DEP

Office of the Secretary

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 1700 and 4100

[Docket No. BLM-2026-0001; A2407-014-004-065516, #O2509-014-004-125222; LLHQ220000]

RIN 1004-AE82

Revision of Regulations for Grazing Administration, Exclusive of Alaska

AGENCY: Bureau of Land Management and Office of Hearings and Appeals, Interior.

ACTION: Notice of proposed rule.

SUMMARY: The Bureau of Land Management (BLM) and Office of Hearings and Appeals (OHA) are proposing to revise the grazing regulations, *Grazing Administration – Exclusive of Alaska*, to establish a new part addressing land health management, with certain provisions relocated from existing regulations, and to make conforming updates to the regulations that govern administrative appeals of BLM grazing decisions to OHA's Departmental Cases Hearings Division (DCHD). We solicit comment on all aspects of this rule.

DATES: Send your comments on this proposed rule to the Department of the Interior (Department) on or before [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***]. The BLM and OHA are not obligated to consider any comments received after this date in making their decisions on the final rule.

If you wish to comment on the information-collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the information collections contained in this proposed rule between

30 and 60 days after publication of this proposed rule in the Federal Register. Therefore, comments should be submitted to OMB by [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***]

ADDRESSES: You may submit comments by one of the following methods:

Mail, personal, or messenger delivery: U.S. Department of the Interior, Director (630), Bureau of Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240, Attention: Acting, BLM Director.

Federal eRulemaking Portal: https://www.regulations.gov. In the Searchbox, enter "BLM-2026-0001" and click the "Search" button. Follow the instructions at this website. A plain language summary of the proposed rule is also available on the Federal eRulemaking Portal.

Comments on Information-Collection Requirements: Written comments and recommendations for the information-collection requirements should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information-collection by selecting "Currently under Review - Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: The BLM Directorate of Resources and Planning, Division of Forest, Rangeland and Vegetation Resources, by phone at (208) 373-3818, or by email at BLM_Grazing_Rule@blm.gov for information relating to the BLM grazing program and information about the proposed rule, or Julia Bartels, by phone at 703-235-3750, or by email at julia_bartels@oha.doi.gov, for information relating to OHA. Please use "RIN 1004-AE82" in the subject line. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

Authority

The BLM currently administers livestock grazing on approximately 155 million acres of public land under the authority and direction of the Taylor Grazing Act (TGA) (43 U.S.C. 315 *et seq.*), the Public Rangelands Improvement Act (PRIA) (43 U.S.C. 1901 *et seq.*), and the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*). Section 3 of the TGA authorizes the BLM to issue grazing "permits" that authorize grazing on lands within identified grazing districts (43 U.S.C. 315b), and section 15 authorizes the BLM to issue grazing "leases" that authorize grazing on lands outside such districts (43 U.S.C. 315m). For purposes of this preamble, references to "permits" are intended to encompass both permits issued under section 3 of the TGA and leases issued under section 15. The BLM administers nearly 18,000 grazing permits that together authorize approximately 12.3 million animal unit months (AUMs) of grazing annually (2024 Public Land Statistics, published June 2025).[1] Permits are generally issued for ten years and may be renewed if the BLM determines that the permittee has complied with the terms and conditions of the expiring permit and meets other regulatory requirements.

Need for Amendments

There are a number of issues and considerations that prompt the BLM and OHA to propose these amendments to the grazing regulations, including those discussed in the following paragraphs.

The BLM administers its grazing programs under the regulations at Title 43 Code of Federal Regulations (CFR) part 4100. Those regulations were comprehensively revised in 1995 (the 1995 Rule) and 2006 (the 2006 Rule). However, elements of the 1995 Rule and

[1] An AUM is the amount of forage necessary for the sustenance of one cow/calf pair or its equivalent for a period of one month.

the entirety of the 2006 Rule were successfully challenged in court and enjoined by the Tenth and Ninth Circuit courts of appeals, respectively.[2] Because the 2006 Rule remains permanently enjoined, the regulations that are currently in force, and which the BLM implements while administering the grazing program, are those last published in the 2005 edition of the CFR, which largely reflect the 1995 Rule.[3]

Among other things, the 1995 Rule, in subpart 4180, articulated the conditions that constitute the fundamentals of rangeland health. From there, the 1995 Rule directed BLM State Directors, in consultation with affected resource advisory councils and in coordination with Tribes and other State and Federal land management agencies, to develop standards to measure achievement and maintenance of those fundamentals and guidelines to direct the management of grazing on public lands in a way that would facilitate such achievement and maintenance. The Rule also directed the BLM to take "appropriate action" to adjust grazing management whenever it determined that livestock grazing was a significant causal factor in land not meeting rangeland health standards. However, neither subpart 4180 nor any other regulation directs the BLM to make adjustments to the management of other programs to address non-grazing-related factors. The result has been the grazing program—including grazing permittees—shouldering a disproportionate share of the burden in ensuring achievement of the fundamentals.

In 2014, meanwhile, Congress amended section 402 of FLPMA to address the BLM's environmental reviews in connection with grazing permit renewals, including by providing for the continuation of the terms and conditions of an expiring or transferred permit for which environmental review is not yet complete. 43 U.S.C. § 1752(c)(2).

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[2] *Public Land Council v. Babbitt*, 167 F.3d 1287 (10th Cir. 1999) (enjoining elements of the 1995 Rule); *Western Watersheds Project v. Kraayenbrink*, 620 F.3d 1187 (9th Cir. 2010) (enjoining the 2006 Rule).

[3] Citations to the existing regulations in this notice are, therefore, all to the 2005 edition of the CFR. Even the 2005 version of the CFR, however, is not a completely accurate representation of the regulations presently in effect. Provisions in that version of the code that relate to "conservation use" were invalidated as a result of the successful legal challenge to the 1995 Rule. *Babbitt*, 167 F.3d at 1308. Although those provisions still appear in the 2005 edition of the CFR, they are not being and may not legally be implemented by the BLM.

Separately, in 2016, the Government Accountability Office (GAO) issued a report on the BLM's approach to responding to incidents of unauthorized grazing.[4] The report included findings that the BLM (and the United States Forest Service) tend to handle such incidents informally and fail to record them, and made recommendations that the BLM revise its regulations to better provide for documentation of unauthorized grazing use. Throughout this time, grazing practices have evolved, and the BLM grazing program has worked to accommodate those changes. BLM grazing permittees require flexibility to run their operations in the most efficient manner that is responsive to their business needs and that can be adjusted to account for changes on the landscape year to year and over time. While the operative regulations allow the BLM to facilitate some degree of flexibility within the terms and conditions of grazing permits, the proposed rule is intended to expand and otherwise make concrete and explicit in regulation those opportunities for flexibility.

Appeals of grazing decisions are adjudicated by DCHD. DCHD decisions on appeals may be further appealed to the Interior Board of Land Appeals (IBLA). To avoid confusion, it is important to ensure that the regulations that establish DCHD's procedures for resolving grazing appeals align with the treatment of appeals in subpart 4160 of the grazing regulations.

Overview of Proposed Rule

This proposed rule is intended to modernize the BLM's grazing program and bring its regulations in line with current best practices for grazing administration. It is also intended to align the regulations with other developments since promulgation of the 1995 Rule, including Congress's amendments to section 402 of FLPMA and the observations and recommendations of the GAO in its 2016 report.

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[4] United States Government Accountability Office, Report to the Committee on Natural Resources, House of Representatives, *Unauthorized Grazing: Actions Needed to Improve Tracking and Deterrence Efforts* (July 2016).

The BLM is also proposing to expand the application of the fundamentals of rangeland health and the standards used to measure their attainment beyond livestock grazing administration. The proposed rule keeps the intent of the existing subpart 4180 framework intact, but would relocate the regulations in a new part of the CFR—part 1700. This broader application of the fundamentals and standards reflects that all BLM programs should be responsible for managing toward improved rangeland health. It will allow the BLM to more effectively understand the impacts of land management on the whole landscape—which will, in turn, benefit all BLM-managed lands and public lands users. The proposed rule would require the BLM to take "appropriate action" where a significant factor in failing to achieve land health is within the BLM's control to address, much as the existing rule does when that factor is livestock grazing. Rapid landscape-scale condition assessments and land health evaluations, under the proposed rule, are intended to inform how uses are managed, rather than dictate whether a particular use may occur, and what constitutes "appropriate action" may vary depending on the resource concern and limitations imposed by law and relevant planning decisions.

Finally, proposed revisions to the appeal procedures contained in the grazing rule necessitate conforming revisions to OHA's regulations governing grazing appeals to DCHD, at 43 CFR part 4, subpart C.

A section-by-section discussion of the proposed changes follows.

II. Section-by-Section Discussion

Part 4—Department of the Interior Hearings and Appeals Procedures

Section 4.170 Appealing a grazing decision.

OHA is proposing to revise section 4.170 to remove existing paragraph (g). That paragraph describes the current effect of an appeal of a grazing decision which does not, under the operative regulations, suspend the effect of the decision (absent DCHD granting a separate petition for a stay). Removing this provision is made necessary by the

proposed changes to section 4160.3, which would reverse that default arrangement to provide that, unless the BLM provides otherwise, appeal of a grazing decision does suspend the effectiveness of the decision, pending resolution of the appeal.

OHA is also proposing to correct a cross reference in paragraph (b) of this section by eliminating the specific paragraph designation from the cross-reference as cross-reference is more appropriately made to section 4160.3 as a whole.

Section 4.171 Effect of decision pending appeal; exhaustion and finality.

OHA is proposing to redesignate section 4.174 as section 4.171 and revise it to reflect the changes that the BLM is proposing to make to section 4160.3(c), also in this proposed rule. Under these collective proposed changes, the default arrangement would be that an appeal to DCHD of a grazing decision suspends the effectiveness of that decision. That dynamic is described in proposed paragraph (a) of this section.

The exceptions to that default understanding are described in proposed paragraph (b). As proposed section 4160.3(c) also provides, paragraph (b)(1) would acknowledge that the BLM may place a decision in full force and effect if doing so is necessary for the protection of range resource values.

Paragraph (b)(2) would provide that a party to an appeal that has, by operation of section 4160.3(c) and section 4.171(a)(2), suspended the effectiveness of the underlying decision may file a motion requesting that the DCHD administrative law judge hearing the appeal place the decision in full force and effect. The administrative law judge may grant such a motion and place the suspended decision in full force and effect if (1) resources on the public lands require immediate protection due to changed circumstances that occurred after the filing of the notice of appeal and (2) immediate and irreparable harm to the United States due to resource deterioration associated with the continued suspension of the grazing decision would exceed the harm to the appellant associated with placing the decision into full force and effect. The provision provides a mechanism for placing a

decision in full force and effect if changes in circumstances on the ground justify doing so, even if the circumstances did not justify the BLM placing the decision in full force and effect at the time it made the decision. OHA expects that the party making a motion under proposed paragraph (b)(2) would generally be the BLM, though an intervenor may also be in a position to advance such a motion.

Proposed paragraph (b)(3) similarly empowers a DCHD administrative law judge hearing the appeal of a grazing decision to put his or her decision on the merits into full force and effect pending further administrative appeal to the IBLA.

Proposed paragraph (c) amends existing paragraph (b) from section 4.174 to account for the changes to the default relationship between an appeal and the effectiveness of a decision. Under proposed paragraph (c), a grazing decision is final and subject to judicial review if it is made effective by the BLM under section 4160.3(c) and section 4.171(b)(1) or by a DCHD administrative law judge under section 4.171(b)(2) or (3).

Section 4.172 Petitions for stay.

OHA is proposing to redesignate section 4.171 as section 4.172 and make a minor revision to paragraph (a) to reflect that a petition for stay, under the proposed rule, would only be necessary in those cases in which the BLM, under section 4160.3(c) and section 4.171(b)(1), places a grazing decision in full force and effect.

Section 4.173 BLM document filing requirements and initial disclosures.

OHA is proposing to redesignate section 4.172 as section 4.173 but is not proposing any changes to the regulatory text itself.

Section 4.174 Adjudication of grazing appeal.

OHA is proposing to redesignate section 4.173 as section 4.174 but is not proposing any changes to the regulatory text itself.

Section 4.175 Appeal and review.

OHA is proposing to revise the cross-reference in paragraph (b) to align with the other organizational changes proposed in this rule.

Part 1700—Fundamentals of Land Health and Standards for Program Administration

Section 1700.1 Fundamentals of land health.

Proposed section 1700.1 describes the fundamentals of land health and, notwithstanding some minor changes to language, is meant to carry forward three of the four fundamentals presently articulated in section 4180.1. The exception relates to water quality. Because section 4180.1 defines that fundamental with reference to compliance with associated state water quality standards, the BLM has determined that enforcement of those state standards by those state agencies responsible for such is the appropriate means for ensuring water quality. That fundamental is, therefore, not included in this proposed rule.

The BLM is specifically soliciting comment on this section and all of proposed part 1700 and is interested in hearing the public's views on the proposed relocation of these provisions, the appropriate scope of land health assessment and evaluation and BLM management to address land health concerns, and (including from state water quality agencies) the proposed adjustments to the fundamentals of land health.

Section 1700.2 Standards.

Proposed section 1700.2 establishes the process for the development and amendment of standards designed to allow the BLM to assess the achievement and maintenance of the fundamentals of land health defined in section 1700.1. The section borrows from existing section 4180.2 but eliminates some of the process requirements that exist under the current regulations. For example, the regulations will no longer require coordination with resource advisory councils prior to development or amendment of standards. And the proposed rule would eliminate the requirement that new or amended standards be

approved by the Secretary, a function that the BLM has historically assumed could not be delegated under the existing regulations. Instead, under the proposed rule, new and amended standards must be approved by the BLM Director. The proposed rule would call for the orderly rescission of existing standards that address water or air quality. Existing water quality standards under the existing subpart 4180 process are tied to the fundamental that is proposed to be removed above and so would no longer have that link. Existing air quality standards are not directly linked to any fundamental at all. Ultimately, as in the case of the fundamentals, the BLM believes that water and air quality are best regulated by the state agencies responsible for enforcing state standards, alongside the Environmental Protection Agency, as appropriate, while the BLM continues to manage its actions in accordance with those standards under the Clean Water Act.

Section 1700.3 Rapid landscape-scale condition assessment.

Proposed section 1700.3 sets out the process for conducting rapid landscape-scale condition assessments. The term *landscape* is meant to refer to an area encompassing an interacting mosaic of ecosystems and human systems characterized by a set of common management conditions. The landscape is not defined by the size of the area, but rather by the interacting elements that are relevant and meaningful in a management context. Existing subpart 4180 is largely silent on the process for conducting such assessments, and the BLM's experience with those regulations informs this proposed rule. The proposed rule would have the BLM conduct such assessments at the landscape scale. Measuring land condition across broader scales increases efficiency relative to the allotment-by-allotment assessments in which the BLM sometimes engages by virtue of the close connection between subpart 4180 and the grazing program. Conducting fewer assessments across broader swaths of public lands uses fewer resources while still providing the necessary data to conduct the step-down land health evaluations at

appropriate scales. The BLM already does land condition assessments at broader scales in some cases. For example, some field offices in Montana, Wyoming, Colorado, and Idaho are using watershed-scale approaches to land health evaluations to support other activities such as planning vegetation treatments as well as completing grazing permit renewals. The explicit instruction in this proposed section will normalize and standardize that approach.

The specific provisions of the rule provide requirements for, in paragraph (b), how to conduct landscape-scale condition assessments; and in paragraph (c), how to collect and manage data in connection with landscape-scale assessments.

Section 1700.4 Land health evaluation and causal factor determination.

Proposed section 1700.4 provides a framework for using data from the rapid landscape-scale condition assessments to conduct step down land health evaluations to measure achievement of state and regional land health standards and for conducting causal factor determinations—in which the BLM determines what one or more land uses or other causal factors are making a substantial contribution to the dynamic that causes land not to meet standards—in cases where the land health evaluation indicates that land is not meeting or making progress toward meeting those standards. Under current practice, BLM land health evaluations are typically initiated at the allotment or project scale using locally available monitoring data, and broader landscape conditions may or may not be consistently taken into account. Proposed section 1700.4 would standardize and strengthen this process by requiring that land health evaluations begin with the results of rapid landscape-scale condition assessments and then "step down" to the appropriate finer scale to determine whether standards are being achieved or significant progress is being made. Where the evaluation shows that standards are not being met, the proposed section would also require preparation of a causal factor determination identifying the land uses or other factors making a substantial contribution to the conditions preventing

achievement of standards. This approach is intended to increase consistency and transparency relative to current practice and to ensure that broader landscape conditions are integrated into local assessments and management responses.

Paragraph (a) includes requirements for carrying out land health evaluations, and paragraph (b) confirms that where that evaluation indicates land is achieving or making progress toward achieving standards, no further evaluation is needed. In cases where the evaluation indicates that land is not achieving or making significant progress toward achieving land health standards, paragraph (c) requires that the BLM prepare a causal factor determination within 6 months, consistent with the direction in paragraph (d). Paragraph (e) provides that the BLM will then take "appropriate action" (i.e., modify permit terms and conditions such as changes to the period of use, livestock numbers, class of livestock, etc.) within two years to address those causal factors it has identified that are within its control to address. Causal factors beyond the BLM's management control include natural disasters such as drought and wildfire, excessive wildlife populations (i.e., an overpopulation of elk, which are managed by State game management agencies), or actions taken on adjacent private lands (i.e., sedimentation from an adjacent gravel quarry or irrigation-controlled water flows). The regulation goes on to explain that what constitutes appropriate action must be understood in the context of applicable law, the governing land use plan, and the management objectives of the land in question. As paragraphs (e) and (f) imply, and paragraph (g) explicitly provides, appropriate action does not necessarily mean changes to existing uses. Paragraph (e) provides examples of appropriate action; addressing land health through the imposition of terms and conditions on permits and other authorizations is just one of those examples. Paragraph (f), meanwhile, provides direction in circumstances where the causal factor is within the BLM's control, but is not directly tied to existing BLM land management

practices—for example, where land health is being negatively impacted by invasive species or the presence of wild horses.

The BLM expects that by expanding the scope of land health across all BLM programs, it will move away from limiting appropriate action to changes to the terms and conditions of authorizations to use the public lands. Because the current grazing regulations prompt the BLM only to consider changes within the grazing program, it is often the case that addressing failures to achieve land health is more difficult because the BLM cannot directly address the causal factor (e.g., other resource uses). The proposed rule aims to decouple management for land health from actions on BLM permits and other land use authorizations.

Finally, paragraphs (h) and (i) of this proposed section provide, respectively, for the internal reporting and public disclosure of land health evaluations and causal determinations prepared under these rules. These reporting and disclosure requirements are not a part of the existing regulations. The BLM expects that establishing those requirements here will increase the usefulness of preparing land health evaluations and causal factor determinations.

Part 4100—Grazing Administration—Exclusive of Alaska[5]

Section 4100.0-2 Objectives.

The BLM is proposing to revise section 4100.0-2 to focus its statement of objectives on the grazing program. The BLM is proposing to remove existing text that provides that an objective of the grazing program is "to accelerate restoration and improvement of public rangelands to properly functioning conditions." While restoration and improvement of public lands is important, it is properly understood, consistent with the proposal to apply

[5] Because of the Ninth Circuit's injunction of the 2006 Rule, this notice presents proposed regulatory language for part 4100 in its entirety. The proposed language for part 4100 uses as a starting point the language of the regulations presently in force, i.e., those contained in the 2005 edition of the CFR. From that starting point, the BLM is proposing the substantive changes described herein as well as a number of cosmetic and ministerial changes to modernize language, clarify ambiguities, and eliminate references to "conservation use" in light of the Tenth Circuit's injunction of those parts of the 1995 Rule.

land health provisions more broadly, to be an objective of the BLM's overarching management of the public lands, not just its administration of the grazing program. This proposed change is consistent with the proposal to relocate land health provisions from subpart 4180 to a new part 1700 to address restoration and improvement of public lands across all BLM programs. The remainder of the proposed edits to this section are ministerial and include replacing the list of authorities relevant to the grazing program with nonexclusive language.

Section 4100.0-3 Authority.

The BLM is proposing minor changes to section 4100.0-3 to update it in light of changes to FLPMA and to make other ministerial changes.

Section 4100.0-5 Definitions.

The BLM is proposing the following changes to the definitions that appear in the operative version of section 4100.0-5.

The BLM is proposing to revise the definition of the term *active use* to eliminate reference to "conservation use," as that form of grazing authorization has been found to exceed the BLM's authority under the TGA (*Babbitt*, 167 F.3d at 1307-08), and to simplify the presentation of what the term *active use* includes (permitted use available for livestock grazing) and what it does not include (permitted use that has been approved for temporary nonuse or is held in suspension).

The BLM is proposing to revise the definition of the term *allotment management plan (AMP)* to clarify that development of an activity plan, as defined by statute, is not the only mechanism for putting an AMP in place. Methods for establishing an AMP are and should be flexible to make the BLM's process as efficient as can be, so long as the resulting AMP has the elements already identified in the existing definition (i.e., "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").

The BLM is proposing to revise the definition of the term *animal unit month (AUM)* so that the definition in section 4100.0-5 matches the more detailed definition in section 4130.8-1(c). There has never been any intent that the two definitions be interpreted differently, but maintaining distinct definitions could cause confusion and the additional detail, proposed to be added here, will have broader application to operations that graze sheep, goats, or other livestock beyond cows.

The BLM is proposing to revise the definition of the term *annual rangelands* to specify where such rangelands are designated (i.e., in the land use plan, activity plan, or other decision of the authorized officer). That detail is lacking in the present definition.

The BLM is proposing to revise the definition of the term *base property* to provide that land that contains livestock operation facilities capable of serving as a base of livestock operations can properly qualify as base property. That would be in addition to the two existing criteria by which land or water may qualify as base property. The 1995 Rule broadened the definition of base property to provide that land only had to have the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year. The additional base property type affords the BLM more flexibility in determining applicant qualifications.

The BLM is proposing to add a definition of the term *beginning rancher (mentee)* to establish criteria for who may qualify as a beginning rancher. Throughout the regulations, the proposed rule would revise certain provisions that encourage young ranchers to participate in public land grazing to expand the existing limitation that those young ranchers must be the sons or daughters of existing permittees. So long as someone has not owned, controlled, or operated a farm or ranch for a period of more than 10 years and has

not previously held a grazing permit, that person would be eligible for the allowances that are presently extended only to "sons and daughters."

The BLM is proposing to revise the term *cancelled* to reflect the more widely used spelling in American English—*canceled*. The proposed rule would make corresponding changes throughout part 4100.

The BLM is proposing to add a definition of the term *carrying capacity* and eliminate the existing definition of the term *livestock carrying capacity*. Carrying capacity must include use by all species using the landscape, whether domestic or native.

The new definition would provide that the term means "the measurement of how much forage is available on a unit of land."

The BLM is proposing to eliminate the definition of the term *conservation use*. The "conservation use" concept was previously challenged and found to be beyond the BLM's authority under the TGA.

The BLM is proposing non-substantive edits to the definition of the term *ephemeral rangelands* for improved clarity.

The BLM is proposing to add a definition of the term *grazing authorization* to use throughout the grazing regulations as a catch-all term to include grazing permits and leases (which, collectively, the proposed rule would refer to as "grazing permits") as well as other, less frequently used grazing-related authorizations (e.g., trailing permits and exchange-of-use grazing agreements).

The BLM is proposing to remove the definition of the term *grazing lease* because the proposed rule would redefine the term *grazing permit* to encompass both permits issued under section 3 of the TGA and leases issued under section 15 and would remove, with limited exceptions, all references to and discussion of "grazing leases" from the regulations.

The BLM is proposing to revise the definition of the term *grazing permit* to encompass both grazing "permits" issued under section 3 of the TGA and grazing "leases" issued under section 15 and to more succinctly describe the contents of a grazing permit (or lease). Although the TGA provides for different terminology depending on whether the lands to be authorized for grazing are within or without a "grazing district" and, therefore, which section of the TGA applies, there is no practical difference under the regulations between a permit issued under section 3 and a lease issued under section 15 in nearly all cases. Indeed, the operative regulations use the two terms together (and so interchangeably) in nearly every instance that one appears. To simplify the text of the grazing regulations and reduce confusion, the proposed rule would simply refer to "permits" in all cases where both are invoked. This change is purely semantic and would not alter how the BLM issues authorizations or processes billing, nor would it alter the distribution of grazing receipts.

The BLM is proposing to revise the definition of the terms *grazing preference* and *preference* to make explicit that the BLM will take preference into account in cases of permit renewal. The proposed revision is not intended to suggest a change from the way that the BLM presently considers grazing preference under the TGA and the grazing regulations.

The BLM is proposing to revise the definition of the term *interested public* to make explicit that anyone wishing to participate in the management of livestock grazing on public lands must have a cognizable interest in such management on the allotment or allotments for which they wish to participate as a member of the interested public. An interest in public lands management or the health of the range or particular resources on it would not alone be sufficient for the BLM to grant interested public status; rather, an articulable interest in those matters as applied to the allotment at issue would be necessary.

The BLM is proposing to eliminate the definition of the terms *livestock* and *kind of livestock*. The existing definition is circular in that it defines *livestock* to "mean[] species of domestic livestock." Moreover, it is potentially confusing in that it lists certain species but does not make clear whether that list is exclusive. Rather than revise or replace the existing definition, the BLM is proposing to eliminate it altogether while making changes to the substantive regulations pertaining to the issuance of permits to make clear what types of operations may obtain grazing permits. For more detailed discussion of the proposal to only issue permits for grazing by production-oriented livestock, see the proposed changes to and preamble discussion of section 4130.2 and the proposed definition of that term in this section 4100.0-5.

The BLM is proposing minor revisions to the definition of the term *monitoring* to provide additional detail around the timing and purpose of collecting monitoring data.

The BLM is proposing to revise the definition of the term *permitted use* to eliminate the component of the definition that refers to land use plans, to include the limitation that use is permitted for grazing by production-oriented livestock only (for more detailed discussion of this caveat, see the preamble discussion of section 4130.2, *infra*), and to make clear that permitted use includes both active and suspended use.

The BLM is proposing to add a definition of the term *prescribed grazing* to be more specific in identifying the "management objectives" that may be served by the practice.

The BLM is proposing to add a definition of the term *production-oriented livestock* to inform the parameters for issuing grazing permits. The TGA was enacted in 1934, in the midst of the Great Depression and the Dust Bowl. The Great Depression, spanning from 1929 to the late 1930s, resulted in widespread malnutrition and even starvation. In that context, the TGA and subsequent statutory authorities for authorizing grazing were intended to support the livestock industry as an industry. Dust Bowl conditions, meanwhile, were attributable in part to overgrazing spurred by the fact that grazing on

public lands was open to all. The TGA was passed, in part, in response to that dynamic, leading to the dedication of allotments to specified levels of grazing by specified permittees, with preference given to those engaged in the livestock business (43 U.S.C. § 315b). Although not expressly stated in the TGA that grazing authorizations should be issued only for production-oriented livestock, there are several statements that heavily imply that intent. For example, the TGA provides that,

> [i]n order to promote the highest use of the public lands..., the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States...which in his opinion are chiefly valuable for grazing and raising forage crops.

43 U.S.C. 315. Elsewhere, the TGA provides,

> The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range... Grazing permits shall be issued only to…groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights….

43 U.S.C. 315b.[6] Even if not directly articulated in the TGA, these provisions can be broadly understood to anticipate that livestock grazing would be in support of resource

[6] The House report on the TGA is more explicit about the Act's purpose, and it provides, "It should be understood that the whole purpose of the bill is to conserve the public range in aid of the livestock industry." H.R. Rep. No. 73-903, at 2 (1934).

consumption. This understanding is further supported by the policies that animate FLPMA, including the policy that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands." 43 U.S.C. 1701(a)(12). It is not appropriate, therefore, for the BLM to entertain applications for grazing permits from individuals or organizations who aim to compete with ranchers for valuable public forage but who have no intention of using that forage to support a commodity-producing operation, as the TGA originally anticipated.

Taking all of that into consideration, the BLM proposes to update the grazing regulations to clarify that grazing permits under the TGA must authorize *production-oriented livestock* uses, as defined in the proposed rule. Even putting aside questions of the BLM's legal authority under the TGA, policy considerations—in favor of supporting the livestock industry while also ensuring productive use of the public lands, consistent not just with the TGA but also FLPMA—support the proposal here and throughout this rule to restrict grazing permits to production-oriented operations.

The BLM is proposing to eliminate the definition of the term *rangeland studies*. The term is not used anywhere in the grazing regulations, making it unnecessary to define it.

The BLM is proposing minor, clarifying revisions to the definition of the term *Secretary*.

The BLM is proposing minor, clarifying revisions to the definition of the term *service area*.

The BLM is proposing minor, clarifying revisions to the definition of the term *State Director*.

The BLM is proposing to add a definition of the term *stocking rate*, which would mean "the number of specific kinds and classes of animals grazing land over a specific time period."

The BLM is proposing to revise the definition of the term *suspension* so that that definition also applies to the term *suspended use*. Long-term (more than 5 years) reduction of AUMs from active use should be accomplished only through a new decision.

The BLM is proposing to add a definition of the term *sustained yield*. The proposed definition reflects the statutory definition of that term as it appears in section 103(h) of FLPMA, 43 U.S.C. 1702(h).

The BLM is proposing to add a definition of the term *targeted grazing* to delineate the actions that may be taken under section 4190.1(a)(1) to address wildfire risk. The proposed definition would make explicit that such actions include creating strategic linear fuel breaks, reducing fine fuel height and fuel loading, and maintaining fine fuels reductions.

The BLM is proposing to add a definition of the term *temporary nonrenewable* (TNR) to describe a particular type of grazing authorization that the BLM may issue when forage is temporarily available for livestock grazing. TNR authorizations may be appropriate in many different circumstances, but the intent is to permit grazing for a year or less based on temporary availability of forage in an existing grazing allotment.

The BLM is proposing to revise the definition of the term *temporary nonuse t*o simplify the definition and align it with the changes the proposed rule would make to the process for applying for and approving temporary nonuse under section 4130.4. (For more detailed discussion of the temporary nonuse process, see discussion of section 4130.4, *infra*.)

The BLM is proposing to add a definition of the term *terms and conditions*, which would include cross-references to the relevant provisions of the grazing regulations, under which such terms and conditions are applied via grazing authorizations.

The BLM is proposing minor, clarifying revisions to the definition of the term *trend*.

The BLM is proposing to revise the definition of the term *unauthorized leasing and subleasing* to add the term "beginning ranchers" in each place that the operative definition uses "sons and daughters." (For more detailed discussion of the rationale for this change, see the discussion of the proposed definition for the term *beginning rancher (mentee)*, *supra*.)

The BLM is proposing to revise the definition of the term *utilization* so that it measures removal, rather than forage, against the current year's growth to generalize consumption of that growth to all sources, and to add a citation to Technical Reference 1734-3 or subsequent updates thereto.

Section 4100.0-7 Cross reference.

The BLM is proposing to revise section 4100.0-7 to add a cross-reference to part 1700, which the proposed rule would also promulgate.

Section 4100.0-8 Land use Plans.

The BLM is proposing to revise section 4100.0-8 to clarify that grazing management must account for direction in the applicable statute in addition to land use plans and to remove the reference to "related levels of production or use to be maintained." That language has always been intended to call on the BLM to disclose levels of production in land use planning decisions, not to establish such levels at the planning stage, but its inclusion in the regulation has caused confusion on this point. The BLM is proposing this change in an effort to eliminate that confusion.

Section 4100.0-9 Information Collection.

The BLM is proposing to revise section 4100.0-9 to remove paragraph (b) on the public reporting burden for information collection and to streamline the remaining text.

Section 4110.1 Mandatory qualifications.

The BLM is proposing to revise paragraph (a) of section 4110.1 to reinsert as a qualification the requirement that an applicant be engaged in the livestock business and

that its business be production oriented. For further discussion of the meaning of *production-oriented livestock* see the preamble discussion, above, of the newly proposed definition of that term. For further discussion of the authority and rationale for this proposed change, see the preamble discussion of the proposed changes to 4130.2, below.

The BLM is proposing to revise paragraph (a)(1) of section 4110.1 to clarify that a qualified applicant must have reached the age of majority. The BLM is also proposing changes to paragraph (b) to clarify the intent of the section without changing anything about the requirement that the authorized officer be satisfied that applicants have a satisfactory record of performance.

Section 4110.2-1 Base property.

The BLM is proposing to revise section 4110.2-1 to remove paragraph (b) in its entirety. Paragraph (b), under the operative regulations, requires the authorized officer to specify the length of time for which land base property would be capable of supporting authorized livestock during the year, following appropriate consultation, cooperation, and coordination. The BLM believes this regulatory provision is unnecessary because grazing permittees and lessees must ensure, and the BLM must find, that land base property can support their livestock when not grazing on public land in general.

Section 4110.2-2 Specifying permitted use.

The BLM is proposing minor revisions to section 4110.2-2 to modernize language and clarify how the BLM specifies permitted use, particularly in the case of ephemeral or annual rangelands, and the relationship between permitted use and the associated base property. The proposed revisions include the introduction of the limitation that grazing permits issued under section 4130.2 are only for grazing by production-oriented livestock. For more detailed discussion of that proposal, see the discussion of proposed changes to section 4130.2, *infra*.

Section 4110.2-3 Transfer of grazing preference.

The BLM is proposing to amend paragraph (c) of section 4110.2-3 to make clear that consent of the owner is required in all base property transfers and to eliminate existing exceptions to that requirement.

The BLM is proposing to amend paragraph (d) of section 4110.2-3 to make clear that the exception for terminating existing permits established in section 4110.2-1(c) may apply in the circumstances described in this paragraph.

The BLM is proposing to revise paragraph (f) of the existing regulation to provide that the presumptive length for a preference transfer is, at a minimum, five years. The current regulation allows the BLM to approve transfers for as few as three years. In such cases, the BLM's experience has been that the administrative burden associated with continually renewing on a three-year cycle the preference transfer and grazing authorization, often to the same base property lessee, is substantial. Setting the presumptive length of a preference transfer at five years (while allowing the authorized officer to depart from that duration where appropriate) would help ease that burden by allowing the BLM to accept an updated base property lease while maintaining the permit as issued for a longer period before renewal would be required.

Proposed new paragraph (h) would establish an exception to the requirements of subpart 4160 for name changes and would allow the BLM to efficiently issue new permits when a name change is required so long as no terms and conditions, including the expiration date, of the permit would be changed.

Proposed new paragraph (i) would provide regulatory detail to guide the process for issuing a new permit following a transfer of grazing preference. When the BLM approves a transfer of grazing preference, there are a number of options under the TGA and section 402 of FLPMA for the BLM to structure and issue the resulting permit to the new

permittee, to whom the grazing preference is being transferred. But the existing regulations are silent as to the BLM's authority and flexibility.

At the very least, section 402(c)(2) of FLPMA requires the BLM to "continue[] under a new permit or lease" the "terms and conditions in a grazing permit or lease that . . . was terminated due to a grazing preference transfer." 43 U.S.C. § 1752(c)(2). That new permit then remains in effect until the point that the BLM "completes any environmental analysis and documentation for the permit or lease required under the National Environmental Policy Act . . . and other applicable laws." *Id.* This potential mode of issuing a new permit following a transfer of grazing preference is detailed in proposed paragraph (i)(3). Proceeding as described under that paragraph does not require environmental review under the National Environmental Policy Act (NEPA) at the time the permit is issued, and NEPA review would occur as a part of the next fully processed renewal of the permit.

Alternatively, the BLM may prefer to complete NEPA review at the time of issuing a permit following a transfer of grazing preference in order that the resulting permit be fully processed. It may do so by either (1) issuing a new permit with the same terms and conditions as the previous permit and limited in duration to the remaining term of that previous permit, or (2) issuing a new permit with whatever appropriate terms and conditions for up to ten years. These options are detailed in proposed paragraphs (i)(1) and (i)(2), respectively. In the former case, as the proposed rule acknowledges, it is presumed that the BLM would be able to comply with NEPA through a determination of NEPA adequacy, given that the terms and conditions and length of authorization would be precisely the same as those in place when the previous permit was issued or last renewed. In the latter case, the BLM could rely on previous NEPA documentation to the extent appropriate, though some form of new or supplemental NEPA analysis may be required.

The remaining proposed changes, including those to paragraphs (a)(1) and (b), are ministerial in nature.

Section 4110.2-4 Allotments.

The BLM is proposing to amend section 4110.2-4 to limit the consultation, cooperation, and coordination process to just the affected permittee and the state or states that contain the allotment at issue. The regulation would no longer require consultation, cooperation, and coordination with the interested public for decisions to combine or divide allotments. In general, the BLM has found that requiring the interested public be consulted at every step of the process for managing grazing can be inefficient and prevent timely management necessary to both facilitate grazing and protect forage and other resources. The proposed change would not preclude coordination with the interested public in cases where it would be helpful, but it would no longer require it. Moreover, the interested public would continue to have an opportunity to participate through its ability to comment on draft environmental assessments and other documents prepared under NEPA and through the proposed decision and protest process outlined in sections 4160.1 and 4160.2.

Section 4110.3 Changes in permitted use.

The BLM is proposing to revise section 4110.3 to eliminate references to subpart 4180, which is proposed to be repealed and replaced by generally applicable regulations at part 1700. The remaining proposed changes to this section are for clarity or otherwise ministerial in nature.

Section 4110.3-1 Increasing active use.

The BLM is proposing to revise paragraph (c) of section 4110.3-1 to split it into three paragraphs and to introduce the notion that additional forage will be apportioned consistent with multiple-use objectives. The BLM is also proposing in newly designated paragraph (d) to limit the consultation, cooperation, and coordination process under this

section to just the affected permittee and the state or states that contain the allotment at issue. For further discussion of the rationale for removing requirements to include the interested public in consultation, cooperation, and coordination opportunities, see the discussion above of the proposed changes to section 4110.2-4. The BLM is also proposing to revise newly designated paragraph (e) to eliminate the provision that would prioritize "contributions to stewardship efforts" when apportioning additional forage. In the BLM's experience, this provision is unclear and poorly defined, making it difficult to implement consistently when evaluating applications for apportioning additional forage, and is unlikely to result in a different apportionment of additional forage than does application of the remaining criteria.

The BLM is also proposing to add throughout the section references to the limitation that grazing permits issued under section 4130.2 are only for grazing by production-oriented livestock. For more detailed discussion of that proposal, see the discussion of proposed changes to section 4130.2, *infra*.

The remaining proposed revisions to section 4110.3-1 are organizational or otherwise ministerial in nature.

Section 4110.3-2 Decreasing active use.

The BLM is proposing to revise paragraph (b) of section 4110.3-2 to eliminate the reference to subpart 4180, which is proposed to be repealed and replaced by generally applicable regulations at part 1700.

The BLM is also proposing a new paragraph (c) that would provide that reductions in active use will be held in suspension and not canceled. It is appropriate to suspend, rather than cancel, use so that active use may efficiently resume at the original or otherwise increased levels when the conditions necessitating decreased use are no longer present.

Section 4110.3-3 Implementing changes in active use.

The BLM is proposing to revise section 4110.3-3 to limit the consultation, cooperation, and coordination process under this section to just the affected permittee and the state or states that contain the allotment at issue. For further discussion of the rationale for removing requirements to include the interested public in consultation, cooperation, and coordination opportunities, see the discussion above of the proposed changes to section 4110.2-4.

The BLM is proposing to revise paragraph (b) (proposed to be reorganized across paragraphs (a)(2) and (b)) of section 4110.3-3 to modify the process for issuing notices of closure and modifying authorized grazing use to address exigent circumstances such as drought, fire, flood, insect infestation, and imminent threat of resource damage. In such cases, the BLM must consult, cooperate, and coordinate with affected permittees and the relevant state and may not, as under the existing regulation, rely on a "reasonable attempt" at such consultation, cooperation, and coordination. The remaining proposed changes to section 4110.3-3, including those in paragraph (a) of the section, are organizational or otherwise ministerial in nature.

Section 4120.2 Allotment management plans.

The BLM proposes to rename this section by removing the reference in the existing section title to "resource activity plans" to simplify language and be consistent with the proposed changes to the definition of *Allotment management plan* in section 4100.0-5. *Allotment management plan*, as it is proposed to be defined, would include functional equivalents, like resource activity plans. The BLM also proposes updating this section to reflect the current practice by which an allotment management plan (AMP) is frequently incorporated directly into permits after being developed through the NEPA process and the BLM's consideration of a reasonable range of alternatives that occurs as part of that process.

The BLM is also proposing to revise section 4120.2 in various places to limit the consultation, cooperation, and coordination processes under this section to just the affected permittee and the state or states that contain the allotment at issue. For further discussion of the rationale for removing requirements to include the interested public in consultation, cooperation, and coordination opportunities, see the discussion above of the proposed changes to section 4110.2-4.

The BLM also proposes to remove paragraph (c) but revise paragraph (a) to clarify that an AMP would become effective after complying with applicable laws and the provisions of subpart 4160. The operative rule states that an AMP becomes effective upon approval by the authorized officer.

After renumbering paragraphs (d) and (e) as paragraphs (c) and (d), the BLM proposes to amend paragraphs (a) and the new (d) to remove the requirement for consultation, cooperation, and coordination with the resource advisory council (RAC) having responsibility for managing resources within the area to be covered by the plan when preparing, revising, or terminating an AMP or other activity plan. The BLM is proposing this change to improve efficiency in site-specific AMP development and implementation. The BLM routinely meets with RACs to consult, cooperate, and coordinate on issues and projects at larger management scales than specific grazing allotments. This proposed change does not preclude the BLM from engaging in consultation, cooperation, and coordination with the RAC, in appropriate circumstances, but it would no longer be a regulatory requirement.

Section 4120.3-1 Conditions for range improvements.

The BLM is proposing to revise section 4120.3-2 to provide that certain bureau decisions pertaining to range improvements must be memorialized in a written decision document. The BLM is proposing to revise paragraph (f) to account for the fact that some decisions related to range improvements may fall outside the purview of part 4100. The remaining

proposed revisions to section 4110.3-1 are organizational or otherwise ministerial in nature.

Section 4120.3-2 Cooperative range improvement agreements.

The BLM is proposing to revise paragraph (a) of section 4120.3-2 to clarify that cooperative range improvement agreements must specify the cost of materials in addition to the cost of labor and must identify who is responsible for operation and maintenance. The BLM is proposing to revise paragraph (b) to make explicit that water rights permitted or authorized under state law are included in that provision's reference to valid existing rights.

Section 4120.3-3 Range improvement permits.

The BLM is proposing to revise paragraph (c) of section 4120.3-3 to provide additional detail, including appropriate cross-references to other provisions of the grazing regulations, regarding the process to issue nonrenewable grazing permits for forage that will not be used by the existing permittee. The BLM is proposing to revise paragraph (c)(2) regarding dispute resolution to clarify that the reference to "interested parties" in the operative regulation means the parties to the dispute in question.

Section 4120.3-8 Range improvement fund.

For the same reasons identified above in the discussion of sections 4110.2-4 and 4120.2, respectively, the BLM is proposing to revise paragraph (c) of section 4120.3-8 to remove the requirement to consult with the interested public and with RACs during the planning of range developments and range improvement programs.

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

The BLM is proposing to designate the operative text of section 4120.3-9 as paragraph (a) and revise that text to clarify that the provisions of this regulation apply only to stockwater rights acquired "on the basis of state law." This proposed addition is intended to clarify that the regulation does not apply to Federal reserved water rights, such as

water rights reserved by Public Water Reserve 107. The proposed revisions to paragraph (a) would also provide examples for how to acquire, perfect, maintain, and administer water rights under state law, including through use of joint ownership arrangements and principal-agent relationships.

The BLM is proposing to add a new paragraph (b) which would require that the BLM only make changes to the purpose of use, place of use, or place of diversion of a water right as allowed under applicable state law and provide 30 days' notice to affected grazing permittees before doing so.

Section 4120.4 Special rules.

The BLM is proposing a minor addition to section 4120.4 to require that special rules be posted to a BLM or Department website, if available.

Section 4120.5-2 Cooperation with state, county, Tribal and Federal agencies and governments.

The BLM is proposing a revision to the title of section 4120.5-2 to clarify the expectation that the BLM will cooperate with state and county governments, not just the agencies of such governments, in administering laws and regulations related to livestock, livestock diseases, sanitation, and noxious weeds.

Section 4130.1-2 Conflicting applications.

The BLM is proposing a minor revision to paragraph (d) of section 4130.1-2 (redesignated as paragraph (c)) to modernize the language regarding access to public land. The proposed change would not change the operation of the section.

The BLM is proposing to remove paragraphs (b) and (g) of section 4130.1-2. In addition to being duplicative, an applicant may not be able to demonstrate proper use or stewardship of rangeland resources prior to becoming a permittee.

The BLM is proposing to add a new paragraph (f) that would identify the applicant's demonstrated ability to manage its grazing operation in a manner that would meet

applicable objectives as a criterion for the BLM to consider when resolving conflicting applications.

Finally, the BLM is proposing to revise paragraph (h) (redesignated as paragraph (g)) to provide that the BLM may require an applicant to provide additional information with its application concerning any unresolved violations of grazing permit terms and conditions. Such information may be necessary to allow the BLM to give this criterion appropriate consideration and weight when resolving conflicting applications.

Section 4130.2 Grazing permits.

The BLM is proposing to revise paragraphs (a) and (e)(1) of section 4130.2 to more simply identify the key components of a grazing permit—the permitted use, including active and suspended use, and the terms and conditions of the permit. The BLM is also proposing to limit grazing permits to "production-oriented" operations. In the TGA, Congress expressed the preference that grazing permits be issued to "landowners engaged in the livestock business." 43 U.S.C. § 315b. The BLM's administration of the grazing program has nearly universally reflected that principle from the time of the TGA's passage through today. By proposing this limitation now, the BLM is seeking to head off suggestions that grazing permits may be appropriate for other purposes, including preservation or conservation. Active management (i.e., grazing) is consistent with the direction in FLPMA to manage the public lands under principles of multiple use and serves as a critical tool (i.e., targeted grazing) to minimize dangerous buildup of fine fuels. Fine fuels are those that carry fires and create a consistent fuel bed, creating unsafe conditions during fire season. In this context, fine fuels are generally non-native annual grasses. Native bunchgrasses are less able to carry fire through an area due to the spacing between plants. To allow for application and enforcement of this limitation, the BLM is also defining *production-oriented livestock* in section 4100.0-5 to improve consistency with the intent of the TGA and reflect policy considerations. (And see the preamble

discussion of that proposed definition, above, for further detail on the authority and rationale for this proposal.) The term has also been proposed to be added, as appropriate, in other provisions throughout part 4100 that discuss the nature of the use that grazing permits may authorize.

The BLM is proposing to modify paragraph (b) to make explicit that consultation, cooperation, and coordination occurs after the BLM has received a complete application for permit issuance or renewal and to note that consultation, cooperation, and coordination need not occur at all prior to renewal of a permit under section 402(c)(2) of FLPMA, 43 U.S.C. 1752(c)(2). Renewals under that provision of FLPMA are mandatory by law and leave the BLM no discretion to do anything other than continue the authorization under the same terms and conditions as existed in the expiring permit. Moreover, the BLM is proposing to limit that consultation, cooperation, and coordination process to just the affected permittee and the state or states that contain the allotment at issue. For further discussion of the rationale for removing requirements to include the interested public in consultation, cooperation, and coordination opportunities, see the discussion above of the proposed changes to section 4110.2-4.

The BLM is proposing to revise paragraph (d) to combine subparagraphs (3) and (4). Under the resulting proposed subparagraph (3), the BLM may issue a permit for less than ten years when doing so would be "consistent with management and resource condition objectives." In cases where there is a base property lease associated with the grazing authorization, the proposed provision would require that the terms of the base property lease and grazing authorization be aligned. The BLM is then proposing a new subparagraph (4) to accommodate short-term permits in cases of prescribed grazing, grazing for scientific research or administrative studies, and grazing to control noxious weeds.

The BLM is proposing to revise paragraph (e) to primarily use the term "preference" rather than "first priority."

The BLM is proposing to remove paragraphs (g) and (h), which pertain to approvals of "conservation use" and "temporary nonuse." A revision to the grazing regulations in 1995 added provisions that purported to allow the BLM to issue a grazing permit for "conservation use," that is the absence of grazing, for up to the full term of the permit. In 1999, the Tenth Circuit, affirming a decision by a federal district court, found that the conservation use element of the 1995 rule exceeded the BLM's statutory authority under the TGA. *Babbitt*, 167 F.3d at 1307-08. The proposed rule eliminates reference to and discussion of conservation use permits from section 4130.2.

Meanwhile, the discussion of "temporary nonuse" in this section is no longer necessary because that topic is comprehensively addressed by the proposed revisions to section 4130.4.

The BLM is proposing to redesignate paragraphs (i) and (j) as paragraphs (g) and (h) and revise the newly designated paragraph (g) to eliminate the need to include land offered under exchange-of-use agreements when calculating the percentage of public land within an allotment for purposes of including that information in a grazing permit.

The BLM is proposing to add a new paragraph (i) to incorporate into the grazing regulations the statutory provision of FLPMA that allows the BLM to prioritize grazing permits for renewal based on relevant environmental concerns and available funding. *See* 43 U.S.C. 1752(i).

Section 4130.3 Terms and conditions.

The BLM is proposing to revise section 4130.3 to eliminate its reference to subpart 4180 which this proposed rule would also eliminate. For detailed discussion of the proposals to eliminate subpart 4180 and promulgate similar provisions at new part 1700, see the preamble discussion of those sections.

Section 4130.3-1 Mandatory terms and conditions.

The BLM is proposing to revise paragraph (a) of section 4130.3-1 to provide for how the BLM will determine the carrying capacity that serves as the limit for permitting grazing use. The remaining proposed changes to section 4130.3-1 are organizational or otherwise ministerial in nature. The BLM is also proposing to eliminate paragraph (c) as it refers to subpart 4180 which this proposed rule would also eliminate. For detailed discussion of the proposals to eliminate subpart 4180 and promulgate similar provisions at new part 1700, see the preamble discussion of those sections.

Section 4130.3-2 Other terms and conditions.

The BLM is proposing to revise paragraph (b) of section 4130.3-2 to provide that the BLM will identify the class of livestock in addition to or instead of, as appropriate, the breed when issuing permits for allotments within which two or more permittees are permitted to graze.

The BLM is proposing to revise paragraph (c) to provide that authorization for placement of nutritional supplements beyond salt must be included in the terms and conditions of a permit.

The BLM is proposing to delete paragraph (e). Consistent with the proposal elsewhere to limit grazing authorizations under section 4130.2 to production-oriented livestock, there is no basis for a different treatment of "indigenous" animals within those permits. For more detailed discussion of that proposal, see the discussion of proposed changes to section 4130.2, *supra*.

The BLM is proposing to add a new paragraph (h) (having renumbered paragraphs (f) through (h) as paragraphs (e) through (g) with the deletion of existing paragraph (e)) to provide for the inclusion of flexible terms and conditions, and their limits, to allow operators to adjust grazing practices without separate approval by the BLM. Since the operative regulations were put in place, the BLM and operators have in many cases

moved toward a more flexible, outcome-based model for grazing authorizations. This addition is part of an effort to modernize the grazing regulations to reflect this more flexible approach.

Section 4130.3-3 Modification of permits.

The BLM is proposing to revise section 4130.3-3 to make clear that a modification of permit terms and conditions must be made by a final grazing decision in a process that follows the procedures of subpart 4160. The proposed rule would also clarify that, in cases where the modification is in response to an application by the permittee, the BLM will begin the consultation, cooperation, and coordination process only once such application is complete, and that the consultation, cooperation, and coordination process under this section is limited to just the affected permittee and the state or states that contain the allotment at issue. For further discussion of the rationale for removing requirements to include the interested public in consultation, cooperation, and coordination opportunities, see the discussion above of the proposed changes to section 4110.2-4.

Other proposed changes to section 4130.3-3 are limited to edits for organization and clarity and would not change the operation of the section.

Section 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits, including temporary nonuse.

The BLM is proposing a wholesale revision of section 4130.4 to better delineate the process and standards for adjusting grazing use within the terms and conditions of a permit, and in particular to clarify that process and those standards with respect to temporary nonuse. This revision is necessary because the operative provision continues to reflect the “conservation use” concept that was challenged and found to be beyond the BLM’s authority under the TGA and because the operative provision does not reflect changes in grazing management by the BLM and permittees to move toward a more

flexible, outcome-based approach or to allow for the application of targeted grazing to address resource needs.

The proposed section would allow the BLM to approve changes to livestock number and period of use when a permittee applies for temporary nonuse. The proposed section would require permittees to actively apply for temporary nonuse and would provide that the BLM approves temporary nonuse on an annual basis. Temporary nonuse may be appropriate and approved for natural resource management, enhancement, and protection (including fuels management), or based on the business or personal needs of the permittee, in the latter case for no more than four consecutive years. In the case of temporary nonuse for business or personal reasons, the proposed provision would allow the BLM to make the forage subject to temporary nonuse available to another qualified applicant.

The proposed section would also allow the BLM to approve changes to period of use to allow the permittee to graze up to 21 days before the begin date and 21 days after the end date specified in the permit terms and conditions.

In both cases, the ability to change grazing use within the terms and conditions of the permit provides operators and the BLM with flexibility to respond to changing conditions, both on the ground and in operators' business and personal lives, and protect resources to ensure healthy rangelands and continued availability of forage.

Section 4130.5 Free-use grazing permits.

The BLM is proposing to remove section 4130.5 as a stand-alone section. The provisions of paragraph (a) are no longer necessary as the BLM treats applications for permits issued in the circumstances described in paragraph (a) the same as it would a general application for a grazing permit. The provisions in paragraph (b), meanwhile, are proposed to be relocated to section 4130.2(d)(4), which allows authorization of grazing for less than the standard ten-year period.

Section 4130.6 Other grazing authorizations.

The BLM is proposing minor revisions to the types of other authorizations listed here to align with changes proposed to the related substantive provisions that follow, which are described below.

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

The BLM is proposing to revise section 4130.6-1 to make explicit that exchange-of-use grazing agreements are available to applicants who do not already hold a permit to graze the allotment that would be subject to the agreement and that applicants are not required to have grazing preference to be eligible for an exchange-of-use agreement. The proposed rule would also change "livestock carrying capacity" to "carrying capacity" to reflect that carrying capacity encompasses more than just livestock use. The remaining proposed revisions to section 4130.6-1 are organizational or otherwise ministerial in nature.

Section 4130.6-2 Nonrenewable grazing permits.

The BLM is proposing to revise section 4130.6-2 to limit the consultation, cooperation, and coordination process under this section to just the affected permittee and the state or states that contain the allotment at issue. For further discussion of the rationale for removing requirements to include the interested public in consultation, cooperation, and coordination opportunities, see the discussion above of the proposed changes to section 4110.2-4.

The BLM is proposing other minor revisions to section 4130.6-2 to add relevant cross-references to other provisions of the grazing regulations and to clarify language.

Section 4130.6-3 Trailing permits.

The BLM is proposing to refer only to "trailing" permits and eliminate use of the synonymous term "crossing" permit. Both phrases are currently used, creating unnecessary confusion. The Rangeland Administration System (RAS) identifies these permits as "trailing" permits.

The BLM is proposing to add a new paragraph (b) to section 4130.6-3 (and to designate the existing operative text of the provision as paragraph (a)) to provide that the BLM may issue a trailing permit with immediate effect or on a date set out in the decision. Frequently, needing to wait 30 days for a trailing permit to go into effect defeats the purpose of the request for a trailing permit by the livestock operator.

Section 4130.6-4 Special grazing permits.

The BLM is proposing to remove section 4130.6-4. The TGA authorizes the BLM to issue permits for grazing only by "livestock" and includes no separate allowance for grazing by indigenous animals. Grazing by indigenous animals, therefore, is appropriately subject to the same requirements and limitations as grazing by other livestock and should be authorized through a standard grazing permit. Indeed, even today, with this provision in effect, the BLM often authorizes grazing by bison and other indigenous animals under standard permits and without reference to this provision.

Section 4130.7 Ownership and identification of livestock.

The BLM is proposing to revise section 4130.7 to expand the category of ranchers who may work with a permittee to learn the business and begin their own. The operative rule limited that opportunity to the permittee's "sons and daughters." In the BLM's experience, that is too restrictive. By expanding the opportunity to anyone who qualifies as a "beginning rancher" (for discussion of the qualifications to be a beginning rancher, see discussion of the proposed definition of that term in the discussion of section 4100.0-5, *supra*), the proposed rule would give greater opportunity to those who seek to learn the livestock business and who will become the next generation of BLM grazing permittees.

The BLM is also proposing to eliminate subparagraph (f)(2), which requires that livestock owned by sons or daughters or, under the proposed rule, by grandchildren or other beginning ranchers not exceed 50 percent of the total number of livestock

authorized under the permit. This limitation is unnecessary and similarly serves to constrain the allowance made in this part to encourage the next generation of ranchers.

Section 4130.8-1 Payment of fees.

The BLM is proposing to add a new subparagraph (a)(4) to provide that the grazing fee used for authorizations under newly proposed paragraphs (g) and (h) will be equal to the average value of the grazing fee for the 10 years immediately preceding the issuance of the billed grazing permit.

The BLM is proposing to add to paragraph (b) that no fee shall be charged for a trailing permit unless livestock will be trailing for more than 24 hours while also noting that a trailing permit is still required even in cases where trailing will occur for less than 24 hours.

The BLM's proposed revisions to paragraph (c), including the proposal to divide it into paragraphs (c), (d), and (e), are organizational or otherwise ministerial in nature.

The BLM is proposing to redesignate paragraph (d) as paragraph (f) and revise the text to provide that the surcharge for grazing by livestock owned by persons other than the permittee will not apply to "beginning ranchers" (as opposed to just "sons and daughters") or in cases where the other person is another permittee being provided relief from drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements. The BLM believes that the surcharge was never intended for situations where a permittee is in need of relief from external forces beyond its control or is taking action to help improve the range.

The BLM is proposing to add new paragraphs (g) and (h) to allow the BLM to issue a single bill to cover fees for the whole life of a permit in the case of small operations and, at the election of the permittee, for larger operations, rather than issue a bill each year, as it currently does for all permits. Preparing and issuing bills on an annual basis places an administrative burden on the BLM. Similarly, paying those bills on an annual basis

places a burden on permittees, especially those with small operations or operations that use only a small amount of BLM-managed land. For example, a permittee with 35 AUMs could pay $591.50 once at the beginning of their permit instead of remembering to pay a bill for $59.15 each year for ten years. To alleviate those burdens, under the proposed rule, the BLM would issue a single bill to cover the whole life of a permit in all cases in which the permit authorizes fifty or fewer AUMs per year. Payment would be required prior to grazing use. Under the proposed rule, the BLM would allow permittees whose permits authorize more than fifty AUMs per year to elect to pay a single bill prior to grazing use. As noted above, under proposed paragraph (a)(4), the fee for permits issued under these proposed provisions would be based on the average value of the grazing fee for the 10 years immediately preceding their issuance. Under proposed section 4130.8-2(c), such fees would be non-refundable. If the BLM were forced to process refunds for those fees, it would negate the efficiencies gained by using the aggregate billing approach.

The BLM is proposing to redesignate paragraph (e) as paragraph (i) and revise the text to provide that, in cases where grazing is billed after the grazing season, grazing fees are due within 30 days of when the bill issues and not "upon issuance," as under the operative regulations. The remaining proposed revisions to paragraph (e) (redesignated as paragraph (i)) are ministerial in nature.

Section 4130.8-2 Refunds.

The BLM is proposing to add a new paragraph (c) to section 4130.8-2 to provide that grazing fees are non-refundable in cases of aggregate billing under proposed section 4130.8-1(g)-(h) for the reasons of efficiency discussed above.

Section 4130.8-3 Service charge.

The BLM is proposing minor revisions to section 4130.8-3 to clarify language.

Section 4140.1 Acts prohibited on public lands.

The BLM is proposing to revise paragraph (a) of section 4140.1 to eliminate references to "conservation use," as that concept was previously challenged and found to be beyond the BLM's authority under the TGA, and otherwise clarify the language to provide for precision in these regulations, the violation of which may carry a criminal sanction. The BLM is specifically soliciting comment as to whether the agency should define "substantial use" as used in section 4140.1(a)(2).

The BLM is proposing to revise paragraph (b) to more succinctly provide that timely payment of grazing and surcharge fees is required to avoid penalties for unauthorized use under section 4140.1(b)(1)(i).

The BLM is proposing to revise paragraph 4140.1(b)(10) to provide that direction by the authorized officer to reclaim or repair lands, property, or resources must be in writing before the failure to follow such direction constitutes a violation.

The BLM is proposing to remove paragraph 4140.1(b)(11). Instances in which a permittee leaves a gate open can be managed through the trespass process under subpart 4150. When apprehended, criminal sanction under other authorities may be available for members of the public who leave gates open.

The remaining proposed revisions to section 4140.1 are ministerial in nature.

Section 4150.1 Violations.

The BLM is proposing to revise section 4150.1 to require in regulation that the BLM must contact the owner of livestock, and document such contact, whenever it appears there is an instance of unauthorized use in violation of section 4140.1(b)(1) and to provide criteria by which an authorized officer may conclude that a nonwillful violation may be treated as "incidental." In general, the revisions to subpart 4150 are intended to reinforce that unauthorized grazing use must be appropriately documented. Such reinforcement is necessary to respond to findings made by the GAO in its 2016 report

that such documentation was not consistently prepared.[7] At the same time, it is appropriate to treat certain categories of violations more informally. The BLM proposes that where the authorized officer concludes that the unauthorized use occurred through no fault of the livestock operator; the forage consumed as a result of the unauthorized use is insignificant; public lands have not been damaged; and the livestock operator promptly corrects the violation, the violation should be considered "nonwillful and incidental" and may be resolved with less formality than other, more serious violations.

Section 4150.2 Notice and order to remove.

The BLM is proposing to revise section 4150.2 to reinforce that all violations must be documented in a written notice of unauthorized use and order to remove livestock. Consistent with the proposed revisions to section 4150.1, discussed above, the BLM is also proposing to relax that requirement in the case of nonwillful violations that meet the newly articulated criteria for being considered incidental. The BLM is also proposing to revise section 4150.2 to explicitly provide that an operator may contest with the BLM the characterization of a violation as willful.

Section 4150.3 Settlement.

The BLM is proposing to revise section 4150.3 to align with revisions in section 4150.1 and 4150.2. The operative regulations already had an allowance for nonmonetary settlement in the kind of cases that now, under the proposed rule, would be characterized as incidental. The proposed rule further provides that the authorized officer may, at his or her discretion, exempt a nonwillful violation from the settlement process altogether if the authorized officer finds, to his or her satisfaction, that the livestock operator promptly corrected the violation. The remaining proposed revisions are ministerial in nature.

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[7] United States Government Accountability Office, Report to the Committee on Natural Resources, House of Representatives, *Unauthorized Grazing: Actions Needed to Improve Tracking and Deterrence Efforts* (July 2016).

Section 4150.4-1 Notice of intent to impound.

The BLM is proposing a minor addition to section 4150.4-1 to require that notices of intent to impound be posted to a BLM or Department website, if available.

Section 4160.1 Proposed decisions.

The BLM is proposing to revise paragraph (a) of section 4160.1 to modernize and make more efficient the process for issuing proposed decisions. Under the proposed rule, the BLM would be able to use more modern modes of service when notifying affected applicants, permittees, their agents, and lien holders of a proposed decision. The BLM proposes to allow service by registered or certified mail, personal delivery, delivery service (to physical addresses), and electronic mail (in cases where the person to be served consents in writing to electronic service). The proposed rule would also eliminate the requirement that proposed decisions be sent beyond the identified participants (i.e., to the interested public as well). Instead, under the proposed rule, proposed decisions would be posted to a BLM website, and it would be the responsibility of the interested public to keep abreast of BLM management of the grazing allotments in which they have an interest. This change acknowledges significant changes in modes of communication since the existing regulation was promulgated, including the rise of internet communication and the increased transparency and availability of information that the internet affords. Moreover, this change would align the BLM's process with that of other programs and agencies and streamline the process for issuing grazing decisions and bring that process more in line with the process for other types of land use authorization decisions that the BLM makes. It also would facilitate a more orderly protest process, as described below in the discussion of proposed changes to section 4160.2.

The BLM is proposing to revise paragraph (c) of section 4160.1 to expand the categories of decisions which the authorized officer may, at his or her discretion, issue as final decisions without first issuing a proposed decision. The BLM would continue to be

authorized to issue final decisions, without first issuing a proposed decision, under section 4110.3-3(a)(2)(ii) (section 4110.3-3(b) under the operative rule) to close allotments and modify authorized use in exigent circumstances and under section 4150.2(e) (section 4150.2(d) under the operative rule) to issue temporary grazing closures. The proposed rule would also allow the BLM to issue the following categories of decisions as final decisions, without first issuing a proposed decision: decisions under section 4130.6-3 to issue a trailing permit; decisions under section 4170.1-2 to cancel active use that a permittee has failed to use; decisions issuing permits where public land is 15 percent of less of the allotment; decisions issuing permits for fewer than 50 AUMs; decisions issuing permits to which the categorical exclusion established by section 402(h)(1) of FLPMA (43 U.S.C. § 1752(h)(1)) applies; decisions issuing permits in cases where the terms and conditions are not changing, there is no interested public associated with the allotment, and the permittee is the only party receiving the decision; decisions to authorize a range improvement in cases where there is no interested public associated with the allotment and the permittee is the only party receiving the decision; decisions issuing permits that adjust the number of livestock, while making no other changes, to account for a change in the percentage of public land within an allotment; decisions under section 4110.2-3(i)(1) to issue a grazing permit following a preference transfer that has the same terms and conditions, including expiration date, as the predecessor permit; decisions under section 4110.2-3(i)(3) to continue under a new permit, following a preference transfer, the terms and conditions of the predecessor permit, consistent with section 402(c)(2) of FLPMA (43 U.S.C. § 1752(c)(2)); and decisions issuing permits to account for a change to the name or configuration of an allotment or to correct the legal description of allotment boundaries, while making no other changes.

The BLM is specifically soliciting comment as to whether there are additional categories of decisions that would be appropriate to exclude from the requirement to first issue a proposed decision.

Section 4160.2 Protests.

The BLM is proposing to revise section 4160.2 to simplify the timing of protests. Under the operative rule, every person who receives a proposed decision has 15 days from the point of receipt to register any protest to the proposed decision. This has led to confusion as different recipients may have different deadlines to respond, and it has proven difficult for the BLM to always know when those deadlines are in all cases. The proposed rule would provide for a single deadline for protest tied to the date that the proposed decision is issued—i.e., when it is *sent* to the parties required to be served and when (under the proposed changes to section 4160.1) it is posted to a BLM website. To account for the time involved in delivering the proposed decision and identifying proposed decisions posted online, the BLM is proposing to expand the period for registering a protest from 15 days to 20 days.

Section 4160.3 Final decisions.

The BLM is proposing minor revisions to paragraph (b) in section 4160.3 to align the provision for service in that section with the proposed changes in section 4160.1 to the mode and acceptable methods of service of proposed decisions.

The BLM is also proposing a new paragraph (c) to replace existing paragraphs (c) through (f). The proposed paragraph tracks language included in previous iterations of the grazing regulations and would provide that, consistent with the applicable provisions of 43 CFR part 4, which governs administrative appeals to the Office of Hearings and Appeals generally, final decisions may be appealed within 30 days of issuance, during which time the final decision is not in effect. As an exception to that rule, proposed paragraph (c) allows the authorized officer to determine that a final decision should be

effective immediately, notwithstanding the general rule under 43 CFR part 4 that decisions only go into effect after 30 days. Proposed paragraph (c) further provides that an appeal will have the effect of suspending the final decision until the appeal is resolved. No separate petition for stay would be required. The proposed paragraph then provides that, as under the current regulations, permittees who were granted grazing use in the preceding year would be entitled to continue that use during the pendency of the appeal and the attendant suspension of the final decision. Finally, proposed paragraph (c) allows for an exception to the general rule that an appeal suspends the effect of the final decision for cases where, if required for the protection of range resource values, the authorized officer determines and documents that the decision should be issued in full force and effect. In such cases, the final decision is not suspended during an appeal. The BLM anticipates that many of the provisions of proposed paragraph (c) will operate similarly to the equivalent provisions in the existing regulation. The proposed revisions are intended to streamline and simplify the regulatory language and, in particular, the process for securing a stay of the effect of a final decision being appealed by providing for the automatic suspension, in most cases, of final decisions if and when appealed.

Section 4160.4 Appeals.

The BLM is proposing ministerial edits to section 4160.4 to revise cross-references to 43 CFR part 4, which was itself recently revised. The proposed edits would provide a cross-reference only to the part number and would eliminate the summary of what part 4 provides to avoid having those cross-references and that summary go out of date again in the future.

Section 4170.1-2 Failure to use.

The BLM is proposing to revise section 4170.1-2 to make clear that approved temporary nonuse will not be held against the permittee when the BLM evaluates whether that permittee has been making substantial use of their authorization to graze. Although the

BLM has never enforced section 4170.1-2 in a manner that punished operators for taking approved temporary nonuse, the uncertainty caused by the ambiguity in the operative version of this section has led some operators to avoid seeking and receiving approval even where temporary nonuse is a good option for either the operator's own business circumstances or for protection of forage and other resources. The remaining edits proposed to section 4170.1-2 are ministerial in nature.

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

The BLM is proposing to eliminate subpart 4180 from the grazing regulations and replace it with the part 1700 regulations proposed in this rule. Although the concepts of land health are born out of the congressional direction in PRIA to protect rangelands, threats to land health are not limited to livestock grazing. Other uses of the public lands, including their management for wild horse herds, may contribute to those lands failing to achieve and maintain the fundamentals of land health. But by focusing assessment of those fundamentals within the grazing program and, effectively, tying land health evaluation to the grazing permitting process, without other allowance for addressing concerns, it is grazing permittees who have carried a disproportionate burden of management to foster land health. For more detailed discussion of this rationale and of the operation of the newly proposed regulations, see the discussion of the proposed part 1700 regulations, *supra*.

Section 4190.1—Effect of wildfire management decisions.

The BLM is proposing to revise section 4190.1 to add targeted grazing to the list of examples of appropriate fuel reduction and fuel treatment activities.

III. Severability

The provisions of the proposed rule should be considered separately. If any portion of the rule were stayed or invalidated by a reviewing court, the remaining elements would

continue to provide the BLM with important and independently effective tools to manage livestock grazing on the public lands. Hence, if a court prevents any provision of this proposed rule from taking effect, that should not affect the other parts of the proposed rule. The remaining provisions would remain in force.

IV. Procedural Matters

Regulatory Planning and Review Under Executive Order 12866

Section 6(a) of Executive Order (E.O.) 12866 requires agencies to submit "significant regulatory actions" to the Office of Information and Regulatory Affairs (OIRA) for review. OIRA has determined that this proposed regulatory action constitutes a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly, this action was submitted to OIRA for review under E.O. 12866. The BLM is required to conduct an economic analysis in accordance with section 6(a)(3)(B) of E.O. 12866. The BLM has complied with this directive in this document.

Review Under Executive Orders 14154 and 14192

The BLM has examined this proposed rulemaking and has determined that it is consistent with the policies and directives outlined in E.O. 14154, *Unleashing American Energy*, and E.O. 14192, *Unleashing Prosperity Through Deregulation*. This proposed rule is an E.O. 14192 deregulatory action.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 et seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment an initial regulatory flexibility analysis that describes the reasons why the action is being considered, a statement of the

objectives and legal basis for the proposed rule, an estimate of the number of small entities the proposed rule will apply to, a description of reporting and recordkeeping requirements, and an identification of overlapping rules and laws. 5 U.S.C. 603(b). The reasons, objectives, and legal basis for the proposed rule are described above. The Proposed Rule is expected to reduce time and operational costs for small entities who hold permits to graze on BLM lands, though there may be some costs to small entities, particularly related to understanding the regulatory changes and adjusting to aggregate billing.

To estimate the number of small businesses that may be affected by the Proposed Rule, the BLM relied on data from the USDA Census of Agriculture for the Beef Cattle Ranching and Farming (NAICS 112111), Sheep Farming (NAICS 112410) and Goat Farming (NAICS 112420) industries. It is likely that at least some of these operations are a component of a larger business enterprise. In total, the BLM estimates 112,512 small businesses in the grazing sectors operate in states with BLM grazing. To identify small organizations and small government jurisdictions, the BLM searched grazing permit operators for key terms that may signal permits held by organizations or governments. There are roughly 40 government entities and 44 not-for-profit organizations that hold grazing authorizations.

As detailed in the IRFA, there are four types of impacts that will generate benefits or costs for small entities: rule familiarization, changes in billing for small permits, improved efficiency of decisions, and the surcharge exemption for beginning ranchers. All businesses operating on BLM lands may incur an estimated one-time cost associated with rule familiarization, and unquantified recurring benefits from improved efficiency of decisions. Only those businesses that operate on BLM lands and hold small authorizations will be affected by changes in billing for small permits. The estimated net effect on these businesses is either a $43 benefit per bill or a $72 cost per bill, depending

on the discount rate used. The improved efficiency of decisions is expected to benefit small ranching operations but the impacts are unquantified. Finally, the surcharge exemption is expected to benefit a limited number of operations where a beginning rancher intending to take over the business is grazing livestock under a permit in his or her mentor's name.

The BLM has estimated the potential economic impacts to small entities using best available information. Based on this analysis, the BLM does not expect the proposed rule to have a significant impact on a substantial number of small entities. However, the BLM solicits comments from affected small entities on the Initial Regulatory Flexibility Analysis. Comments with additional information that could improve the analysis are most helpful.

Review Under Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector as there is no direct implementation of action as a result of this rule. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Review Under Governmental Actions and Interference with Constitutionally Protected Property Right - Takings E.O. 12630

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630 as the rule only applies to livestock grazing on public lands. A takings implication assessment is not required.

Review Under E.O. 13132

Under the criteria in section 1 of Executive Order 13132, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary

impact statement. This rule, while it would promulgate regulations at a national level and across multiple western states, would not affect the distribution of power within a State or propose to change the relationship between the national government and the States. Therefore, a federalism summary impact statement is not required.

Review Under E.O. 12988

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Review Under E.O. 13211 of Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, agencies are required to prepare and submit a Statement of Energy Effects to the Administrator of OIRA for those matters identified as significant energy actions. This statement is to include a detailed statement of "any adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) should the proposal be implemented" and "reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use."

Section 4(b) of E.O. 13211 defines a "significant energy action" as "any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is

likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by OIRA as a significant energy action."

This proposed rule, if finalized as proposed, is not expected to have a significant effect on the Nation's energy supply.

Review Under E.O. 13175

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, 512 DM 4 and 512 DM 6, and we acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations on a government-to-government basis. Through this notice we invite Tribes and Alaska Native Corporations to participate in government-to-government consultation on this proposed rule. Consultation may be arranged by contacting the individual listed in the "For Further Information Contact" section above and may take the form of an in-person meeting or via teleconference or virtual web meeting. In addition, we will send communication via electronic mail to all 574 federally recognized Indian Tribes and to approximately 200 Alaska Native Corporations soliciting their input as to whether or not they would like the BLM to consult with them on the proposed changes to the regulations at 43 CFR part 4100, *Grazing Administration—Exclusive of Alaska* and to notify them of the opportunity to participate in an informational webinar. The opportunity for government-to-government consultation will remain open for the duration of the rulemaking, and the BLM welcomes Tribal input at any time before the final rule is issued. Tribes may be particularly interested in sections 4100 "*Authority*" and 4120.5-2 "*Cooperation with state, county, Tribal and Federal agencies and governments.*"

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) (44 U.S.C. §§ 3501–3521) generally provides that an agency may not conduct or sponsor and, not withstanding any other provision of law, a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. Collections of information include any request or requirement to obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. § 3502(3) and 5 CFR 1320.3(c)). OMB has approved the existing information-collection requirements contained in 43 CFR Part 4100 under OMB control number 1004-0041. This proposed rule would revise information-collection requirements that are subject to review by OMB under the PRA.

Proposed Revised Information Collections

43 CFR 4130.2(a) and Form 4130-1: The BLM is proposing to revise paragraph (a) of section 4130.2 to more simply identify the key components of a grazing permit—the permitted use, including active and suspended use, and the terms and conditions of the permit. The BLM is also proposing to limit grazing permits to operations involving "production-oriented" livestock. Form 4130-1 would be revised to capture these changes to the way information is included in a grazing permit. Form 4130-1b would be revised to require applicants to certify that they are engaged in a production-oriented livestock business.

43 CFR 4130.7 and Form 4130-1b: The BLM is proposing to revise section 4130.7 to expand the category of ranchers who may work with a permittee to learn the business and begin their own. Accordingly, the section of Form 4130-1b on ownership and control of livestock would be revised to include grandchildren of grazing permittees and beginning

ranchers as among those that may graze public lands subject to a permit held by someone else.

The proposed rule would not change the estimated public reporting burdens for these forms because the changes do not result in new or different information being submitted with a grazing permit application, only the scope of the questions presented on the two impacted forms would change. The other forms under this OMB Control Number would remain unchanged.

Renewal of OMB Control Number 1004-0041

OMB Control Number 1004-0041 is currently scheduled to expire on November 30, 2026. Contemporaneous with this rulemaking process, the BLM plans to request that OMB renew this OMB Control Number for an additional three (3) years. As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format. We are especially interested in public comments addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of response.

The annual estimated total burdens for OMB Control Number 1004-0041, along with an abstract of this information collection, are provided below.

Title of Collection: Authorizing Grazing Use (43 CFR subparts 4110 and 4130).

OMB Control Number: 1004-0041.

Form Numbers: 4130–1, 4130–1a, 4130–1b, 4130–3a, 4130–4, and 4130-5.

Type of Review: Revision of a currently approved collection of information.

Respondents/Affected Public: Any U.S. citizen or validly licensed business may apply for a BLM grazing permit or lease.

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

Frequency of Collection: On occasion and Annual.

Estimated Completion Time per Response: Varies from 10 to 35 minutes, depending on activity.

Number of Respondents: 18,010.

Annual Responses: 33,810.

Annual Burden Hours: 7,855.

Annual Burden Cost: $30,000.

Abstract: The Taylor Grazing Act of 1934 (43 U.S.C. 315) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) authorize the BLM to administer the livestock grazing program consistent with land use plans, multiple use objectives, sustained yield, environmental values, economic considerations, and other factors. Maintaining accurate records of permittee qualifications for a grazing permit, base property used in conjunction with public lands, and the actual use made by livestock authorized to graze on the public lands, is an important and integral part of the program administration and grazing management. The regulations at 43 CFR 4110.1 and 43 CFR 4110.2 require application and notice to the BLM to transfer grazing preference and to

apply for a permit in conjunction with a preference transfer. The regulations at 43 CFR 4130.1 require existing permittees to apply to the BLM for changes in their authorized grazing. The regulations at 43 CFR 4130.3-2(d) allow the BLM to require permittees operating under a grazing permit to submit an actual grazing use report within 15 days after completing their annual grazing use, or as otherwise specified in the permit. The regulations at 43 CFR 4130.6-1 allow the BLM to enter into "exchange-of-use" agreements with applicants who own or control lands that are unfenced and intermingled with public lands within an allotment. The BLM requires applicants and permittees to submit the required information on Forms 4130-1, 4130-1a, 4130-1b, 4130-3a, 4130-4, and 4130-5.

Comments on Proposed Information-Collections in Proposed Rule

The complete information collection request that has been submitted to OMB for this proposed rule is available at www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under Review - Open for Public Comments" or by using the search function. If you want to comment on the information-collection requirements of this proposed rule, please send your comments and suggestions on this information-collection by the date indicated in the **DATES** and **ADDRESSES** sections as previously described.

Comments on Proposed Renewal of OMB Control Number 1004-0041

If you only want to comment on the proposed renewal of this OMB Control Number, send your written comments by email to Darrin King, BLM Information Collections Officer, at BLM_HQ_PRA_Comments@blm.gov. Please refer to OMB Control Number 1004-0041 in the subject line of your comments. Please do not send comments on the proposed rule to the above email address. Comments on the proposed rule should be provided as indicated in the DATES and ADDRESSES sections as previously described.

National Environmental Policy Act

The BLM intends to apply the categorical exclusion (CE) identified in the Department's NEPA regulations at 43 CFR 46.210(i) to comply with NEPA. This CE covers policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case. The proposed rule is administrative and procedural in nature. It sets out the processes for evaluating and approving grazing authorizations under the TGA and would establish a new process for evaluating and responding to land health conditions on public lands. Where and at what levels grazing will occur is ultimately determined by planning decisions and individual permitting decisions, and this rule would not dictate the outcome of any of those decisions, which would be subject to NEPA on a case-by-case basis. Similarly, the rule obliges the BLM in some circumstances to take "appropriate action" to address concerns associated with land health. What constitutes appropriate action, its timing, and its environmental effects will all turn on the particular facts and circumstances present when and where that obligation is triggered. Before taking "appropriate action," the BLM would analyze the environmental effects of doing so under NEPA.

Finally, the BLM expects that the proposed rule would not implicate any of the extraordinary circumstances listed in 43 CFR 46.215. The BLM plans to document the applicability of the CE concurrently with development of the final rule.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Claims.

43 CFR Part 1700

Fundamentals of Land Health, Standards, Assessment and Evaluation.

43 CFR Part 4100

Administrative practices and procedure, Grazing lands, Livestock, Penalties, Range management, and Reporting and recordkeeping requirements.

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Director, Office of Surface Mining, Reclamation and Enforcement

Exercising Authority of the Assistant Secretary, Land and Minerals Management.

Accordingly, for the reasons set out in the preamble, the Department of Interior, Bureau of Land Management and Office of Hearings and Appeals propose to amend 43 CFR parts 4, 1700, and 4100 as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. Amend the authority citation for part 4 by revising it to read as follows:

Authority: 5 U.S.C. 301, 503–504, 554–559, 704; 25 U.S.C. 9, 372–374, 410, 2201 *et seq.*; 43 U.S.C. 315h, 1201, 1457; Pub. L. 99-264, 100 Stat. 61, as amended.

Subpart C—Rules Applicable to Proceedings Before the Departmental Cases Hearings Division

2. Amend § 4.170 by, in paragraph (b), removing "(a)" from the cross-reference to § 4160.3(a), and by removing paragraph (g).

3. Add a new § 4.171 to read as follows:

§ 4.171 Effect of decision pending appeal; exhaustion and finality

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

(1) A BLM grazing decision will not be effective during the time in which a person or entity adversely affected by the grazing decision may file an appeal under 43 C.F.R. 4160.3 unless the decision is placed into full force and effect by the BLM officer.

(2) An appeal will suspend the effect of the grazing decision pending final action on the appeal unless the decision is placed into full force and effect by the BLM officer.

(b) ***Full force and effect decision.*** A grazing decision may be placed into full force and effect as follows:

(1) The authorized BLM officer may provide that the grazing decision will be in full force and effect upon issuance or on a date established in the decision, and the grazing decision will remain in effect pending final action on the appeal unless the ALJ grants a stay pursuant to § 4.172.

(2) The ALJ may provide that the grazing decision will be in full force and effect pending a decision or order on the merits if a written motion, supported by clear and convincing evidence, demonstrates that:

(i) Resources on the public lands require immediate protection due to changed circumstances that occurred after the filing of the notice of appeal; and

(ii) The immediate and irreparable harm to the United States due to resource deterioration associated with the continued suspension of the grazing decision exceeds the harm to the Appellant associated with placing the decision into full force and effect.

(3) The ALJ may provide in the decision or order on the merits that the grazing decision will be in full force and effect pending any further appeals, and the grazing decision will remain in effect pending final action on the appeal unless the IBLA grants a stay pursuant to § 4.405.

(c) ***Exhaustion and finality of grazing decision.*** To ensure exhaustion of administrative remedies, a grazing decision will not be considered final and subject to judicial review under 5 U.S.C. 704 unless it has been made effective pending a decision on appeal in the manner provided in this section.

4. Redesignate § 4.171 as § 4.172 and revise paragraph (a) to read as follows:

(a) Standards and procedures for obtaining a stay. An appellant under § 4.170 may petition for a stay of a grazing decision placed into full force and effect by an authorized BLM officer by filing the petition for a stay with DCHD concurrently with the notice of appeal. Filings must be made in accordance with §§ 4.102 and 4.103. Except as otherwise provided by statute or other pertinent regulation, the following requirements apply:

(1) ***

(2) ***

(3) ***

***

5. Redesignate § 4.172 as § 4.173.

6. Redesignate § 4.173 as § 4.174.

7. Remove § 4.174.

8. Revise § 4.175 to read as follows:

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(b) ***Judicial Review.*** A BLM grazing decision may only be challenged in Federal court under 5 U.S.C. 704 if administrative remedies have been exhausted and the decision has become final and effective in accordance with § 4.171(c). Exhaustion does not require an appeal of a denial of a petition for a stay.

9. Add part 1700 to read as follows:

PART 1700—FUNDAMENTALS OF LAND HEALTH AND STANDARDS FOR PROGRAM ADMINSTRATION

Sec.

AUTHORITY: 43 U.S.C. 1701 *et seq.*

PART 1700—FUNDAMENTALS OF LAND HEALTH AND STANDARDS FOR PROGRAM ADMINSTRATION

§ 1700.1 Fundamentals of land health.

The Bureau of Land Management shall manage lands across all program areas in such a manner as to facilitate achievement of the following conditions:

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their 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; watershed, riparian-wetland, and hydrologic processes 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) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered, Federal candidate, and other special status species.

§ 1700.2 Standards.

(a) The Bureau of Land Management will, as appropriate, develop, amend, and maintain State or regional standards to measure and evaluate achievement of the fundamentals described in § 1700.1. At a minimum, State or regional standards will address the following, where relevant to the State or region in which the standards will apply:

(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 reproductive establishment of appropriate plant species when climatic conditions and space allow;

(7) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(8) Maintaining or promoting the processes that minimize non-point sources of water quality pollution;

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

(10) Emphasizing native species in the support of ecological function; and

(11) Incorporating the use of non-invasive, non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health, or a site has passed an ecological threshold and cannot be returned to a functioning native state.

(b) State or regional standards developed by the Bureau of Land Management may not be implemented prior to their approval by the Bureau of Land Management Director.

(c) Existing standards at the time of promulgation of this part that relate to water quality or air quality shall be rescinded within 30 days of promulgation of this subpart unless relevant to paragraph (a)(8) of this section.

(d) Existing standards at the time of promulgation of this part that refer to "grazing" will be expanded to include all programs, unless inherently specific to grazing management (e.g., a standard that provides that *grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made*).

§ 1700.3. Rapid landscape-scale condition assessment.

(a) Rapid landscape-scale condition assessments assess and synthesize information on the condition of soil, water, habitats, and ecological processes that are relevant to the fundamentals of land health identified in § 1700.1.

(b) When conducting rapid landscape-scale condition assessments, the Bureau of Land Management must:

(1) Compile and analyze condition and trend data relevant to each land health standard, including remote sensing products, field-based data, and other data gathered through inventory, assessment, and monitoring activities;

(2) Incorporate consistent analytical approaches, quantitative indicators, and benchmarks where practicable;

(3) Complete the assessment with available data within six (6) months of initiating the assessment process; and

(4) Update the assessment at least once every 10 years.

(c) When authorized officers inventory, assess, and monitor conditions on public lands, they shall employ the following, as appropriate:

(1) Interdisciplinary monitoring plans for providing data relevant to decision makers;

(2) Standardized field protocols and indicators to allow data comparisons through space and time in support of multiple management decisions;

(3) Appropriate sample designs to minimize bias and maximize applicability of collected data;

(4) Integration with remote sensing products to optimize sampling and calibrate continuous map products; and

(5) Data management and stewardship to ensure data quality, accessibility, and use.

§ 1700.4 Land health evaluation and causal factor determination.

(a) Land health evaluations evaluate whether public lands are achieving, making significant progress toward achieving, or not achieving land health standards. To conduct land health evaluations, authorized officers must:

(1) Rely on data and information from rapid landscape-scale condition assessments (§ 1700.3);

(2) Consider multiple lines of evidence to evaluate achievement of each standard;

(3) Identify trends toward or away from desired conditions tied to ecological potential through analysis of high-quality information available over relevant time periods and spatial scales;

(4) Document the rationale and findings as to whether each land health standard is achieved or significant progress is being made towards its achievement; and

(5) Complete land health evaluations within the minimum amount of time necessary to document achievement of standards, but not more than 90 days from initiating the evaluation.

(b) If the authorized officer finds that resource conditions are achieving or making significant progress toward achieving land health standards, no additional analysis under 1700.4 is needed.

(c) If the authorized officer finds that resource conditions are not achieving or

making significant progress toward achieving land health standards, a written causal factor determination to identify the significant causal factor or factors for nonachievement must be prepared as soon as practicable but no later than—

(1) 6 months after completion of the land health evaluation; or

(2) If additional time is needed to gather additional information through additional assessment and evaluation under paragraph (d)(2) of this section, 1 year after completion of the land health evaluation.

(d) Causal factor determinations use available data to identify significant causal factors and describe contributing causal factors or conditions leading to non-achievement of standards.

(1) If the authorized officer determines sufficient information exists to identify and address the significant causal factors preventing resources from achieving or making significant progress towards achieving land health standards, no additional information is required.

(2) If the authorized officer determines insufficient information exists to identify and address the significant causal factors preventing resources from achieving or making significant progress towards achieving land health standards, additional information, assessment, and evaluation may be needed at finer scale.

(e) The authorized officer must take appropriate action or actions to facilitate achievement of land health standards within two years of completing a causal factor determination, unless otherwise specified in the land use plan, or unless the significant causal factors identified are outside of Bureau of Land Management control (e.g., lack of streamflow due to dewatering on connected lands not administered by the Bureau of Land Management). Taking appropriate action means implementing an action or actions that are expected to result in significant progress toward achieving land health standards. Appropriate action must be consistent with

applicable law, regulation, and the governing land use plan and its management objectives, such as where an area is managed for recreation or is degraded land prioritized for development. Appropriate actions may include, but are not limited to:

(1) Developing a monitoring schedule with specific objectives to allow progress to be made toward standards, with defined points at which monitoring must inform management decisions, and with an emphasis on collecting the minimum amount of monitoring data necessary to determine if progress is being made or if a standard has been met due to a change in management;

(2) Imposition of relevant terms, conditions or stipulations for new or renewed permits, leases, and other use authorizations;

(3) Development and implementation of activity plans;

(4) Implementation of adaptive management actions; and

(5) Control of unauthorized use.

(f) Upon determining that significant causal factors other than current management practices are preventing achievement of land health standards, but are not outside of Bureau of Land Management control (e.g., presence of invasive species), the authorized officer shall identify and prioritize appropriate actions that may result in significant progress toward achievement of land health standards.

(g) Appropriate action need not include cancelation or modification of a current authorized use that is determined to be a significant causal factor, provided that the use conforms to the governing land use plan and the permittee is in compliance with the terms, conditions or stipulations of the land use authorization.

(h) Authorized officers will report annually to the Bureau of Land Management Director on the results of land health evaluations and causal factor determinations and actions taken to address areas not achieving or making progress toward achieving land health standards.

(i) The Bureau of Land Management will maintain and annually update a publicly available record of the results of land health evaluations, causal factor determinations, and management actions taken to facilitate progress toward achieving land health standards.

10. Revise Part 4100 to read as follows:

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Sec.

Subpart 4110—Qualifications and Preference

Sec.

Subpart 4120—Grazing Management

Subpart 4130—Authorizing Grazing Use

Sec.

4190.1 Effect of wildfire management decisions.

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

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

§ 4100.0–1 Purpose.

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

§ 4100.0–2 Objectives.

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; 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 consistent with land use plans, multiple use, sustained yield, environmental values, and economic and other objectives set by relevant law and policy.

§ 4100.0–3 Authority.

(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315 et seq.);

(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 (PL 95-514) and the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (PL 113-291);

(c) Executive orders that 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 Oregon and California Railroad Act of August 28, 1937 (43 U.S.C. 2601 et seq.);

(e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.); and

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

§ 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 that portion of the permitted use within an allotment that is:

(1) Available for livestock grazing use under a permit;

(2) Not approved for temporary nonuse under § 4130.4 of this part; and

(3) Not in suspension.

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.

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant or permittee. 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 or permittee 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), or its functional equivalent, such as a grazing management plan that incorporates flexibility, monitoring and objectives or other components and 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 a month's use and occupancy of range by one (1) cow, bull, steer, heifer, bison, horse (ancillary to livestock production), burro, or mule, or by five (5) sheep or goats.

Annual rangelands means those areas identified in the land use plan, activity plan, or decision of the authorized officer 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 contains livestock operation facilities capable of serving as a base of operations for the livestock use of public lands, (2) land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (3) 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.

Beginning rancher (mentee) means anyone who has not (1) owned, controlled, or operated a farm or ranch for a period of more than 10 years or (2) previously held a grazing permit, and may include, without limitation, children and grandchildren of grazing permittees.

Canceled or cancellation means a permanent termination of a grazing permit and grazing preference or other grazing authorization, in whole or in part.

Carrying capacity means the measurement of how much forage is available on a unit of land.

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

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 typically have very low carrying capacity, yet can produce short-lived, abundant forage in response to favorable climatic conditions. Ephemeral rangelands do not produce sufficient forage to allocate for livestock grazing on a sustained yield basis, yet may periodically produce forage suitable for livestock grazing for short periods of time.

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 authorization means any document that authorizes grazing use on BLM-administered lands. Such documents include grazing permits (including both permits issued under section 3 of the Act and leases issued under section 15 of the Act), trailing permits, and exchange-of-use grazing agreements.

Grazing permit means a document that authorizes grazing use of the public lands under section 3 or section 15 of the Act. A grazing permit specifies permitted use and the terms

and conditions under which permittees make grazing use during the term of the permit. Permits should specify total AUMs, including active and suspended AUMs.

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

Interested public means an individual, group or organization that has an interest in the management of livestock grazing on a particular allotment and has either submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on that allotment or has submitted written comments to the authorized officer regarding the management of livestock grazing on that 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.

Monitoring means the observation and orderly collection of data over an appropriate time period to evaluate:

(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives such as land health.

Permitted use means the forage allocated for grazing by production-oriented livestock in an allotment under a permit and is expressed in AUMs. Permitted use includes active use and suspended use AUMs.

Prescribed grazing means the controlled harvest of vegetation with grazing or browsing animals with the intent to achieve specific ecological, economic, and management objectives. Targeted grazing is a form of prescribed grazing.

Production-oriented livestock means animals when they are being used as part of an operation to provide output for various purposes, such as meat, milk, fiber, or other products and any animals when they are being used to assist with management of other animals in connection with such operations (e.g., horses that are used to assist with cattle management).

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 forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; or restore, protect and improve the health of rangeland ecosystems to benefit production-oriented livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects (i.e., prescribed fire), and use of mechanical devices or modifications achieved through mechanical means (i.e., interseeding, pitting).

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

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

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

Stocking rate means the number of specific kinds and classes of animals grazing land over a specific time period per acre. Stocking rate is usually expressed in AUMs/acre.

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

Suspension or *suspended use* 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 specified in a grazing permit until specified objectives or actions have been met.

Sustained yield means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

Targeted grazing means using livestock as a tool to create strategic linear fuel breaks, to reduce fine fuel height and fuel loading, and to maintain fine fuels reduction for a specified period under § 4190.1(a)(1) of this part, or to address other resource issues such as control of undesirable plant species.

Temporary nonrenewable or *TNR* means a type of gazing authorization that authorizes additional forage temporarily available for livestock grazing. Examples where a TNR authorization may be issued include: (1) in a vacant allotment without a current grazing authorization where forage is temporarily available; (2) in an allotment with a current grazing authorization where additional forage is temporarily available above active use; (3) in an allotment with a current grazing authorization where forage is available as result of temporary nonuse. In all circumstances the current permittee, if any, will be consulted before use by an additional permittee is authorized.

Temporary nonuse means that portion of active use that the authorized officer authorizes to not be used temporarily, in response to an application made by the permittee.

Terms and conditions means requirements described in § 4130.3-1 and § 4130.3-2, which are included in a grazing authorization. All terms and conditions must be followed.

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

Unauthorized leasing and subleasing means—

(1) The lease or sublease of a Federal grazing permit, 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 to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons, daughters, and grandchildren of the grazing permittee or beginning ranchers meeting the requirements of § 4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee; or

(4) Allowing another party, other than sons, daughters, and grandchildren of the grazing permittee or beginning ranchers meeting the requirements of § 4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of the current year's growth that has been removed during a specified period. The term is also used to refer to the pattern of such use. See Technical Reference 1734-3 or subsequent updates.

§ 4100.0–7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1700 of this chapter govern land health; 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.

§ 4100.0–8 Land use plans.

The authorized officer shall manage production-oriented livestock grazing on public lands under the principles of multiple use and sustained yield, and in accordance with applicable land use plans and statutory authority. Land use plans shall establish allowable resource uses (either singly or in combination), 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).

§ 4100.0–9 Information collection.

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. The information is collected to enable the authorized officer to determine whether to approve an application to utilize public lands for grazing.

Subpart 4110—Qualifications and Preference

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§ 4110.1–1, 4130.2(d)(4)(a), and 4130.6–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, be engaged in a production-oriented livestock business, and 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 who has reached the age at which they are legally considered an adult (age of majority); 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) The authorized officer must determine whether applicants for the renewal of permits or issuance of permits that authorize use of new or transferred preference, and any affiliates, have a satisfactory record of performance. The authorized officer will not renew or issue a permit unless the applicant and all affiliates have a satisfactory record of performance and meet the requirements in § 4110.1(a).

(1) Renewal of permit.

(i) The authorized officer will find the applicant for renewal of a grazing permit, and any affiliate, 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 for which renewal is sought, and with the rules and regulations applicable to the permit.

(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 terms and conditions and applicable rules and regulations.

(2) New permit. Applicants for new permits, 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 cancelled for violation of the permit within the 36 calendar months immediately preceding the date of application; or

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

(iii) The applicant or affiliate is barred from holding a Federal grazing permit 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.

§ 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 authorizations, such authorizations 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 § 4110.1.

§ 4110.2 Grazing preference.

§ 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 § 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

(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.

(b) 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 paragraph (a) of this section. A permittee'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 or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

(c) If a permittee loses ownership or control of all or part of his/her base property, the permit, 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 requests, in writing, that the permit 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 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.

(d) 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 under section 15 of the Act, have a preference right to lease the whole tract under section 15 of the Act.

§ 4110.2–2 Specifying permitted use.

(a) All grazing permits will specify permitted use where the authorized officer authorizes grazing by production-oriented livestock based upon forage availability, except for permits for identified ephemeral or annual rangelands. Permitted use includes active use and any suspended use. Active use will be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or subsequent decision of the authorized officer under § 4110.3-3 and may be expressed as a limit. Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits.

(b) The specified permitted use shall attach to the base property supporting the grazing permit based on:

(1) The relative acreage of land base property controlled by the permittee, or

(2) The amount of livestock forage production within the service area of water base property.

§ 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 §§ 4110.1, 4110.2–1, 4110.2–2 and 4130.1-1.

(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 § 4120.3 and maintained in conjunction with the transferred preference (see § 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 (see § 4130.2) with such modifications as he or she may request which are 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 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 to which the grazing preference is attached and identifying the permitted use being transferred.

(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. 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.

(d) At the date of approval of a transfer, the existing grazing permit shall terminate automatically and without notice to the extent of the transfer unless covered under § 4110.2-1(c).

(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 preclude the issuance or renewal of a grazing permit 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 minimum of 5 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.

(h) Issuance of a grazing permit with the same terms and conditions for the remaining length of time of the permit due to a preference transfer, when the only change is the name on the authorization, is not subject to the provisions of subpart 4160.

(i) Following a preference transfer, the authorized officer may:

(1) *Rely on expiring permit* – Issue to the transferee a grazing permit with the same terms and conditions as the transferor's terminated permit for the remaining term of that permit. When the authorized officer issues a permit under this paragraph (1), it is presumed that the officer may, to the extent appropriate and consistent with the National Environmental

Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), make a determination of NEPA adequacy in support of the permit decision.

(2) *Issue a new permit* – Issue to the transferee a grazing permit with appropriate terms and conditions for a term not to exceed 10 years. When the authorized officer issues a permit under this paragraph (2), the authorized officer should rely on previous documentation of NEPA compliance to the extent appropriate and consistent with NEPA.

(3) *Continue expiring permit under 43 U.S.C. 1752(c)(2)* – Continue under a new permit the terms and conditions of the transferor's terminated permit until such time as any environmental analysis required under NEPA or other applicable laws is completed.

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees and the state having lands or responsibility for managing resources within the area, 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.

§ 4110.3 Changes in permitted use.

(a) The authorized officer shall periodically review the permitted use specified in a grazing permit and shall make changes in the permitted use as needed to:

(1) Manage, maintain or improve rangeland health or productivity;

(2) Assist, if necessary, in making progress toward restoring riparian ecosystems to properly functioning conditions; or

(3) Conform with land use plans or activity plans.

(b) The authorized officer will support these changes with site-specific analysis from monitoring, documented field observations, ecological site inventory or other data acceptable to the authorized officer.

§ 4110.3–1 Increasing active use.

Additional forage for grazing by production-oriented livestock may be apportioned to applicants found to be qualified under subparts 4110 and 4130 of this part consistent with multiple-use management objectives.

(a) Additional forage temporarily available for grazing by production-oriented livestock may be apportioned on a nonrenewable basis.

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

(c) Additional forage will be apportioned to qualified applicants for grazing by production-oriented livestock consistent with multiple-use objectives.

(d) The authorized officer may apportion additional forage on a sustained yield basis as available for grazing by production-oriented livestock, or extend the season of use, or both in an allotment after consultation, cooperation, and coordination with the affected permittees and the state having lands or managing resources within the area; provided the permittee or other applicant is found to be qualified under subparts 4110 and 4130 of this part.

(e) Additional forage shall be apportioned in the following priority:

(1) Permittee(s) in proportion to the amount of their permitted use, including reinstatement of suspended AUMs; and

(2) Other qualified applicants under § 4130.1–2 of this part.

§ 4110.3–2 Decreasing active use.

(a) Active use may be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

(b) The authorized officer will reduce active use through suspension or otherwise modify management practices when the site-specific analysis described in § 4110.3(b) shows

active grazing use is causing an unacceptable level or pattern of utilization, or when use exceeds the carrying capacity as determined through accepted monitoring methods.

(c) Where active use is reduced under paragraphs (a) and (b) of this section it will be held in suspension until the permittee applies for active use to resume, and the authorized officer approves that application.

§ 4110.3–3 Implementing changes in active use.

(a) After consultation, cooperation, and coordination with the affected permittee and the state having lands or managing resources within the area, the authorized officer will implement changes in active use through a documented agreement or by decision.

(1) Decisions implementing § 4110.3–2 shall be issued pursuant to § 4160.1, except as provided in paragraphs (a)(2) and (b) of this section.

(2) After consultation, cooperation, and coordination with affected permittees and the state having lands or responsible for managing resources within the area, the authorized officer will close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the other provisions of this paragraph (a) when the authorized officer determines and documents that an emergency exists and—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, or insect infestation; or

(ii) Continued production-oriented livestock grazing use poses an imminent likelihood of significant resource damage.

(b) Notices of emergency closure and decisions requiring modification of authorized grazing use may be effective upon issuance or on a date specified in the decision. Notwithstanding section 4160.3(c), such decisions will remain in full force and effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay in accordance with part 4 of this title.

§ 4110.4 Changes in public land acreage.

§ 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 be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under § 4130.1–2 of this title.

§ 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 may be canceled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be canceled 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 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 and grazing preference may be canceled. A permittee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee'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 § 4120.3–6).

§ 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 and agreements issued under these regulations.

Subpart 4120—Grazing Management

§ 4120.1 [Reserved]

§ 4120.2 Allotment management plans.

All permits may incorporate an allotment management plan for managing livestock grazing. Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees, other Federal or state resource management agencies, 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 the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees, landowners involved, and any state having lands or responsible for managing resources within the area to be covered by such a plan. The plan shall become effective upon approval by the authorized officer after complying with applicable laws and the provisions of subpart 4160 of this part. The plans shall—

(1) Include terms and conditions under §§ 4130.3, 4130.3–1, 4130.3–2, and 4130.3–3;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives defined in the allotment management plan and applicable standards developed under part 1700 of this title; and

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's or operators' demonstrated stewardship, within which the permittee(s) may adjust operations without prior approval of the authorized officer; and

(4) Include a monitoring plan 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 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) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit for the allotment.

(d) Allotment management plans or 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, landowners involved, and any state having lands or responsibility for managing resources within the area to be covered by the plan.

§ 4120.3 Range improvements.

§ 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 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, via a written decision, may require a permittee to maintain and/or modify range improvements on the public lands under § 4130.3–2 of this title.

(d) The authorized officer may require, via a written decision, a permittee to install or maintain range improvements on the public lands in an allotment with two or more permittees and/or to meet the terms and conditions of any cooperative range improvement agreement or range improvement permit.

(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) The authorized officer will review proposed range improvement projects under applicable laws. If the decision following this review falls under the authority of this part, it will follow the procedures of subpart 4160 of this part.

§ 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 of materials or labor, or both, shall be divided between the United States and cooperator(s) and must identify operation and maintenance responsibility.

(b) Subject to valid existing rights, including water rights permitted or authorized under state law, 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 interest in contributed funds, labor, and materials will be documented by the Bureau of Land Management to ensure proper credit for the purposes of §§ 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.

§ 4120.3–3 Range improvement permits.

(a) Any permittee 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 is held. The permittee 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 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) If forage available for livestock is not or will not be used by the permittee who is authorized for the associated active use, the authorized officer may issue temporary nonrenewable grazing permits to other qualified applicants to use it under §§ 4130.6–2 and 4130.4(f), or § 4110.3–1(a). Before issuing a temporary nonrenewable permit, the authorized officer will consult, cooperate, and coordinate with the current permittee as provided in § 4130.6–2. If the authorized officer issues such a temporary nonrenewable

permit, the preference permittee must cooperate with the temporary authorized use of forage by another operator.

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

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the parties to the dispute, 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, nonrenewable grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

§ 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.

§ 4120.3–5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 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.

§ 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 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 § 4120.3–4 of this title.

(c) Whenever a grazing permit is canceled in order to devote the public lands covered by the permit to another public purpose, including disposal, the permittee 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 on the public lands covered by the canceled permit. 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 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 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.

§ 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.

§ 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 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, 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.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the affected permittees.

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

(a) Any right adjudicated to the United States based on state law 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, including, as necessary, through the use of a joint ownership arrangement, principal/agent relationship, or any other legal arrangement allowed or recognized under state law and in coordination, consultation and cooperation with impacted permittees.

(b) The Bureau of Land Management will not change the purpose of use, place of use, or place of diversion of a water right acquired, perfected, maintained or administered under paragraph (a) of this section except in accordance with state law. The Bureau of Land

Management must give a minimum of 30 days' notice to any grazing permittees who utilize the subject water for their livestock before making any such change.

§ 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 and electronically posted to an agency website, if available.

(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.

§ 4120.5 Cooperation.

§ 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.

§ 4120.5–2 Cooperation with state, county, Tribal and Federal agencies and governments.

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.

Subpart 4130—Authorizing Grazing Use

§ 4130.1 Applications.

§ 4130.1–1 Filing applications.

Applications for grazing permits (active use and nonuse) 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.

§ 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 § 4110.3–1 of this title or any of the following factors:

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

(b) General needs of the applicant's livestock operations;

(c) The applicant's access to grazing of such public lands;

(d) Topography;

(e) Other land use requirements unique to the situation;

(f) The applicant's demonstrated ability to manage production-oriented livestock to meet resource management objectives; and

(g) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits 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. Where unresolved violations of terms and conditions of agency grazing rules exist, the applicant may be requested to provide additional information.

§ 4130.2 Grazing permits.

(a) Term grazing permits authorize grazing by production-oriented livestock on the public lands that are designated in land use plans as available for livestock grazing. Permits must specify the permitted use, including active and suspended use. These grazing permits must also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) Following the receipt of a complete application, the authorized officer will consult, cooperate and coordinate with affected permittees, and the state having lands or responsibility for managing resources within the area before issuing or renewing grazing permits, except as provided for in the amendments to section 402 of the Federal Land Policy and Management Act by the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (PL 113-291).

(c) Grazing permits convey no right, title, or interest held by the United States in any lands or resources.

(d) The term of grazing permits authorizing grazing by production-oriented livestock 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 authorized officer determines that a shorter term is consistent with management and resource condition objectives. If such a determination is made, a base property lease may be approved for not less than the term of the Federal permit. The Federal permit will not exceed the term of a base property lease; or

(4) The authorized officer determines that authorizing a short-term, renewable permit is appropriate under the following circumstances:

(i) The primary objective of authorized grazing use is the management of vegetation to meet resource objectives other than the production of livestock forage, such as prescribed or targeted grazing to manipulate the vegetation composition and structure (e.g., fuel reduction), control undesirable vegetation, or re-establish desired vegetation communities, and such use is in conformance with the requirements of this part; or

(ii) The primary purpose of grazing use by production-oriented livestock is for scientific research or administrative studies.

(e) Permittees holding expiring grazing permits shall be given preference (i.e., first priority) for new permits if:

(1) The lands for which the permit is issued remain available for production-oriented livestock grazing;

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

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

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

(g) Permits may incorporate the percentage of public land livestock use as provided in § 4130.3–2(f).

(h) 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.

(i) The Bureau of Land Management will determine the priority and timing for completing each required environmental analysis to support the renewal of a grazing permit based on (1) the standards for the grazing allotment or permit; and (2) the available funding for the environmental analysis.

§ 4130.3 Terms and conditions.

Livestock grazing permits 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.

§ 4130.3–1 Mandatory terms and conditions.

(a) In every grazing permit, the authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the permitted use, in animal unit months. The active use shall not at any time during the specified grazing season exceed the carrying capacity of the allotment as determined from a carrying capacity analysis using approved methodologies.

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

§ 4130.3–2 Other terms and conditions.

The authorized officer may specify in grazing permits 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 or class of livestock in allotments within which two or more permittees are authorized to graze;

(c) Authorization to use and directions for placement of supplemental feed, including salt or nutritional supplements, for improved livestock and rangeland management on the public lands;

(d) A requirement that permittees operating under a grazing permit submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit, the actual use made;

(e) 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 prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;

(f) 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;

(g) A statement disclosing the requirement that permittees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management of grazing activities within the allotment; and

(h) Specification of the limits of flexibility within which the permittee(s) may adjust operations without prior approval of the authorized officer.

§ 4130.3–3 Modification of permits.

The authorized officer may modify terms and conditions of the permit 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, or are not in conformance with the standards established and maintained under part 1700 of this title. Any such modification will be documented in a written decision prepared under subpart 4160 of this part. Before issuing a decision to modify terms and conditions, but after the receipt of a complete application, where one is required, the authorized officer will consult, cooperate and coordinate with the affected permittees and the state having lands or responsibility for managing resources within the area. To the extent practical, the authorized officer will provide the affected permittees and the state having lands or responsibility for managing resources within the affected area 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.

§ 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits, including temporary nonuse.

(a) The authorized officer may approve temporary changes in grazing use within the terms and conditions of the permit not already allowed under authorized flexibility.

(b) For the purposes of this subpart, “temporary changes in grazing use within the terms and conditions of the permit not already allowed under authorized flexibility” means temporary changes in livestock number, period of use, or both, that would:

(1) Result in temporary nonuse;

(2) Result in forage removal that—

(i) Does not exceed the amount of active use specified in the permit; and

(ii) Occurs not earlier than 21 days before the begin date specified on the permit, and not later than 21 days after the end date specified on the permit, unless otherwise specified in the appropriate allotment management or other approved plan under § 4120.2(a)(3); or

(3) Result in both temporary nonuse under paragraph (b)(1) of this section and forage removal under paragraph (b)(2) of this section.

(c) The authorized officer will consult, cooperate and coordinate with the permittees regarding their applications for changes within the terms and conditions of their permit.

(d) Permittees must apply if they wish—

(1) Not to use all or a part of their active use; or

(2) To use forage previously authorized as temporary nonuse.

(e) Temporary nonuse is authorized only if—

(1) The authorized officer approves it in advance; and

(2) An application is received for each year in which temporary nonuse is desired.

(f) Permittees applying for temporary nonuse must state on their application the reasons supporting nonuse. The authorized officer may authorize nonuse to provide for:

(1) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of land health standards; or

(2) The business or personal needs of the permittee not to exceed 4 consecutive years.

(g) Under § 4130.6-2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described in paragraph (f)(2) of this section. The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (f)(1) of this section.

(h) Permittees who wish to obtain temporary changes in grazing use within the terms and conditions of their permit must file an application in writing with the Bureau of Land Management on or before the date they wish the change in grazing use to begin. The authorized officer will assess a service charge under § 4130.8-3 to process applications

for changes in grazing use that require the issuance of a replacement or supplemental billing notice.

§ 4130.5 [Reserved]

§ 4130.6 Other grazing authorizations.

Exchange-of-use grazing agreements and trailing permits convey no priority for renewal and cannot be transferred or assigned.

§ 4130.6–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant when the applicant owns or controls lands that are unfenced and intermingled with public lands, but does not hold a permit to graze the same allotment that would be subject to such an agreement.

(b) The Bureau of Land Management may issue an exchange-of-use grazing agreement to an applicant that meets the criteria in paragraph (a) of this section 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 must contain appropriate terms and conditions required under § 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.

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

(d) An exchange-of-use agreement does not require the applicant to have grazing preference.

§ 4130.6–2 Nonrenewable grazing permits.

Nonrenewable grazing permits may be issued on an annual basis, as provided in §§ 4110.3-1(a) and 4130.4, to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees and the state having lands or responsible for managing resources within the area prior to the issuance of nonrenewable grazing permits.

§ 4130.6–3 Trailing permits.

(a) A trailing 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.

(b) Notwithstanding the provisions of § 4.171(a)(1) of this title, when the Bureau of Land Management determines that it is necessary, the authorized officer may make a decision that issues a trailing permit effective immediately or on a date established in the decision. Notwithstanding section 4160.3(c), such decisions will remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay in accordance with part 4 of this title.

§ 4130.6–4 [Reserved]

§ 4130.7 Ownership and identification of livestock.

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

(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 require counting 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 controls but does not own the livestock which graze the public lands, the agreement that gives the permittee control of the livestock by the permittee 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 shall be filed with the authorized officer.

(f) Livestock owned by sons, daughters and grandchildren of grazing permittees or beginning ranchers may graze public lands included within the permit when all the following conditions exist:

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

(2) The brands or other markings of livestock that are owned by the sons, daughters, grandchildren, or beginning ranchers are recorded on the relevant permit or grazing application.

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

§ 4130.8 Fees.

§ 4130.8–1 Payment of fees.

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

(1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) 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:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

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.

(4) The grazing fee to be used for authorizations issued under paragraphs (g) or (h) will be equal to the average value of the grazing fee for the 10 years immediately preceding the issuance of the billed grazing permit.

(b) Fees shall be charged for livestock grazing upon or trailing across the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month. No fee shall be charged for trailing use unless livestock will be trailing for more than 24 hours. A trailing permit is still required.

(c) Except as provided in § 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 one (1) cow, bull, steer, heifer, bison, horse, burro, or mule, or by five (5) sheep or goats that is—

(1) Over the age of 6 months at the time of entering the public lands or other lands administered by the Bureau of Land Management;

(2) A weaned animals regardless of age; or

(3) Becoming 12 months of age during the authorized period of use.

(d) The Bureau of Land Management will not charge grazing fees for animals that are less than 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management, provided that they are the natural progeny of animals upon which fees are paid, and they will not become 12 months of age during the authorized period of use.

(e) In calculating the billing the authorized officer will prorate the grazing fee on a daily basis and will round charges to reflect the nearest whole number of animal unit months.

(f) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee except where such use is made by livestock owned by sons, daughters, or grandchildren of permittees or by beginning ranchers as provided in § 4130.7(f). The surcharge for grazing by livestock owned by persons other than the permittee will also not apply when the other person is another permittee being provided relief from drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements. 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 will be equal to 35 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.

(g) Annual grazing fees for a permit authorizing 50 or fewer animal unit months per year will be billed in the aggregate for the full term upon permit issuance, and the total grazing fee is due prior to beginning grazing, in accordance with paragraph (i).

(h) For a permit authorizing more than 50 animal unit months per year, the permittee may elect to be billed in the aggregate for the full term upon permit issuance. In such cases, the total grazing fee is due prior to beginning grazing, in accordance with paragraph (i).

(i) Fees are due on the 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 or functional equivalent, is unauthorized and may be subject to penalties 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 within 30 days. Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit shall be cause to revoke provisions for after-the-grazing-season billing.

(j) 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 § 4140.1(b)(1) and shall result in action by the authorized officer under §§ 4150.1 and 4160.1–2.

§ 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. 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.

(c) Grazing fees collected for authorizations issued under § 4130.8-1(g) and (h) will be non-refundable.

§ 4130.8–3 Service charge.

The authorized officer will assess a service charge for each trailing permit, transfer of grazing preference, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Under section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)), the calculation of the BLM service charge will reflect processing costs and will be adjusted periodically as costs change. Notice of changes will be published periodically in the Federal Register.

§ 4130.9 Pledge of permits as security for loans.

Grazing permits that have been pledged as security for loans from lending agencies shall 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 livestock operation, *Provided*, That the permittee 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 may be pledged as security for loans from lending agencies, this does not exempt these permits from the provisions of these regulations.

Subpart 4140—Prohibited Acts

§ 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 performing the following prohibited acts may be subject to civil penalties under § 4170.1:

(1) Violating terms and conditions incorporated in permits;

(2) Failing to make substantial grazing use as authorized by a permit for 2 consecutive fee years. This does not include approved temporary nonuse or use temporarily suspended by the authorized officer;

(3) Placing supplemental feed on these lands without authorization or contrary to the terms and conditions of the permit;

(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 included on the term grazing permit when so directed in writing by the authorized officer; or

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

(b) Persons performing the following prohibited acts on BLM-administered lands related to rangelands shall be subject to civil and criminal penalties set forth at §§ 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 other grazing authorization (see § 4130.6) and timely payment of grazing fees and surcharge fees;

(ii) In violation of the terms and conditions of a permit 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) While failing to comply with a requirement under § 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 the authorized officer requires under this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis; or

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

(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 issued by the Bureau of Land Management, and the permittee 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 be subject to the civil penalties set forth at § 4170.1–1.

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

(i) Unauthorized 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; or

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

(2) Violation of the Bald and Golden 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; or straying of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

§ 4150.1 Violations.

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

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful. Whenever it appears that a violation exists, the authorized officer will contact the owner of the livestock, if known. Contact must be documented along with the authorized officer's determination of the nature of the violation. If the owner of the livestock cannot be identified, the authorized officer will proceed under § 4150.2(d).

(b) A nonwillful violation will be considered incidental when the following criteria are met:

(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) the livestock operator promptly corrects the violation to the satisfaction of the authorized officer.

(c) 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.

§ 4150.2 Notice and order to remove.

(a) 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. The authorized officer may notify the alleged violator through informal means.

(b) Whenever a violation has been determined to be nonwillful, but does not meet the criteria to be considered incidental, 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 that any violation should be considered incidental, or to make settlement under § 4150.3.

(c) Whenever a violation has been alleged to be willful, 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, that any violation should be considered nonwillful, or that any violation should be considered nonwillful and incidental, or to make settlement under § 4150.3.

(d) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under § 4150.4.

(e) 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 may be issued as final decisions effective upon issuance or on the date specified in the decision and, notwithstanding § 4160.3(c), shall remain in effect pending decision on an appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with part 4 of this title.

§ 4150.3 Settlement.

(a) Notwithstanding the remainder of this section, an authorized officer may exempt a nonwillful violation from the settlement requirements of this section if the authorized officer finds that the livestock operator promptly corrected the violation to the satisfaction of the authorized officer.

(b) Where violations are repeated willful, in addition to settlement under this section, the authorized officer shall take action under § 4170.1–1(b) of this title.

(c) The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (d), (e), or (f) of this section. Settlement for willful 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, and resolving violations, and livestock impoundment costs.

(d) 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 the violation is nonwillful and incidental under § 4150.1(b) and nonmonetary settlement is in the best interest of the United States.

(e) For willful violations: Twice the value of forage consumed as determined in paragraph (d) of this section.

(f) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (d) of this section.

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

(h) 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 take action under subpart 4160 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. Such decisions shall include a demand for payment.

§ 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 § 4150.2 may be impounded and disposed of by the authorized officer as provided herein.

§ 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 or her 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 or her agent are unknown, or where both a known owner and his or her 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, and electronically posted to an agency website, if available. 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.

§ 4150.4–2 Impoundment.

After 5 days from delivery of the notice under § 4150.4–1(a) of this title or after 5 days from publishing and posting the notice under § 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.

§ 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 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.

§ 4150.4–4 Redemption.

Any owner, agent, 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 § 4150.3 or adequate showing that there has been no violation.

§ 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.

Subpart 4160—Administrative Remedies

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be posted to an agency website and shall be served on any affected applicant, permittee, 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). Acceptable means of service are:

(1) registered or certified mail, return receipt requested;

(2) personal delivery with written acknowledgment of receipt;

(3) delivery service, delivery receipt requested, if the last address of record is not a post office box; or

(4) electronic means, such as electronic mail with delivery receipt requested, if the person to be served has previously consented to that means of service in writing.

(b) Proposed decisions shall state the reasons for the action and shall refer to the pertinent terms, conditions and 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 §§ 4130.8 and 4150.3 and the action to be taken under § 4170.1.

(c) The authorized officer may issue a final decision, without first issuing a proposed decision, where the authorized officer is:

(1) Taking action in accordance with §§ 4110.3–3(a)(2)(ii), 4130.6-3, 4150.2(e), or 4170.1-2;

(2) Issuing permits that are 15 percent or less public land or are for 50 or fewer AUMs;

(3) Issuing permits in accordance with § 402(h)(1) of the Federal Land Policy and Management Act (43 U.S.C. 1752(h)(1));

(4) Issuing permits when there are no changes to terms and conditions, there is no interested public, and the permittee is the only party receiving the decision;

(5) Authorizing range improvements when there is no interested public and the permittee is the only party receiving the decision;

(6) Issuing permits in accordance with § 4130.3-2(f) that adjust only the number of livestock to account for a change in the percentage of public land use when ownership or control of unfenced lands within an allotment changes, and make no changes to permitted use or other terms and conditions;

(7) Issuing permits under § 4110.2-3(i)(1) or (3); or

(8) Issuing permits for the remainder of the existing term to reflect changes in allotment names or configuration, or correct the legal description of allotment boundaries, and that do not result in changes to permitted use, or terms and conditions.

§ 4160.2 Protests.

Any applicant, permittee, or other interested public may protest a proposed decision issued under § 4160.1 of this title in person or in writing to the authorized officer within 20 days of the date the proposed decision is issued.

§ 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. A final decision that responds to a protest or

otherwise follows a proposed decision or that is issued in lieu of a proposed decision, pursuant to § 4160.1(c), shall be posted and served in the same manner as is provided for proposed decisions in § 4160.1(a).

(c) The final decision shall provide for a period of 30 days after issuance for filing of an appeal. A decision will not be effective during this 30-day period, except that, notwithstanding the provisions of § 4.171(a)(1) 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. An appeal shall suspend the effects of the final decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing use to be granted under the current application, an applicant who was granted grazing use in the preceding year may continue to make that use pending final action on the appeal. However, the authorized officer may provide in the final decision that it shall be in full force and effect pending decision on appeal therefrom unless the Office of Hearings and Appeals grants a stay in accordance with part 4 of this title. Final decisions shall be in full force and effect only if such is required for the protection of range resource values. The authorized officer must explain the rationale for the full force and effect decision if issued as such. See part 4 of this title for general provisions of the appeal process.

§ 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 § 4160.3 and part 4 of this title. The authorized officer shall transmit an appeal, petition for stay, and the accompanying administrative record within 14 days to ensure their timely arrival at the Office of Hearings and Appeals.

Subpart 4170—Penalties

§ 4170.1 Civil penalties.

§ 4170.1–1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit, or suspend the grazing use authorized under a grazing permit, in whole or in part, or cancel a grazing permit and grazing preference, or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee 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 and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee of § 4140.1(b)(1) of this title.

(c) Whenever a nonpermittee violates § 4140.1(b) of this title and has not made satisfactory settlement under § 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 § 4140.1(a)(6) after August 21, 1995, shall be required to pay twice 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 shall be canceled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.

§ 4170.1–2 Failure to use.

If a permittee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the permit, subject to any concurrent temporary nonuse approved under

§ 4130.4 of this part, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, cooperation, and coordination with the permittee and any lien holder of record, may cancel whatever amount of active use the permittee has failed to use.

§ 4170.2 Penal provisions.

§ 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 § 4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than $500.

§ 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. 1733(a)), any person who knowingly and willfully commits an act prohibited under § 4140.1(b) or who knowingly and willfully violates approved special rules and regulations may 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.

Subpart 4180—[Reserved]

Subpart 4190—Effect of Wildfire Management Decisions

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.171(a)(1), when the Bureau of Land Management determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, the Bureau of Land Management may make a rangeland wildfire management decision effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

(1) Fuel reduction or fuel treatment such as prescribed burns, targeted grazing, and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and

(2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

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