

In a comment supporting the proposed rule, a professional forestry society said that wildfire management decisions to perform fuels reduction and fire rehabilitation and stabilization should be implemented efficiently to protect communities, watersheds, wildlife habitat, and adjacent properties from the potentially devastating effects of wildfire. The comment said, however, that these decisions should remain consistent with the pre-defined objectives and goals outlined in the applicable Resource Management Plan and should adhere to all applicable environmental laws. We agree with this comment. Our fire management projects will be consistent with our Resource Management Plans and applicable environmental laws. No change is necessary in the final rule.

Other comments, mainly from national and regional environmental organizations, raised specific objections and concerns that require discussion. This discussion follows.

One comment stated that the proposed rule would discourage public appeals from agency actions, which are essential to public participation. The comment cited the Federal Land Policy and Management Act (FLPMA), at Section 309(e), which requires the Secretary to give the public adequate notice and "opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. 1739(e). The comment went on to say (1) that the proposed rule would allow a project to begin before a decision is made on the appeal, effectively discounting public opinion; (2) that a decision on appeal to reject a proposed project has less effect if the project has already commenced and the negative effects of the action have already occurred; and (3) that the public is less likely to participate in the decisionmaking process when it can have no real or immediate effect on a proposed project. The comment concluded that a "policy discouraging public involvement should not be adopted because it contradicts the spirit of FLPMA, which encourages public comment on proposed actions and participation in the appeal process for a management decision."

Another comment addressing the same theme said that the purpose of a stay pending appeal is to allow project planners the opportunity to review citizen concerns and modify the project's parameters to address such concerns, as warranted, prior to project implementation. The comment went on to say that project stays have two

fundamental benefits: (1) To ensure that potentially unsound environmental ramifications of project decisions, as identified by interested parties, do not compromise the landscape in question; and (2) to promote trust between those citizens who have sought to comment on the management of public lands and the agency responsible for carrying out those actions. The comment concluded by saying that the rule change undermines the value of public comment by allowing citizen concerns to be effectively ignored, further eroding the trust citizens have in public land management agency decisions.

The appeal process is not part of the public participation required by Section 309(e) of FLPMA. The rule may discourage some appeals; but contrary to the concern expressed in the comment, it encourages public participation by making it more essential at the project design/environmental review stage. It is at this stage that BLM gathers evidence and public input upon which to base its fire management plans/projects and decisions. Also, the purpose of staying a decision pending appeal is not to give the BLM further opportunity to consider issues raised by the appellant, but to protect the interests of the appellant and the public while IBLA is considering the appeal. Finally, while the proposed provision made these decisions effective immediately, an adversely affected party may appeal the decision and petition the Office of Hearings and Appeals for a stay of the decision pending appeal under 43 CFR 4.21(b), which, if granted, would minimize whatever harm the appellant alleges.

One comment said that the proposed revision is entirely unnecessary, since BLM and the Office of Hearings and Appeals already have the authority to make a decision effective immediately if it is determined to be in the "public interest" to do so. The comment went on to say that the authority for this determination should remain with IBLA on a case-by-case basis to avoid any abuse of the provision by line officers in the field. Another comment from an environmental interest group also stated that the new provisions were unnecessary, since in appropriate circumstances OHA or an appeals board could find that the public interest requires that particular fire management decisions should be placed in full force and effect notwithstanding the filing of appeals.

The final rule eliminates a bureaucratic step—requesting OHA to place a decision in full force and effect—in making often very urgent decisions to help reduce the severity of

upcoming fire seasons, without unduly impairing the ability of persons to appeal those decisions and to seek stays of the decisions pending appeal.

The authorities to which the first of these comments refers are 43 CFR 4160.3(f), which allows BLM to place certain grazing decisions into effect immediately or on a date certain and to remain in effect pending appeal; 43 CFR 5003.1 (paragraph (a) as this section is revised in the proposed rule), which provides that appealing does not automatically suspend the effect of a forest management decision; and 43 CFR 4.21, which authorizes the OHA Director or IBLA to stay a decision in the public interest pending appeal. Of these authorities, section 4160.3(f) limits full force and effect to certain decisions unrelated to wildfire management.

In light of the disastrous fire seasons in recent years and the ongoing drought in much of the West, BLM views its ability to carry out fire management practices as a matter of great urgency. We also view the fire management practices we contemplate, mentioned in the proposed rule and listed in sections 4190.1(a) and 5003.1(b) of this final rule, as scientifically justified. Therefore, we think that these fire management decisions need to be effective immediately if BLM finds a substantial risk of wildfire due to such problems as drought and fuels buildup, or an immediate risk of erosion due to wildfire. We have added language to sections 4190.1 and 5003.1 requiring BLM to make such a threshold finding before making a decision effective immediately.

If wildfire has destroyed the vegetation on a tract of land, especially sloped land, it is clear that wind or rain will cause erosion. It is also clear that wind or rain or both are common occurrences in most environments covered by these regulations. Therefore, the time-related standard of "immediate risk" is appropriate for determining whether a decision to rehabilitate a denuded slope, for example, especially one situated in a sensitive circumstance like above a trout stream or a salmon spawning ground, should be made effective immediately.

However, it is not so obvious whether prescriptive decisions aimed at preventing or reducing catastrophic wildfires would routinely meet a threshold of "immediate risk." We therefore believe it is appropriate to use a qualitative threshold of "substantial risk" for these decisions. In deciding whether there is a substantial risk of wildfire, BLM field managers will analyze the situation based on the Fire