

Subpart 4170—Penalties*Section 4170.1–2 Failure To Use*

BLM proposes to remove the term “permitted use” from this section and replace it with the term “active use.” This is consistent with our proposed definitions.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration*Section 4180.1 Fundamentals of Rangeland Health*

BLM proposes revising the introduction to provide that BLM will take action to change grazing management so that it will assist in achieving the fundamentals, only if there are no applicable standards and guidelines in place.

In the preamble to the final rule for the 1995 grazing regulation amendments, the fundamentals of rangeland health were identified as the basic components of rangeland health and were intended to serve as overarching principles to be supplemented by the standards and guidelines. Stated another way, the standards and guidelines were to be developed under the umbrella of the fundamentals. As such, the standards and guidelines serve as more locally specific measures of rangeland health and acceptable management practices consistent with intent of the fundamentals.

Under the existing regulations at section 4180.1, BLM is required to take appropriate action upon determining that existing grazing management needs to be modified to ensure that the four conditions, which make up the fundamentals of rangeland health, exist. In addition, under the existing regulations at section 4180.2, BLM is required to take appropriate action upon determining that existing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform to the guidelines for grazing administration. Where regionally specific standards and guidelines have been developed and approved, there is no need for BLM managers to make two separate determinations as suggested by the existing rule. An evaluation of standards attainment and guidelines conformance to determine whether existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the standards and guidelines will effectively satisfy the requirement for an evaluation to determine if existing grazing

management needs to be changed to ensure the existence of the conditions as defined by the fundamentals. Thus, an evaluation relating to the fundamental of rangeland health is necessary only in those circumstances where standards and guidelines have not been developed and approved.

BLM proposes revising the introduction also to change the amount of time BLM would need to take action to ensure that resource conditions conform to the requirements of this section. The deadline would change from not later than the start of the next grazing year to not later than the start of the grazing year following BLM's completion of action, including consultation under sections 4110.3–3 and 4130.3–3. This change will provide time for BLM to complete relevant and applicable requirements of law and regulation, such as NEPA compliance documentation, consultation under ESA if applicable, and required consultation under sections 4110.3–3 and 4130.3–3. BLM is doing this because some decisions must address complex resource management circumstances and require time to determine the most appropriate course of action.

BLM received few comments on this provision in response to the ANPR. The ANPR stated that we are considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards. Most of the comments BLM received asked us to implement stricter adherence to the already existing standards and to establish time frames for compliance and consequences for not achieving those time frames. We believe the current framework is effective and achieves compliance. Other commenters asked that we move the fundamentals of rangeland health provisions to Subpart 1610, Resource Management Planning. At this time we plan to leave the health standards in the grazing portion of our regulations.

Section 4180.2 Standards and Guidelines for Grazing Administration

BLM proposes revising paragraph (c) to provide that we would require both assessments of standards attainment and monitoring to support a determination that grazing practices are a significant factor in failing to achieve, or not making significant progress towards achieving rangeland health standards. BLM's current policy is to use all available relevant information, including monitoring data when

available, to assess standards attainment.

The change proposed by this rule would require that BLM support standards attainment determinations with assessment and monitoring data.

We would also revise paragraph (c) to provide that within 24 months following a determination that current grazing practices are a significant factor in failing to achieve or make progress towards achievement of standards, BLM would, in compliance with applicable law and with consultation requirements, analyze, formulate, and propose appropriate action intended to remedy the failure to meet the standards. Under the current rule, following the determination BLM must take appropriate action “before the start of the next grazing year.”

The new provision states that these requirements would be met upon execution of an agreement or issuance of a final decision to implement appropriate action. Following the agreement or decision, and resolution of any appeals to the decision, BLM would be required to implement the appropriate action before the start of the next grazing year.

BLM also proposes removing the phrase “Category 1 or 2” with respect to the designation of special status to candidate threatened and endangered (T&E) species because the FWS no longer uses these designations.

These changes are being proposed for several reasons. BLM recognizes that one of the thrusts of “Rangeland Reform ‘94” was to require BLM to implement timely and responsive remedial action upon determining that existing grazing practices were preventing achievement of rangeland health standards. Since the implementation of this rule, BLM has found that in many cases, requiring our field offices to take action “before the start of the next grazing year,” *i.e.* within a maximum of 12 months of the determination, is insufficient time to complete the governmental processes involved in making a reasoned choice regarding the appropriate action, and it does not allow for operation adjustments by the affected grazing operators that are not unduly economically disruptive.

Arriving at a proposed remedial response that requires gathering and analyzing relevant information and necessary coordination takes time. BLM must then consider the appropriate action and document reasonable alternatives in accordance with NEPA. Consultation under ESA, which can be time-consuming, may be required at this stage. Then, BLM must develop a proposed grazing decision that