~~Emphasizing~~ **Requiring** native species in the support of ecological function;

(12) Eradication of noxious weeds; and

~~(13)~~ **(13)** Incorporating the use of non-native plant species only in those **rare** situations in which native species ~~are not available in sufficient quantities or~~ are incapable of maintaining or achieving properly functioning conditions and biological health;

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section.

(1) Fallback standards.

(i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

(ii) Riparian-wetland areas are in properly functioning condition.

(iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.

(iv) Healthy, productive and diverse populations of native species exist and are maintained.

(2) Fallback guidelines.

(i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

(ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;

(iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;

- (iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;
- (v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;
- (vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;
- (vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);
- (viii) Conservation of Federal threatened or endangered, Proposed, Category 1 and 2 candidate, and other special status species is promoted by the restoration and maintenance of their habitats;
- (ix) Native species are ~~emphasized~~ **required** in the support of ecological function;
- (x) Non-native plant species are used only in those situations in which native species ~~are not readily available in sufficient quantities~~ or are incapable of maintaining or achieving properly functioning conditions and biological health;
- (xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);
- (xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;
- (xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;
- (xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and
- (xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

Note: We have not included the following text in the above proposed regulations, as the BLM Notice of Intent does not indicate whether the agency intends to propose adding a grazing regulation that collects various provisions currently available to BLM managers and permittees or lessees into a special authorization called Outcome Based Grazing. However, the workshop document that BLM has circulated at its four public workshops and [posted on its website](#), “Outcome Based Grazing,” seems to indicate that the BLM may intend to do so. If in fact the BLM proposes a regulation on Outcome Based Grazing in the Draft EIS, we offer the following as an alternative in order to provide public accountability for and monitoring of permittee or lessee actions taken under an Outcome Based Grazing Authorization:

Section 4100.0-5 Definitions

Outcome-Based Grazing means authorization of permittee flexibility to reduce adverse impacts of grazing use (e.g., by reducing stocking rate, adjusting season of use, combining management of multiple allotments) for the purposes of increasing native vegetation; providing measurable benefits to native wildlife, aquatic species and their habitat; improving natural resource conditions; and/or balancing domestic and native ungulate use.

Section 4130.10

4130.10 Outcome Based Grazing

(a) An outcome based grazing authorization will be granted to permittees or lessees upon approval by the authorized officer subject to subparts 4130 and 4180 and the following terms and conditions:

(b) A request for authorization must include

- (1) a plan of all actions, including a range of potential adaptive actions (4130.10(b)(4);
- (2) a financial plan, including proportion of funding that will be provided by the operator
- (3) measureable objectives;
- (4) a monitoring plan and timeline;
- (5) monitoring thresholds that will trigger adaptive actions if not met or exceeded, as applicable;
- and
- (6) use only of regionally-appropriate native plants for seeding or planting.

(c) Opportunity for interested public to review, comment on, and receive response from the permittee or lessee

- (1) three months prior to approval by the authorized officer
- (2) one month prior to yearly turnout or January 1, whichever is earlier.

(d) Monitoring results and accounting of all public funding received during the previous 12 months will be publicly posted one month prior to the upcoming season of use or January 1 of the year following the past season of use, whichever is later.

e) If authorization was granted prior to implementation of these regulations, the authorization will be modified within one year to conform with all other provisions of 4130.10.

(f) The interested public may request to meet with the authorized officer and the permittee or lessee regarding observations of failure to meet any terms and conditions of the outcome-based grazing authorization; the meeting shall be held within 60 days of the request.

Attachment 2. Rationale for Major Elements in the Alternative

The rationale and support for 15 major elements of the reasonable alternative are provided below. Those sections in which the alternative regulations have been proposed are noted.

1. 30% utilization

Sec. 4100.0-5 Definitions

Sec. 4130.2 Grazing permits or leases

4130.6-2 Nonrenewable grazing permits and leases

A. Rationale

- 30% utilization simultaneously addresses economics and BLM land health. There is probably no greater efficiency step that could be taken than to reduce current utilization rates to 30%. As noted in the studies referenced below, conservative utilization is simultaneously economically advantageous for permittees/lessees and prevents deterioration of 4180.1 Fundamentals of rangeland health and Sec. 4180.2 Standards and guidelines for grazing administration.
- 30% utilization can be efficiently monitored. Utilization is easily observable, for instance as the presence of seedheads for grass and forb reproduction and flowers for pollinators; most plants are taller than the cow patties, providing wildlife habitat (e.g., small mammal cover, seeds for seed-eating birds); cottonwood and willow are present as multi-height stands; and most streambanks are less heavily trampled and the soil has less compaction. This allows for more efficient permittee, agency, and public assessment of allotment conditions, as there is similar utilization throughout all pastures grazed in a specific year.
- More forage is available in a drought year, which evens out authorized AUMs year to year.

B. References

[Galt, D., Molinar, F., Navarro, J., Joseph, J., & Holechek, J. \(2000\). Grazing Capacity and Stocking Rate. Rangelands 22\(6\), 7-11.](#)

The authors of this most recent article on livestock utilization state: “We increasingly hold the opinion that a 25% harvest coefficient is a sound idea for most western rangelands”, where harvest coefficient is defined as the percentage of total forage production that is assigned to grazing animals for consumption (8). They also highlight that a 25% harvest coefficient

accomplishes the goal of ensuring multiple use values (e.g., recreational, aesthetic) quite well. Research from New Mexico shows that in drought years, “conservative” stocked rangelands produced almost 50% more forage than “moderate” stocked rangelands. Studies show that unused vegetation can increase forage production by 50% or more when compared to areas where vegetation residue is removed by grazing; unused vegetation increases plant vigor and soil water infiltration.

Holechek, J.L. (1988). An Approach for Setting the Stocking Rate. *Rangelands* 10(1), 10-14.

The author provides utilization guidelines for different range types in the United States. For Semidesert Grass and Shrubland and for Sagebrush Grassland types with less than 12” average annual precipitation, Holechek recommends 30-40% use of *key species*. These recommendations come with the qualification that ranges in poor condition, or those grazed during active growth, should receive the lower utilization level. These guidelines are based on long-term studies lasting five or more years. The guideline “take half and leave half” of the current season’s growth appears to only apply to humid and annual grasslands. A study on sheep grazing on the Desert Experimental Range in Utah found that the net income for the same number of sheep was more than double under 35% utilization compared to 68%. The author also highlights the importance of exclosures on key grazing areas to separate the influence of climate from that of climate and grazing together.

Holechek, J.L., Gomez, H., Molinar, F., & Galt, D. (1999). Grazing Studies: What We’ve Learned. *Rangelands* 21(2), 12-16.

Similar to the Holechek 1988 paper, this review article states that considering 50% utilization to be “moderate” stocking applies in the southern pine forest, and humid and annual grasslands, “but results in rangeland deterioration in the semi-arid grasslands, desert and coniferous forest rangelands” (12). The authors’ extensive review of long term grazing management studies found that light or conservative stocking (35% utilization or below) resulted in the greatest benefit in terms of forage production in the dry years, an important point under increasingly warmer and drier conditions on the Colorado Plateau. In addition, conservative stocking minimizes financial loss during drought years, which can be financially ruinous under heavy stocking.

2. Cooperation with the public

Sec. 4120.6 Cooperation with the Public.

A. Rationale

In the *Federal Register* scoping notice for the regulations revisions, the BLM indicates, “. . . the BLM is interested in amending 43 CFR part 4100 to address the following: . . . Public participation. The BLM seeks to ensure adequate participation of all stakeholders without unduly burdening administrative processes.” [Emphasis added.]

This is an important issue, as BLM-administered lands are public lands, not private ranches. The alternative proposes a new section, 4120.6, in which the BLM would both (a) cooperate with members of the public who wish to voluntarily monitor, assess, or undertake research on BLM-administered lands; and (b) respond to specific information regarding natural resource damage due to livestock management. Both of these efforts would provide BLM staff with on-ground information that is too often absent, given budget cuts and staff shortages.

The perception of balance between “adequate participation of all stakeholders” and “unduly burdening administrative processes” likely will differ between alternatives in the Draft EIS. For instance, any proposal to expand categorical exclusion authority necessarily diminishes the capacity of stakeholders to participate in decisionmaking. Indeed, there are remarkably few channels by which interested stakeholders can participate in any BLM grazing decisions at all or be guaranteed any response to their documentation of damage to natural resources clearly related to livestock grazing. It will be important for all interested stakeholders to express their thoughts on the consequences of the different alternatives in the Draft EIS.

3. Native species

4100.0-5 Definitions

4110.2-2(a) Specifying permitted use,

4120.2(g-h) Conditions for range improvements,

4120.3(b) Range improvement fund,

4130.3-1(f) Mandatory terms and conditions,

130.5(b)(1) Free-use grazing permits

4180.1(a) Fundamentals of rangeland health

If Outcome Based Grazing is a proposed regulation: 4130.10

A. Rationale

Management of livestock under the alternative we provide increases the probability that BLM standards and guidelines for native species will be met. The BLM standards and guidelines at (43 CFR Part 4100 §4180.2) indicate that the following should be addressed through grazing administration on BLM-administered lands:

- Habitat for endangered, threatened, proposed, Candidate 1 or 3, or special status species [all of which would be native]
- Habitat quality for native plant and animal populations and communities
- Maintaining or promoting the physical and biological conditions to sustain native populations and communities
- Emphasizing native species in the support of ecological function;
- Incorporating the use of non-native plant species only in those situations in which native species. . . are incapable of maintain or achieving . . . biological health

To this end, the alternative propose management would:

- Focus conservation use on “improving **native vegetation and** wildlife habitat”
- Design rangeland improvements “to improve production of **native** forage”
- Limit vegetation treatments to those that will benefit native vegetation.
- Require “**full consideration to the needs of native wildlife species**” in grazing permits
- “[U]se **only species native to the region**” in vegetation treatments involving seeding and planting
[Note that many BLM vegetation treatments currently involve planting non-native forage crops for cattle.]
- Focus vegetation treatment projects on “**restoring fully functional native ecosystems within the natural range of variability.**”
- Use range improvement funding for vegetation improvement and management on increasing “native vegetation”
- Allow permits and leases to provide for livestock grazing to be temporarily delayed, discontinued or modified to allow, among other objectives, “**for the reproduction, establishment, or restoration of vigor of native vegetation**”
- Note that “the primary objective of authorized grazing use or conservation use is the management of vegetation to meet **native** resource objectives”
- Incorporate “use of non-native plant species only in those **rare** situations in which native species are incapable of maintaining or achieving properly functioning conditions and biological health.”
[Note that this will provide incentive for focusing seed supply development on native species for availability.]

If the BLM proposes a regulation for outcome based grazing authorization, our alternative provides a definition of outcome based grazing that requires native species to be the purpose.

All of these provisions in the alternative are designed to achieve current BLM standards and guidelines. It is difficult to envision meeting the current BLM standards and guidelines without these provisions.

4. Resolving conflicts with predators and facilitating co-existence with wildlife

Section 4120.3-1(i)

A. Rationale

Wildlife-friendly fences ensure compliance with FLPMA and the Endangered Species Act. Fences can impede the migration of big game and other wildlife (Gates et al. 2012; Hanophy 2009; Van Lanen et al. 2017). They also can impact the behavior and populations dynamics of certain species including those in danger of extinction (e.g., greater sage grouse). There is wide consensus among wildlife managers that wildlife can benefit from the removal of unnecessary fences or mitigations to existing fences (Hanophy 2009).

Requiring that fences installed as range improvements are designed, constructed and maintained to facilitate wildlife migration and minimize disturbance to wildlife is consistent with Section 102(a)(8) and Section 7 of the Endangered Species Act.

Wildlife-friendly fencing approaches are more likely to lead to compliance with Rangeland Health Standards. Rangeland Health Standards require “[r]estoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species” and “[r]estoring, maintaining or enhancing habitats of Federal Proposed, Category 1 and 2 Federal candidate, special status species, and other native wildlife to promote their conservation.” Mitigating impacts to native species resulting from fences and removing unnecessary fences will advance compliance with the rangeland health standards.

Inclusion of guidelines for removing carcasses within permits will insure that permittees or lessees avoid attracting predators to dead animals in areas of livestock activity and will avoid predators becoming accustomed to eating livestock.

B. References

Hanophy, W. 2009. Fencing with Wildlife in Mind. Colorado Parks and Wildlife, Denver, CO.

<https://cpw.state.co.us/Documents/LandWater/PrivateLandPrograms/FencingWithWildlifeInMind.pdf>

This publication provides guidelines and details for constructing fences with wildlife in mind. The information it contains was contributed by wildlife managers, biologists, land managers, farmers, and ranchers and reflects a body of knowledge about wildlife and fences informed through observation and research. The publication offers:

- A basic understanding of how ungulates cross fences and the fence designs that cause problems for moose, elk, deer, pronghorn, and bighorn sheep.
- Fence designs that adequately contain livestock without excluding wildlife.
- Fence designs that effectively exclude ungulates, bears, beavers, and other small mammals.

Van Lanen, Nicholas, Adam w. Green, Taylor R. Gorman, Laura A. Quattrini, David C. Pvlacky, Jr. 2017. Evaluating efficacy of fence markers in reducing greater sage-grouse collisions with fencing. *Biological Conservation*, Volume 213, Part A, September 2017, Pages 70-83.

Anthropogenic infrastructure routinely interferes with wildlife movement, habitat use, and survival. Grouse in the family Phasianidae may be particularly susceptible to collisions with fences due to their morphology and life history. Because many Phasianid species are of conservation concern, managers often deploy markers on fences to reduce collision-associated mortality. The authors investigated the effectiveness of the effects of local and landscape features and various fence marking strategies on grouse collision risk. Based on their findings, they recommended integrating fence marking into conservation practices and prioritizing fence marking near leks in areas with greater fence exposure.

Gates C.C. et al. (2012) The Influence of Land Use and Fences on Habitat Effectiveness, Movements and Distribution of Pronghorn in the Grasslands of North America. In: Somers M., Hayward M. (eds) *Fencing for Conservation*. Springer, New York, NY.
<https://www.researchgate.net/publication/233274633> The Influence of Land Use and Fences on Habitat Effectiveness Movements and Distribution of Pronghorn in the Grasslands of North America

The pronghorn *Antilocapra americana* is a grassland and shrub-steppe obligate unique to North America. Driven by harsh winter conditions, large herds in the grasslands of the Canadian Provinces and north-western United States may undertake opportunistic long-distance migration to seek forage in favorable areas. Cumulative changes from several types of land use continue to reduce the effectiveness of remaining habitat. In particular, roads combined with fences can impede or block pronghorn movements. Plans that focus on maintaining the ecological coherence of landscapes for common species like the pronghorn should benefit the conservation of other species too.

Morehouse, A.T. and M.S. Boyce. 2011. From venison to beef: seasonal changes in wolf diet composition in a livestock grazing landscape. *Front Ecol Environ* 2011; doi:10.1890/100172

Using clusters of global positioning system telemetry relocations and scat analysis, researchers investigated wolf diets year-round in southwestern Alberta, where seasonal cattle grazing is the predominant land use and wolf–cattle conflicts have increased in recent years. Both methods indicated a seasonal shift in wolf diets, from wild prey during the non-grazing season to cattle in the grazing season. Wolves scavenged more frequently during the non-grazing season than during the grazing season; 85% of all scavenging events occurred at ranchers' boneyards (where livestock carcasses are dumped), where wolves fed on dead livestock. Cattle represent a higher proportion of wolf diets than previously thought; the researchers recommend the sanitary disposal of dead livestock to prevent wolves from becoming accustomed to feeding on livestock, and the development of management plans aimed at reducing predation on cattle if humans and wolves are to coexist on landscapes that are dominated by livestock ranching.

Petroelje, T.R., Belant, J.L., Beyer Jr., D.E. and N.J. Svoboda. 2019. Subsidies from anthropogenic resources alter diet, activity, and ranging behavior of an apex predator (*Canis lupus*). *Scientific Reports* | (2019) 9:13438 | <https://doi.org/10.1038/s41598-019-49879-3>.

Acquisition of resources can be costly and individuals are predicted to optimize foraging strategies to maximize net energy gain. Wolves (*Canis lupus*) would be expected to scavenge on subsidies from anthropogenic sources when these resources provide an energetic benefit over the capture of wild prey. Researchers examined the effects of subsidies from anthropogenic resources in the form of livestock carcass dumps (LCDs) on wolf space use, activity, tortuosity, and diet in portions of North America's northern hardwood/boreal ecosystem. They fitted 19 wolves with global positioning systems collars during May-August 2009-2011 and 2013-2015. Wolves with LCDs within their home ranges used areas adjacent to LCDs greater than non-LCD sites and had decreased home ranges and activity as compared to wolves without LCDs in their home ranges. Additionally, cattle comprised at least 22% of wolf diet from scavenging in areas with LCDs present as compared to no cattle in the diet of wolves without access to LCDs. Researchers found that subsidies from anthropogenic resources in the form of LCDs can serve as attractants for wolves and alter wolf diet, activity, and ranging behavior. Apex predators may alter their behavior where subsidies from anthropogenic resources occur and management of these subsidies should be considered when attempting to reduce the impacts of humans on wolf behavior.

Paquet, P.C., Vucetich, J., Phillips, M.K. and L. Vucetich. 2001. Mexican Wolf Recovery: Three-Year Program Review and Assessment. Prepared by the Conservation Specialist Breeding Group for the United States Fish and Wildlife Service. 86 pp.

In an evaluation of the United States Fish and Wildlife Service's Mexican wolf recovery program, wolf experts analyzed the current program and made recommendations essential for improving its chances of success. One recommendation was a requirement that livestock owners on public lands take responsibility for detecting and removing livestock carcasses to prevent carcasses from becoming an attractant source for wolves and thus habituating wolves to eating livestock.

Eighty-seventh annual meeting of the American Society of Mammalogists. 2007. University of New Mexico, Albuquerque, New Mexico. *Journal of Mammalogy*, 88(6):1570–1576 at pp. 1573-74.

At the 87th annual meeting of the American Society of Mammalogists, a resolution was passed supporting and enumerating specific changes need to the Mexican Wolf Recovery Program to best ensure the success of the program and the successful recovery of this gray wolf subspecies. Included in the resolution (at p, 1574) is a recommendation that wolves be protected from the consequences of scavenging on livestock carcasses.

https://www.dfw.state.or.us/Wolves/docs/ODFW_Non-lethal_Measures.pdf (May 30 2019)

“Wolves and many predators are attracted to dead animals and the presence of a single carcass can have the effect of attracting and keeping wolves in areas of livestock. When wolves become accustomed to an easily attained food source they often return to the area which may increase the risk of depredation. In Oregon, the removal of several identified bone piles in one area resulted in a subsequent decrease of wolf use (and depredation) in the immediate area. Dispersing radio-collared wolves often travel long distances only to stop once they have found a bone pile or carcass. As a general practice, carcasses should be removed prior to wolf use whenever possible. Carcass and bone pile removal may be the single best action to keep from attracting wolves to areas of livestock.”

<https://vimeo.com/131528982>

"Living with Carnivores: Boneyards, Bears and Wolves" is a documentary film about living with large carnivores. The story begins a decade ago in western Montana's Blackfoot River Valley and explores how a rural agricultural community responded to the resurgence of grizzly bears and wolves. The film explores the thoughtful “can do” approach of Montana ranchers who realized that the

age old practice of dumping dead livestock onto “boneyards” was destined to spell trouble by attracting grizzly bears and wolves onto ranches resulting in poor outcomes for wildlife and ranchers.” Produced by Alpenglow Press Productions and Seth Wilson. Filmed and edited by Jason D.B. Kauffman, Alpenglow Press Productions. Narration by Craig Johnson

Section 4130.3-1(g) through (k)

Section 4140.1(7)

Section 4130.1-2(g)

A. Rationale for language in 4130 related to resolving conflicts with predators and promoting non-lethal co-existence approaches.

Non-Lethal predator control methods are often more effective than lethal ones. Both lethal and non-lethal methods of predator control are used to reduce predation on domestic livestock. Scientific evidence shows that non-lethal methods are often more effective than lethal ones and are more rigorously tested for their effectiveness than lethal methods. Lethal predator control does not reduce predation on livestock in the long run and may transfer losses to neighboring sites.

Lethal predator control leads to inadvertent harm to other species. Use of nonselective, lethal predator-control methods (e.g., trapping and poison baits) by Wildlife Services has resulted unintentionally in the deaths of millions of native mammals, including at least 12 taxa of mammals protected (or candidates for protection) under the Endangered Species Act since 1990.

Non-lethal predator control of native wildlife reduces the health of our public lands. Lethal predator control of native wildlife reduces the health of our public lands by diminishing biodiversity, reducing resilience to biotic invasions, destabilizing populations at lower trophic levels, and reducing ecosystem services.

B. References

Bergstrom, Bradley. 2017. *Carnivore conservation: shifting the paradigm from control to coexistence*. *Journal of Mammalogy*, Volume 98, Issue 1, 8 February 2017, Pages 1–6, <https://doi.org/10.1093/jmammal/gyw185>.

The authors contend that a consensus is emerging among ecologists that extirpated, depleted, and destabilized populations of large predators are negatively affecting the biodiversity and resilience of ecosystems. They present data and arguments from the perspectives of ecology, wildlife biology and management, social science, ethics, and law and policy showing that nonlethal methods of preventing predation of livestock by large carnivores may be more effective, more defensible on ecological, legal, and wildlife-

policy grounds, and more tolerated by society than lethal methods, and that total mortality rates for a large carnivore may be driven higher than previously assumed by human causes that are often underestimated.

Moreira-Arce, D., Ugare, C., Zorondo-/rodriguez, F. & Sinonneti, J. (2018). Management tools to reduce carnivore-livestock conflicts: Current gap and future challenges. Volume 71, Issue 3, May 2018, Pages 389-394.
https://www.researchgate.net/publication/323392654_Management_Tools_to_Reduce_Carnivore-Livestock_Conflicts_Current_Gap_and_Future_Challenges

The authors reviewed the effectiveness of management techniques used to reduce domestic animal predation. They reviewed 291 predation cases in 149 studies published between 1990 and 2017 involving 47 carnivores. Lethal control and night confinement of domestic animals had no effect on reducing predation, whereas the use of livestock-guarding dogs, fencing, or herdsman may significantly reduce domestic animal losses. When the effectiveness of each technique to reduce predation was assessed by large and mesocarnivores, fencing significantly reduced predation of domestic animals by the former. Despite little scientifically published material, the authors found that lethal control would have no effect in reducing animal predation by native carnivores when compared with nonlethal techniques. They also found that the effectiveness may vary depending on the type of carnivore involved in the conflict with livestock activity.

Santiago-Avila, F.J., Cornman, A.M. & Treves, A. (2018). Killing wolves to prevent predation on livestock may protect one farm but harm neighbors. *PLoS One*, 13, e0189729. <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0189729>

The authors evaluated two methods of government intervention following independent events of verified wolf predation on domestic animals in the Upper Peninsula of Michigan, USA between 1998–2014, at three spatial scales. Their findings did not support the hypothesis that Michigan’s use of lethal intervention after wolf predation was effective for reducing the future risk of recurrence in the vicinities of trapping sites. The authors state that ethical wildlife management guided by the “best scientific and commercial data available” would suggest suspending the standard method of trapping wolves in favor of non-lethal methods (livestock guarding dogs or fladry) that have been proven effective in preventing livestock losses in Michigan and elsewhere.

Treves, A., Krofel, M. & McManus, J. (2016). Predator control should not be a shot in the dark. *Front. Ecol. Environ.*, 14, 380–388.

Authors systematically evaluated evidence for interventions against carnivore (canid, felid, and ursid) predation on livestock in North American and European farms. They also reviewed a selection of tests from other continents to help assess the global generality of their findings. Twelve published tests – representing five non-lethal methods and 7 lethal methods – met the accepted standard of scientific inference (random assignment or quasi-experimental case-control) without bias in sampling, treatment, measurement, or

reporting. Of those twelve, prevention of livestock predation was demonstrated in six tests (four non-lethal and two lethal), whereas counterintuitive increases in predation were shown in two tests (zero non-lethal and two lethal); the remaining four (one non-lethal and three lethal) showed no effect on predation. Only two non-lethal methods (one associated with livestock guarding dogs and the other with a visual deterrent termed “fladry”) assigned treatments randomly, provided reliable inference, and demonstrated preventive effects. The authors recommend that policy makers suspend predator control efforts that lack evidence for functional effectiveness and that scientists focus on stringent standards of evidence in tests of predator control.

5. Conservation use

Definitions; Sec. 4130.2(g)

A. Rationale

The 1995 Bureau of Land Management (BLM) grazing regulations introduced the concept of “conservation use for a BLM grazing permit or lease. A District Court in Wyoming overturned the provision noting that the Taylor Grazing Act (TGA) of 1934, the Federal Land Policy and Management Act (FLPMA) of 1976 and the Public Rangelands Improvement Act (PRIA) of 1978 (all as amended) do not allow such use of a grazing permit or lease. That decision was affirmed on appeal. However, the conservation use concept is a valid use of regulation if the basis is the Clean Water Act (CWA) of 1972 and the Endangered Species Act (ESA) of 1973 (both as amended). In promulgating the 1995 BLM grazing regulations, the Clinton Administration erroneously relied just on TGA, FLPMA, and PRIA. It failed to assert its authority to do so based on CWA and ESA which provide adequate authority to issue BLM grazing permits and leases for conservation use. Specifically, the ESA establishes national policy that “all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this [Act]” and requires federal agencies to carry out programs for the conservation of listed species. 16 U.S.C. §1531(c) and §1536(a)(2). In a similar vein, the CWA establishes several “national goals” relevant to the grazing of domestic livestock on BLM lands:

- (1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated...;
- (2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved...;
- (3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited...; and
- (7) it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this chapter to be met through the control of both point and nonpoint sources of pollution. (33 U.S.C 1251(a)).

B. References

Wilcove, David S, David Rothstein, Jason Dubrow, Ali Phillips, Eliza ether Losos. 1998. [Quantifying Threats to Imperiled Species in the United States](#). BioScience, Vol. 48, No. 8 (Aug., 1998), pp. 607-615.

In general, scientists agree that habitat destruction is currently the primary lethal agent, followed by the spread of alien species. The authors quantify the extent to which various human activities are imperiling plant and ani-mal species in the United States. They found that 1) habitat destruction and degradation emerged as the most pervasive threat to biodiversity, contributing to the endangerment of 85% of the species analyzed, 2) among extractive land uses, logging, mining, and grazing have contributed to the demise of 12%, 11%, and 22%, respectively, of the endangered species analyzed, and 3) livestock grazing is particularly harmful to plants, affecting 33% of endangered plant species analyzed.

Myers, L., Fiske, M. and Layhee, M. (2017) Elevated Stream Pathogenic Indicator Bacteria Concentrations in Livestock Grazing Areas across a Single National Forest. Natural Resources, 8, 657-670. <https://doi.org/10.4236/nr.2017.810042>.

This study provides additional insight into the relationship of livestock grazing and pathogenic bacteria in excess of water quality standards to protect human health. The authors analyzed water in small streams near known cattle grazing areas within the Stanislaus National Forest in the Sierra Nevada, California from 2012 to 2016. Fourteen stream sites were sampled before and after cattle were released onto the forest (four of these sites were sampled across multiple years) to compare indicator bacteria concentrations to standards established for recreational contact for surface waters. There were 194 water quality violations of either state or federal regulatory standards for recreational contact, all of which occurred once cattle were on the forest. The findings support the link between cattle presence and increased levels of stream pathogenic bacteria and indicate the need to consider alternative range management practices to better protect water quality and human health.

6. Nonuse

Sec. 4130.2(g) Grazing permits or leases

A. Rationale

The regulations should make clear that nonuse for conservation purposes continues to be a valid and allowable exercise of grazing privileges on public land. While the Tenth Circuit affirmed that issuance of *permits* for conservation use is inconsistent with the Taylor Grazing Act, it made clear that BLM *could approve nonuse annually*, even for the entire duration of a 10-year permit. *See Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1307–08 (10th Cir. 1999). Rest of a grazing allotment through conservation nonuse authorizations is widely recognized as an important component of grazing management that serves multiple ends. *Id.*

B. References

Curtin, Charles G. 2002. *Livestock Grazing, Rest, and Restoration in Arid Landscapes*. Conservation Biology, Volume 16, number 3. June 2002. <http://courses.washington.edu/esrm479/grazing.pdf>

This article is a summary of 23 papers (experiments, data sets and literature reviews) on effectiveness of removing or not removing grazing cattle from western rangelands for restoration purposes. Most grazing studies manipulate only the variable of cattle removal, and ignore the effects of key drivers such as climate, fire, native herbivores and human impact limit the widespread applicability of their findings. To improve monitoring and enable landscape-scale studies, land managers and researchers must look further than studies referring only to livestock removal, toward climatic conditions and disturbance factors that interact with grazing for ecological effect. Grassland and savanna ecosystems are not only structured by livestock grazing, but also, more significantly through dynamic ecological interactions and fundamental ecological processes. Therefore it cannot be assumed that rangelands will recover with only the removal of livestock. Repairing damaged grazing lands will not only require flexible and long-term restoration monitoring and management, but also, a better understanding of the ecological implications and environmental thresholds of livestock grazing on arid rangelands.

7. When a permittee or lessee cannot make use of the forage

Sec. 4120.3-3 Range improvement permits.

A. Rationale

The alternative provides for expanded opportunities for approvals of temporary non-use or annual approval of conservation use (§4130.2). If a permittee or lessee is unable to make use of these expanded opportunities, the appropriate response would not be to issue a temporary permit to graze by another operator (as in the current §4120.3(c)], but for the permittee or lessee to relinquish or sell the permit, allowing another permittee or lessee to make use of the permit for grazing, non-use, or conservation use. The regulation proposed for deletion, i.e., §4120.3(c), places no sideboards on the denial by an authorized officer of a request for temporary nonuse or conservation use.

8. “Chiefly valuable for grazing”

Definitions

Sec. 4100.0-8 Land use plans

A. Rationale: The Taylor Grazing Act of (TGA) directs the Secretary of the Interior to establish grazing districts of vacant, unappropriated, and unreserved lands from any part of the public domain and “which in his opinion are chiefly valuable for grazing and raising forage crops.” 43 U.S.C. 315. Shortly after enactment of the TGA, what is now the BLM categorized and then included the lands under its jurisdiction that it found to be “chiefly valuable for grazing and raising forage crops” in grazing districts. BLM has never re-evaluated this determination but certainly has the discretion to do so. Since enactment of the TGA, Congress has extended special protections and recognitions to certain lands in BLM grazing districts, including but not limited to the establishment of wilderness areas, wilderness study areas, wild and scenic rivers, and national conservation areas. Further, the executive branch has designated and recognized other lands with notable resources and values as Areas of Critical Environmental Concern and Special Recreation Management Areas, among others. FLPMA is clear that as part of the land use planning process “any classification of public lands is subject to review in the land use planning process.” 43 U.S.C. 1712(d).

9. Evaluations of rangeland health

A. Rationale

It has been nearly a quarter of a century since Rangeland Reform '94 establishing the Fundamentals of Rangeland Health was enacted. The BLM's implementing manual for these changes, H-4180-1 set up a 10 year cycle for conducting Rangeland Health evaluations and determinations on all allotments, yet 25 years later nearly 40% of BLM lands (59 million acres) have never been assessed and most of the remaining 60% have only been assessed once. The failure of the 1996 regulations to include a mandatory timeframe for the completion of Rangeland Health evaluations and determinations has resulted in the primary process for the protection of BLM lands to be rendered hollow.

[Public Employees for Environmental Responsibility. 2020. “America’s Rangelands Deeply Damaged by Overgrazing.”](https://www.peer.org/americas-rangelands-deeply-damaged-by-overgrazing/) Press release, March <https://www.peer.org/americas-rangelands-deeply-damaged-by-overgrazing/>

10. Monitoring thresholds

4120.2 AMPs and resource activity plans

Potential 4130.10 Outcome based grazing constraints

A. Rationale

The requirement that an allotment management plan and resource activity plan provide a monitoring plan, “including a description of monitoring protocols, sites, **thresholds for adaptive actions**, and an implementation schedule” is the means by which a permittee or lessee, the BLM, and the public can know whether BLM standards and guidelines [§4180.2(d)] are being met. Without quantitative or at least independently verifiable semi-quantitative or qualitative thresholds, monitoring is unlikely to lead to adaptive management actions. As vegetation and wildlife are having to adapt to different timing of seasons, higher temperatures, drought, and intensified precipitation regimes, so to must the permittee or lessee and the BLM. Monitoring thresholds are an action-forcing device that provides accountability for maintenance of, or progress toward standards and guidelines.

11. Rangeland improvements

Section 4100.0-5 Definitions

Section 4120.2 Allotment management plans and resource activity plans

Section 4120.3-1 Conditions for range improvements

Section 4130.3-1 Mandatory terms and conditions

Potential: Section 4130.10 Outcome based grazing

A. Rationale

The alternative limits range “improvements” to those structures or treatments that benefit native vegetation. Native vegetation is not to be removed if the primary goal of a project or infrastructure is to improve “range” (i.e., forage) as opposed, for instance, to reduce a physical hazard, protect the Wildlife Urban Interface, or maintain historically- or currently-used sage grouse nesting habitat. “Range” is habitat for native non-game wildlife (as well as hunted wildlife); endemic and uncommon native plants, and other plants that are declining due to habitat disturbance. Vegetation treatments that support non-native species are not improvements for such species.

The proposed regulation that permittees or lessees confirm prior to turnout that all allotment infrastructure is maintained makes BLM allotment management more efficient.

The proposed requirement that “range improvement” activities and infrastructure be monitored (which could be required of the permittee or lessee) insures that “improvement” is actually occurring. Monitoring provides accountability for the public’s investment in range improvement activities and infrastructure.

12. Tracking of permanently retired grazing permits and leases

Section 4120 Grazing management

A. Rationale: Several recent laws have authorized the BLM to retire permanently grazing permits or leases if voluntarily donated by the permittee or lessee (see reference) The grazing regulations should recognize this innovation and ensure that the BLM tracks the permanently retired permits or leases and their associated allotments. Absent an institutionalized tracking system, it is possible that the information will get lost and the BLM will inadvertently (and illegally) make the allotments available for public lands grazing. The tracking information should be publicly available, posted online, and reflected in resource management plans.

B. Reference

See Sec. 1402 of Public Law 111–11, Sec. 122(b) of Public Law 112-74, Sec. 122(b) of P.L. 112-74, and Sec. 102(e)(2) of the Sawtooth National Recreation Area and Jerry Peak Wilderness Additions Act.

13. Base property

4100.0-5 Definitions

The definition of base property has been clarified to be property sufficient to support authorized livestock during the period they are not authorized on public lands

A. Rationale:

This implements the intent of the principle of base property.

14. Livestock carrying capacity

4100.0-5 Definitions

A. Rationale

The definition of livestock carrying capacity has been updated to reflect current range and ecological science (see references). Implementing current science helps the BLM better balance its duties under the Federal Land Policy and Management Act and the Multiple Use – Sustained Yield Act.

B. References

USDA NRCS National Range and Pasture Handbook, Range Management - Principles and Practice, Holechek et al., Troxel and White 1989. Balancing Forage Demand with Forage Supply, Texas A&M Publication B-1606

Lacey et al. A Guide for Planning, Analyzing and Balancing Forage Supplies with Livestock Demand, Montana State University Publication E13-101

Galt et al. 2000, Grazing Capacity and Stocking Rate in Rangelands 22(6):7-11.

White and McGinty 1997, Stocking Rate Decisions: Key to Successful Ranching Texas A&M Publication B-1310

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15. Marking and counting of livestock

4130.7 Identification of livestock

A. Rationale

The proposed changes strengthen and streamline one of the primary purposes of the Taylor Grazing Act, the Public Rangelands Improvement Act and the creation of the BLM itself, which is the control of livestock on BLM-administered lands. A method to accurately determine ownership of livestock and to have an accurate accounting of all livestock on BLM-administered lands forms the foundation upon which all other aspects of the BLM's livestock permitting and management program rest.