

Chapter 2

Description of the Proposed Action and Alternatives



Chapter 2 Table of Contents

2.0 Description of the Proposed Action and Alternatives	2-5
2.1 Alternative One: No Change in Regulations (No Action)	2-9
2.1.1 Social, Economic, and Cultural Considerations in the Decision-Making Process	2-9
2.1.2 Implementation of Changes in Grazing Use	2-9
2.1.3 Range Improvement Ownership	2-10
2.1.4 Cooperation with State, Local, and County Established Grazing Boards	2-11
2.1.5 Review of Biological Assessments and Evaluations	2-11
2.1.6 Temporary Nonuse	2-12
2.1.7 Basis for Rangeland Health Determinations	2-12
2.1.8 Timeframe for Taking Action to Meet Rangeland Health Standards	2-13
2.1.9 Conservation Use	2-13
2.1.10 Definition of Preference, Permitted Use, and Active Use	2-13
2.1.11 Definition and Role of the Interested Public	2-13
2.1.12 Water Rights	2-14
2.1.13 Satisfactory Performance of Permittee or Lessee	2-14
2.1.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease	2-15
2.1.15 Service Charges	2-15
2.1.16 Prohibited Acts	2-15
2.1.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	2-18
2.1.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process	2-18
2.2 Alternative Two: Proposed Action	2-18
2.2.1 Social, Economic, and Cultural Considerations	2-19
2.2.2 Implementation of Changes in Grazing Use	2-19
2.2.3 Range Improvement Ownership	2-19
2.2.4 Cooperation with Tribal, State, County, or Local Government-Established Grazing Boards	2-20
2.2.5 Review of Biological Assessments and Evaluations	2-20
2.2.6 Temporary Nonuse	2-20
2.2.7 Basis for Rangeland Health Determinations	2-21
2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards	2-21
2.2.9 Conservation Use	2-22
2.2.10 Definition of Preference, Permitted Use, and Active Use	2-23
2.2.11 Definition and Role of the Interested Public	2-24
2.2.12 Water Rights	2-25
2.2.13 Satisfactory Performance of Permittee or Lessee	2-25
2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease	2-26

2.2.15 Service Charges	2-27
<i>Table 2.2.15-A. BLM costs to process billings</i> <i>and miscellaneous permits, 2003.</i>	2-28
<i>Table 2.2.15-B. BLM costs to process grazing preference transfers</i> <i>and related actions, 2003.</i>	2-29
2.2.16 Prohibited Acts	2-29
2.2.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	2-30
2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process	2-30
2.3 Alternative Three: Modified Action	2-31
2.3.1 Implementation of Changes in Grazing Use	2-31
2.3.2 Temporary Nonuse	2-31
2.3.3 Basis for Rangeland Health Determinations	2-31
2.3.4 Prohibited Acts	2-31
2.4 Alternatives Considered But Not Analyzed in Detail	2-32
2.5 Comparison of the Alternatives	2-38
<i>Table 2.5. Proposed revisions to grazing regulations for the public lands:</i> <i>comparison of alternatives.</i>	2-38
2.6 Comparison of the Effects	2-49
<i>Table 2.6. Comparison of the effects across alternatives.</i>	2-49

2.0 Description of the Proposed Action and Alternatives

Chapter 2 contains detailed descriptions of the grazing regulation alternatives. These alternatives provide an array of options that respond to both the purpose of and need for regulatory changes and the issues and concerns raised in scoping as discussed in Chapter 1.

As indicated in Chapter 1, this rulemaking is relatively narrow in scope and is an attempt to address several distinct issues that have been identified since the 1995 grazing reforms. Each proposed regulatory change is largely independent and may have been triggered by concerns that do not directly apply to the others. The collection of proposed changes has been grouped together into a single Proposed Action Alternative. The modified-action alternative is a collection of other possibilities that were worthy of extended analysis. Although the changes have been grouped into broader alternatives, BLM will continue to maintain a focus on the individual proposals during the decisionmaking process. It is thus quite possible that the final action may include pieces from all three of the broader alternatives.

The alternatives include: Alternative One—No Change in Regulations, which is also known as the “No Action” Alternative (Section 2.1); Alternative Two—the Proposed Action, which presents the BLM’s proposed amendments to the regulations (Section 2.2); and Alternative Three—the Modified Action Alternative, which is similar to the proposed action with some modifications (Section 2.3).

The proposed regulation revisions as reflected in the Proposed Action Alternative address 18 key issues as follows:

- Social, Economic and Cultural Considerations in the Decision-Making Process
- Implementation of Changes in Grazing Use
- Range Improvement Ownership
- Cooperation with state, Local, and County Established Grazing Boards
- Review on Biological Assessments and Evaluations
- Temporary Nonuse
- Basis for Rangeland Health Determinations
- Timeframe for Taking Action to Meet Rangeland Health Standards
- Conservation Use
- Definition of Grazing Preference, Permitted Use, and Active Use
- Definition and Role of the Interested Public
- Water Rights
- Satisfactory Performance of Permittee or Lessee
- Changes in Grazing Use Within Terms and Conditions of Permit or Lease
- Service Charges
- Prohibited Acts

- Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed
- Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

In addition to the key issues identified above, there are some additional regulatory text clarifications and minor modifications being proposed. These latter changes are shown in the strike-and-replace version of the proposed rule in Appendix A.1. A clean version of the proposed regulations without strike-and-replace is shown in Appendix A.2.

Alternatives considered but not analyzed in detail are presented in Section 2.4. These alternatives include some proposals that were initially considered by the BLM as well as recommendations from the public. The rationale for not considering these alternatives is also discussed.

A comparison of all alternatives by key elements is presented in Section 2.5 (Table 2.5) of this Chapter. In Section 2.6 (Table 2.6) a summary comparison of effects across the alternatives is presented.

Changes in Chapter 2 between the draft and final EIS are listed below:

- Changes in proposed action based on comments and review of draft EIS:
 - 2.2.4 Cooperation with Tribal, state, county, or Local Government-Established Grazing Boards – Added Tribal agencies and boards to list of entities with which BLM would cooperate; also added Tribal to title of section and to general provision on cooperation.
 - 2.2.5 Review of Biological Assessments and Evaluations – Removed reference to review of biological assessments and

evaluations as examples of reports subject to review and input by affected permittees or lessees, the state and the interested public.

- 2.2.6 Temporary Nonuse – Changed provision to state that authorized officer “may authorize nonuse” as opposed to “will authorize nonuse”; also clarified that applications for temporary changes in use must be in writing and submitted on or before the date requested for the grazing use to begin.
- 2.2.7 Timeframe for Taking Action to Meet Rangeland Health Standards – Added a provision allowing BLM to extend the timeframe to formulate, propose and analyze an appropriate action to address a failure to meet standards or to conform to guidelines if a legally required process that is beyond the control of the BLM prevented the BLM from meeting the 24 month deadline for making a decision.
- 2.2.10 Definition of Preference, Permitted Use, and Active Use – In the definition of “active use”, we substituted the word “livestock” for “rangeland” in the reference to carrying capacity.
- 2.2.11 Definition and Role of the Interested Public – Modified definition to make it clear that a request to be considered as interested public must identify the specific allotment(s) in which the person or entity is interested; also when the interested public submits comments or otherwise participates they must address the management of a specific allotment.

- 2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease – Removed reasons for allowing temporary changes in grazing use; also clarified that applications for temporary changes in use must be in writing and submitted on or before the date requested for the grazing use to begin; provided for more flexibility in period of use if such flexibility was specified in an appropriate allotment management plan.
- 2.2.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed – Added a provision allowing BLM to make full force and effect decisions on nonrenewable grazing permits or leases or on applications for grazing use on annual or designated ephemeral rangelands; removed the special stay provision addressing grazing use if a stay is granted related to an appeal of a decision on nonrenewable permits or leases or ephemeral or annual rangeland grazing use; substituted “immediately preceding permit or lease” for “immediately preceding authorization” in the provision regarding grazing use when a term permit or lease is stayed or when a term permit or lease subsequent to a preference transfer is stayed; added language to clarify that special stay provisions may apply to all or part of a decision on term permits or leases or decisions on those related to preference transfers; separated and clarified the discussion of grazing use when a stay is granted on a term permit or lease from the discussion of grazing use when a stay is granted on a permit or lease subsequent to a preference transfer.
- Additions or changes to improve clarity and provide new information:
 - 2.1.3 Range Improvement Ownership – Added “or other party” to clarify that other parties may cooperate besides permittee or lessee in development and ownership of range improvement under cooperative range improvement agreements
 - 2.1.5 Review of Biological Assessments and Evaluations – Modified definitions of biological assessment and biological evaluation to conform with definitions in regulations and guidance; clarified that BLM is to provide, *to the extent practical*, an opportunity for affected permittees, lessees, states and interested public to review and provide input on reports used as basis for decisions to change grazing permits or leases.
 - 2.1.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process – Modified definitions of biological assessment and biological evaluation to conform with definitions in regulations and guidance. Also made some nonsubstantive editorial changes; corrected citation to Blake v. BLM IBLA case.
 - 2.2.4 Cooperation with Tribal, state, county, or Local Government-Established Grazing Boards – Added that cooperation satisfies FLPMA section 401(b)(1) and that it would bring regulations into compliance

- with E.O. 13352 of August 26, 2004, Facilitation of Cooperative Conservation.
- 2.2.7 Basis for Rangeland Health Determinations – Clarified that both assessments and monitoring are required only for determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines.
 - 2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards – Clarified that BLM would be required to take action to assist in achieving the fundamentals of rangeland health only if the fallback standards and guidelines are in place. Also provided additional rationale for 24 month timeframe.
 - 2.2.12 Water Rights – Clarified description of proposed change in regulation pertaining to water rights; provided additional rationale for removing requirement that, to the extent allowed by state law, livestock water rights must be acquired, perfected, maintained and administered in the name of the United States.
 - 2.2.13 Satisfactory Performance of Permittee or Lessee – Clarified that this provision also addresses applicants for permits or leases subsequent to a preference transfer.
 - 2.2.14 Changes in Grazing Use Within the Terms and conditions of Permit or Lease - Clarified that nonuse is considered a “change in grazing use within the terms and conditions of a permit or lease”; deleted use of the term “range readiness” in discussion of when range is “ready” to be grazed; added text recognizing that allotment management plans could also be used to provide for flexibility in grazing begin and end dates.
 - 2.2.15 Service Charges – Added discussion of basis for service charges as well as added two tables of cost data which was used in helping to arrive at proposed service charge levels.
 - 2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process - Modified definitions of biological assessment and biological evaluation to conform with definitions in regulations and guidance; deleted references to provisions on review of biological assessments and evaluations; added rationale and further discussion of the *Blake* decision.
 - 2.3.3 Basis for Rangeland Health Determinations – Clarified that this provision only applies only to those determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines.
 - 2.4 Alternatives Considered But Not Analyzed in Detail – Provided discussion on why additional alternatives were not incorporated regarding (1) the timeframe for taking action to meet rangeland health standards and (2) the implementation of changes in grazing use.

- Table 2.5 Comparison of the Alternatives – Modified to reflect changes in proposed action as described above.
- Table 2.6 Comparison of the Impacts Across Alternatives – Modified to reflect changes in impact analysis as described in Chapter Four.

2.1 Alternative One: No Change in Regulations (No Action)

The regulations that direct the BLM in administering its rangeland management program are found in 43 Code of Federal Regulations (CFR) 4100. The objectives of these regulations are to:

1. Promote healthy, sustainable rangeland ecosystems;
2. Accelerate restoration and improvement of public rangelands to properly functioning conditions;
3. Promote the orderly use, improvement, and development of the public lands;
4. Establish efficient and effective administration of grazing of public rangelands; and
5. Provide for the sustainability of the western livestock industry and communities that are dependent on productive, healthy public rangelands.

Under the “No Action” alternative there would be no change in the regulations and the BLM would continue to operate in accordance with existing regulations and

policies. The following are the key elements of the present regulations that are addressed in this EIS.

2.1.1 Social, Economic, and Cultural Considerations in the Decision-Making Process

Language would not be added to the existing grazing regulations specifically addressing the need for compliance with the National Environmental Policy Act (NEPA) of 1969 (Public Law 91-90; 42 U.S.C. 4321 et seq.) in making decisions on changes in grazing use. All grazing decisions would continue to be subject to compliance with NEPA, including requirements to use a systematic interdisciplinary approach that ensures the integrated use of natural and social sciences in planning and decision-making affecting the human environment. An environmental assessment is prepared for most grazing decisions. Environmental analyses prepared under NEPA would continue to address the effects of proposed actions and alternatives considered, including effects defined under NEPA to include ecological, aesthetic, historic, cultural, economic, social, or health effects, whether direct, indirect, or cumulative (40 CFR 1508.8). If there are no effects in a certain category, for example, on health, the environmental assessment generally does not address that topic. Field interpretation and application of guidelines to analyze social, economic, and cultural considerations would be less consistent in the absence of regulatory emphasis. To minimize paperwork, NEPA documentation is generally limited to those topics involving effects.

2.1.2 Implementation of Changes in Grazing Use

As stated in the present grazing regulations, at §4110.3-3(a), after all

consultation requirements are fulfilled, reductions in grazing use would be implemented through a documented agreement or by decision of the authorized officer. Such decisions must be issued as proposed decisions subject to the provisions of §4160.1, except for the following: (1) when immediate protection of resources or imminent likelihood of significant resource damage necessitates grazing use closures or modifications to be effective upon issuance of or as specified in the final decision (§4110.3-3(b)), and (2) when substantial risk of wildfire or immediate risk of erosion or other damage due to wildfire necessitates rangeland wildfire management decisions, such as fuel reduction projects using fire, mechanical, chemical, or biological thinning methods or projects to stabilize lands affected by wildfire, to be effective immediately or on the date established in the decision (§4190.1). No specific regulatory requirements would be established concerning how decisions to change levels of grazing use are to be implemented.

2.1.3 Range Improvement

Ownership

Range improvement projects are categorized as either “structural” or “nonstructural”. Structural range improvements may be either “permanent” or “temporary.” Examples of permanent structural range improvements include fences, wells, pipelines, guzzlers, and gabions. Examples of temporary structural range improvements include dip tanks, loading chutes, or portable water troughs. Nonstructural range improvements include vegetation treatments (spraying, vegetative seeding, chaining, and others). Either a “Cooperative Range Improvement Agreement” or a “Range Improvement Permit” is used to authorize construction

of range improvement projects on lands administered by the BLM (§4120.3-1).

Under the current regulations (No Action Alternative), title would continue to be held in the name of the United States to all permanent range improvements such as fences, wells, and pipelines authorized under “Cooperative Range Improvement Agreements” after August 21, 1995 (§4120.3-2(b)) regardless of the level of investment by the permittee. All new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines would continue to be required to be authorized under a “Cooperative Range Improvement Agreement.” “Cooperative Range Improvement Agreements” are used when the BLM and the livestock permittee or lessee or other party cooperatively cost-share the labor, equipment, or materials to build the project (§4120.3-2(a)). In such instances, the “Cooperative Range Improvement Agreement” outlines the costs contributed by each party and responsibilities for building and maintaining the improvement.

Under Range Improvement Permits, used to authorize removable range improvements where all costs of the project are borne by the livestock permittee or lessee (§4120.3-3), permittees or lessees would continue to have the option to hold title to temporary (removable) structural range improvements such as corrals, creep feeders, or portable water troughs placed on public lands under permit (§4120.3-3(c)).

Permittees or lessees would continue to hold a financial interest in proportion to their contribution for permanent structural and nonstructural range improvements even though they do not hold title. If a grazing permit or lease is cancelled in order to devote the public lands to another public purpose, the permittee or lessee shall receive reasonable compensation from the United

States for the adjusted value of their interest in the authorized improvement. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage material owned by them and perform rehabilitation measures necessitated by that removal rather than be compensated for the adjusted value (§4120.3-6).

As provided in §4120.3-1(e), neither a “Cooperative Range Improvement Agreement” nor “Range Improvement Permit” would convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States. Furthermore, range improvement work performed by a cooperator or permittee on the public lands would not confer an exclusive right to use the improvement or the land affected by the range improvement work (§4120.3-2(d)).

2.1.4 Cooperation with State, Local, and County Established Grazing Boards

The BLM would continue to be required to cooperate with involved agencies and governmental entities in managing the grazing program consistent with the present regulations in §4120.5-2. Requirements to cooperate, consistent with applicable laws of the United States, would continue to be limited to (1) agencies and governmental units that have programs and responsibilities involving grazing on public lands; (2) state, county, and Federal agencies administering laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds; and 3) state cattle and sheep sanitary or brand boards and county or other local weed control districts.

While it is generally present practice for BLM Field Offices to cooperate with state, county, or local government-established

grazing boards, where they exist, cooperation would not be required by regulation. Contacts with local grazing boards generally include reviewing range improvements and allotment management plans.

2.1.5 Review of Biological Assessments and Evaluations

Present grazing regulations do not specifically mention biological assessments or biological evaluations that are prepared to satisfy consultation requirements of the Endangered Species Act. A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to: (1) adversely affect a listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing, or (3) adversely modify critical habitat. A biological evaluation (BE) is a documented review of an agency’s programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed or designated critical habitat.

Although the present regulations do not specifically mention any role for the permittee or lessee in the preparation of biological assessments or evaluations, such assessments or evaluations are reports used as a basis for grazing decisions. The BLM is required, to the extent practicable, to provide affected permittees or lessees, as well as States having lands or responsibility for managing resources within the affected area, and the interested public, with an opportunity to review, comment, and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use or to change the terms and conditions of a permit or lease (§4130.3-3).

Thus, under present regulations, the BLM would continue to provide permittees, lessees, states, and the interested public with an opportunity to comment on and provide input to the preparation of biological assessments or evaluations as reports prepared in support of the decision making process.

2.1.6 Temporary Nonuse

Grazing permittees or lessees would continue to be able to submit an annual application for temporary nonuse under existing regulations at §4130.2(g) for reasons including but not limited to financial conditions or annual fluctuations of livestock. Temporary nonuse is defined as the authorized withholding, on an annual basis, of all or a portion of permitted livestock use at the request of a permittee or lessee. Approval of temporary nonuse by the BLM could continue, on an annual basis, but could not continue for more than 3 consecutive years. The BLM would continue to have authority to annually apportion additional forage temporarily available as a result of authorized nonuse on a nonrenewable basis to qualified applicants (§4130.2(h); §4130.6-2).

2.1.7 Basis for Rangeland Health Determinations

The BLM would continue to manage activities under livestock grazing permits and leases based on standards and guidelines for grazing management developed by BLM State Directors in consultation with affected BLM resource advisory councils (§4180.2(b)). The standards and guidelines developed by State Directors apply the fundamentals of rangeland health set forth in §4180.1 of the grazing regulations. The fundamentals for rangeland health, as defined by BLM, include (1) watersheds that are in or are making significant progress toward

proper functioning physical condition, (2) ecological processes that support or are making significant progress toward attaining healthy biotic populations and communities, (3) water quality that complies with state standards and achieves or is making significant progress toward achieving BLM management objectives, and (4) habitats for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate, and other special status species that are maintained or restored or are making significant progress toward being maintained or restored (43 CFR 4180.1).

The BLM authorized officer would continue to be required to take appropriate action when a “determination” has been made that grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines for grazing management (§4180.2(c)). There are no requirements under the present regulations on how those determinations are made.

2.1.8 Timeframe for Taking Action to Meet Rangeland Health Standards

The BLM would continue to be required under current regulations to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that rangeland health conditions exist or progress is being made toward achieving rangeland health as described in §4180.1, Fundamentals of Rangeland Health. Where either Secretarial-approved or fallback standards and guidelines are effective, the BLM would continue to be required to take appropriate action as soon as possible but no later than the start of the next grazing year if existing grazing management practices or

levels of use are determined by the authorized officer to be significant causal factors in failing to achieve standards and conform with guidelines for grazing administration (§4180.2(c)).

This means that once a “determination” has been made, either under §4180.1 or §4180.2(c), the BLM authorized officer must—no later than the start of the next grazing year—consult, cooperate, and coordinate with the permittee or lessee, the state, and the interested public on possible actions to achieve standards; must complete any NEPA analysis requirements and documentation; must comply with any other applicable laws and requirements (e.g., Section 7 consultation under the Endangered Species Act if the proposed action “may affect” a listed species); must issue a proposed and final decision subject to protest and appeal, and must implement the “appropriate action.”

2.1.9 Conservation Use

Though there are provisions in the present regulations, the BLM does not, and would not, issue conservation use permits. No such permits are in place. The existing regulations define conservation use as an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of (1) protecting the land and its resources from destruction or unnecessary injury; (2) improving rangeland conditions; or (3) enhancing resource values, uses, or functions (§4100.0-5). Provisions are included in the existing regulations for authorizing conservation use for as long as 10 years under certain conditions.

The provisions regarding conservation use were included in the 1995 grazing regulation amendments. These rules were challenged and in 1999 the 10th Circuit Court of Appeals upheld the lower court’s ruling that the Secretary of the Interior did not

have the authority to issue conservation use permits.

2.1.10 Definition of Preference, Permitted Use, and Active Use

Grazing administration would continue under definitions in the present regulations.

Grazing preference or preference is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee (§4100.0-5).

Permitted use is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS (§4100.0-5). Under present regulations, the term permitted use encompasses active use and suspended use.

Active use means present authorized use, including livestock grazing and conservation use. Because conservation use was determined to be illegal by the 10th Circuit Court of Appeals, active use encompasses only authorized livestock grazing use. Active use may constitute a portion, or all, of permitted use. Active use doesn’t include temporary nonuse or suspended use within all or portion of an allotment (§4100.0-5).

2.1.11 Definition and Role of the Interested Public

The BLM would continue to apply the definition of interested public and related requirements for interested public involvement in the grazing decision-making process as specified in the present regulations.

Interested public is defined as an individual, group, or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process

for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment (§4100.0-5).

Generally, under present regulations, whenever the BLM is required to consult, cooperate, and coordinate with or seek review and comment from affected permittees or lessees or the state having lands or responsibility for managing resources within the area, present regulations also require doing so with the interested public.

The following summarizes those instances where the BLM is required, under the present regulations, to consult, cooperate, and coordinate with the interested public:

- Designating and adjusting allotment boundaries (§4110.2-4).
- Apportioning additional forage (§4110.3-1(c)).
- Reducing permitted use (§4110.3-3(a)).
- Emergency closures or modifications (§4110.3-3(b)).
- Development or modification of allotment management plans (§4120.2(a) & (e)).
- Planning of the range developments or improvement programs—Consult only (§4120.3-8(c)).
- Issuing or renewing grazing permit or lease (§4130.2(b)).
- Modifying a permit or lease (§4130.3-3).
- Issuing temporary nonrenewable grazing permits (§4130.6-2).

Under the present regulations, the BLM is also required to provide the interested public

an opportunity to review and comment and give input during the preparation of reports that evaluate monitoring and other data used as a basis for making decisions to increase or decrease grazing use or to change terms and conditions of a permit or lease (§4130.3-3).

In addition, under the present regulations, the BLM is required to send copies of proposed and final decisions to the interested public (§4160.1(a) and §4160.3(b)).

2.1.12 Water Rights

Under the present regulations (§4120.3-9), any right acquired on or after August 21, 1995, to use water on public land for the purpose of livestock watering would 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 would be acquired, perfected, maintained, and administered in the name of the United States.

States have primary authority and responsibility for the allocation of water (water rights) for specified beneficial uses, including livestock watering. Where provided for in state law, the BLM applies for appropriative water rights in conformance with state law and generally protests private applications for water rights on lands administered by the BLM.

2.1.13 Satisfactory Performance of Permittee or Lessee

The BLM would continue to apply present regulations that identify requirements for satisfactory performance that must be met by applicants for renewal of existing or issuance of new permits and leases (§4110.1(b)).

For a renewal, an applicant must be in substantial compliance with the terms and conditions of the existing permit or lease and with the rules and regulations applicable to the permit or lease in order to be deemed to have a satisfactory record of performance. The authorized officer may take into account circumstances beyond the control of the applicant seeking renewal of a permit or lease in making determinations of satisfactory performance (§4110.1(b)(1)).

For a new permit or lease, applicants shall be deemed **not to have** a record of satisfactory performance when:

- they **have had** any Federal grazing permit or lease cancelled for violations of the permit or lease within 36 months of their application;
- they **have had** any state grazing permit or lease, for lands within the grazing allotment for which they are applying, canceled for violations within 36 months of their application; or
- they **are barred** from holding a Federal grazing permit or lease by order of a court (§4110.1(b)(2)).

2.1.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

The BLM would continue to apply present regulations allowing changes in grazing use within the terms and conditions of the permit or lease to be granted by the authorized officer (§4130.4). The regulations identify the following applications for changes covered by this section:

- to activate forage in temporary nonuse or conservation use;

- to place forage in temporary nonuse or conservation use; or
- to use forage that is temporarily available on designated ephemeral or annual ranges.

There are no provisions that define what is meant by “within the terms and conditions of the permit or lease” in the existing regulations.

2.1.15 Service Charges

The BLM would continue to assess a \$10 service charge for each crossing permit, transfer of grazing preference, application solely for nonuse, and replacement or supplemental billing notice (§4130.8-3). Except for actions initiated by the BLM, regulations allow the BLM to assess a service fee for such actions. Pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734[a]), the service charge should reflect the BLM’s processing costs and should be adjusted periodically as the processing costs change. The existing regulations do not specify the amount of the service charge.

2.1.16 Prohibited Acts

The BLM would continue to have authority and discretion to apply penalties for specific prohibited acts to both permittees and other public land users. Upon violation of any provision of the grazing regulations by a livestock permittee or lessee, the BLM would be able to (1) withhold issuance of a grazing permit or lease; (2) suspend grazing use authorized under a grazing permit or lease, in whole or in part; or (3) cancel a grazing permit or lease and preference in whole or in part (§4170.1). Some actions could also be subject to the penalty provisions under the Taylor Grazing Act or the Federal Land Policy and Management Act (§4170.2).

In Subpart 4140, the present regulations have several provisions dealing with the consequences of committing certain specified prohibited acts. Some of the prohibited acts apply only to grazing permittees or lessees whereas others apply to anyone who commits those acts while on lands administered by the BLM.

There are three categories of prohibited acts in the present regulations.

The first category is found in §4140.1(a) and states that permittees and lessees who perform the prohibited acts listed under this section may be subject to civil penalties (e.g., withdrawal of issuance, suspension, or cancellation of permit or lease). Six prohibited acts are identified in this section including:

- violations of terms and conditions of permits or leases;
- failing to make substantial grazing use as authorized for 2 consecutive years;
- placing supplemental feed on public lands without authorization;
- failing to comply with terms, conditions, and stipulation of cooperative range improvement agreements or range improvement permits;
- refusing to install, maintain, modify, or remove range improvements when so directed by the BLM; and
- unauthorized leasing or subleasing.

This first category of prohibited acts allows the BLM to address grazing violations and to take direct action against permittees or lessees for committing such violations.

A second category of prohibited acts is found in §4140.1(b). Any person (not only

a permittee or lessee) who performs any of the 11 prohibited acts in this section will be subject to civil and criminal penalties. The prohibited acts identified in this section include:

- allowing livestock or other privately owned or controlled animals to graze on or be driven across public lands without a permit or lease and an annual grazing authorization or in violation of any authorization;
- installing, using, maintaining, modifying, or removing range improvements without authorization;
- cutting, burning, spraying, destroying, or removing vegetation without authorization;
- damaging or removing U.S. property without authorization;
- molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;
- littering;
- interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barriers, or locked gates;
- knowingly and willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports, or amendments thereto;

- failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;
- failing to reclaim and repair any lands, property, or resources when required by the authorized officer; and
- failing to reclose any gate or other entry during periods of livestock use.

This second category of prohibited acts allows generally applicable enforcement actions on BLM public lands.

The third category of prohibited acts is found in §4140.1(c). Under this provision, the BLM may take civil action against a grazing permittee or lessee who commits these prohibited acts if the following four conditions are met: (1) public land is involved or affected, (2) the action is related to grazing use authorized by a BLM-issued permit or lease, (3) the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of these laws, and (4) no further appeals are outstanding.

For this category of prohibited acts, unlike the first two categories, the primary responsibility for enforcement generally rests with another Federal or state agency, not the BLM. Prohibited acts in this category include:

- Violation of Federal or state laws or regulations pertaining to the:
 - placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

- application or storage of pesticides, herbicides, or other hazardous materials;
- alteration or destruction of natural stream courses without authorization;
- pollution of water sources;
- illegal take, destruction, or harassment, or aiding and abetting in the illegal take, destruction, or harassment of fish and wildlife resources; and
- illegal removal or destruction of archaeological or cultural resources.

- Violation of the:
 - Bald Eagle Protection Act;
 - Endangered Species Act; or
 - the regulations concerning the protection and management of wild horses and burros.
- Violation of state livestock laws or regulations relating to:
 - the branding of livestock;
 - breed, grade, and number of bulls;
 - health and sanitation requirements; and
 - violating state, county, or local laws regarding the stray of livestock to areas that have been formally closed to open range grazing.

Under this category, the BLM-issued permit or lease is not required to be related geographically to the location where the prohibited act occurred.

2.1.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

The BLM would continue to operate under the administrative remedies regulations set forth in Subpart 4160. Described in detail are the procedures for issuing and protesting proposed decisions (§4160.1 and §4160.2) and issuing and appealing final decisions (§4160.3 and §4160.4). Procedures for requesting a stay of a final decision and allowable grazing use if a final decision is stayed are identified in §4160.3.

When the Office of Hearings and Appeals stays a final decision regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed. This provision does not apply if the grazing use in the preceding year was authorized on a temporary nonrenewable basis under §4110.3-1(a). Where the applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the grazing use under the stay is consistent with the final decision pending a final determination on the appeal (§4160.3(d)).

When the Office of Hearings and Appeals stays a final decision to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized (§4160.3(e)).

2.1.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The present regulations do not specifically address biological assessments

or biological evaluations prepared in compliance with consultation requirements of the Endangered Species Act. A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to: (1) adversely affect a listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing, or (3) adversely modify critical habitat. A biological evaluation (BE) is a documented review of an agency's programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed or designated critical habitat.

The IBLA has ruled that a biological assessment prepared under Section 7 of the Endangered Species Act (ESA) for a proposed action to permit grazing must be treated as a BLM decision subject to protest and appeal. Blake v. Bureau of Land Management, 145 IBLA 154 (1998), aff'd, 156 IBLA 280 (2002).

Thus, under the No Action Alternative, biological assessments and evaluations would be treated as decisions subject to protest and appeal.

2.2 Alternative Two: Proposed Action

Alternative Two is the BLM's Proposed Action, which responds to the purpose and need described in Chapter 1 by changing certain elements of the agency's present grazing regulations. The proposed changes are described below by element. In addition to the key elements, there are several nonsubstantive or editorial changes that would be made under this alternative. Nonsubstantive or editorial changes are shown in the strike-and-replace copy of the proposed regulations in Appendix A.

2.2.1 Social, Economic, and Cultural Considerations

The Proposed Action would add a provision in §4110.3 that would require the BLM to analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action to change grazing preference. Such documentation would be incorporated in the appropriate NEPA document. The regulation would promote consistent treatment of effects when analyzing proposed grazing changes.

2.2.2 Implementation of Changes in Grazing Use

The BLM would modify how changes in active use are implemented through the proposed regulation. This modification to §4110.3-3 would provide that changes in active use of more than 10 percent would be phased in over a 5-year period unless the affected permittee or lessee agrees to a shorter period or the changes must be made before 5 years have passed to comply with applicable law. For example, if a biological opinion issued under Section 7 of the Endangered Species Act (ESA) required immediate implementation of a change in active use, then compliance with ESA would take precedence and there would not be a 5-year phase-in in that instance.

It is anticipated that, in practice, portions of the total change would be applied in years 1, 3, and 5. The 5-year phase-in period for changes in active use would provide time for more gradual operational adjustments by grazing permittees or lessees to lessen sudden adverse economic effects that may arise from a reduction, or to allow time to plan livestock management changes or to adjust herd size. The phase-in period would also allow the BLM to monitor and observe the effects of the changes in increments. This 5-year

phase-in period is similar to the regulations in effect in 1994.

2.2.3 Range Improvement Ownership

Under the proposed action, title to new, permanent, structural grazing-related range improvements such as fences, wells, and pipelines authorized under a Cooperative Range Improvement Agreement and constructed on public lands would be shared between the cooperator(s) and the United States in proportion to their initial contribution to on-the-ground project development and construction costs (§4120.3-2(b)). Cooperators would include any individual or organization that contributes funding, materials, or labor to the construction or development of a range improvement.

Structural improvements include wells, pipelines, or fences constructed on BLM-managed public lands. This would return the provision on how title for improvements constructed under Cooperative Range Improvement Agreements was shared before the 1995 change in regulations. Granting title to a structural improvement on public lands does not grant exclusive right to use the improvement or title to the underlying lands themselves. Cooperative Range Improvement Agreements will continue to include provisions that protect the interests of the United States in its lands and resources. The ownership of existing range improvements would not be affected. This provision is expected to provide an incentive for permittees and lessees to cooperate in the development of range improvements to achieve management or resource condition objectives.

Permittees would continue to own temporary structures such as dip tanks, loading chutes, or portable water troughs

placed on public lands under a Range Improvement Permit. The United States would continue to have title to nonstructural range improvements (e.g., seeding).

2.2.4 Cooperation with Tribal, State, County, or Local Government-Established Grazing Boards

As a result of comments on the draft EIS, the proposed action was modified to include Tribal agencies and grazing boards to the list of entities and boards with which BLM will cooperate. Changes were also made to make it clear that BLM is required to cooperate only with Tribal, state, county or local grazing boards that are established under Tribal or government authority, as opposed to private organizations that assume the title “grazing board.”

The proposed action now calls for amendment of §4120.5-2 to include Tribal agencies in both the title to the section and the list of agencies with which we would routinely cooperate in administering laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weed eradication and control. The proposed action would specifically require that BLM cooperate with Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands. In many States there are Tribal, state, county, or local government-established grazing advisory boards whose function is to provide guidance on grazing administration—generally focusing on range improvements—on public lands. These locally established grazing boards, where they exist, would be a valuable tool for gathering additional local input for BLM’s decision-making processes and would help satisfy the FLPMA Section 401(b)(1) provision that calls for the BLM to consult with local user representatives when

considering range rehabilitation, protection, and improvement actions. The changes would also bring the regulations into compliance with Executive Order 13352 of August 26, 2004 (69 FR 52989), on Facilitation of Cooperative Conservation.

2.2.5 Review of Biological Assessments and Evaluations

Based on the review of the proposed rule in the draft EIS, we decided to delete the references to biological assessments (BAs) and biological evaluations (BEs) in section §4130.3-3 because it is unnecessary to highlight BAs and BEs as examples of reports during the preparation of which BLM seeks input from affected permittees, lessees, states and the interested public. The reason for this change is to avoid implying that BAs and BEs have greater value or emphasis than other reports also used by BLM when evaluating grazing use. It is more efficient and appropriate to use manual and handbook guidance rather than regulations to ensure that BLM field offices are consistently providing an opportunity for affected permittees, lessees, states, and the interested public to review and provide input, to the extent practicable, during preparation of such reports, including BEs and BAs.

The revised proposed action does clarify that, although reports prepared in support of decisions to modify grazing use are subject to review during preparation, the review opportunity does not include a regulatory obligation for comment. Reviewing parties may still elect to provide comments during preparation of such reports, including BAs and BEs.

2.2.6 Temporary Nonuse

Based on comments on the draft EIS, the BLM made some modifications to the proposed action related to temporary nonuse.

We changed the provision from stating the authorized officer “will authorize nonuse” to “may authorize nonuse” to avoid the interpretation that the BLM is required to approve temporary nonuse regardless of the reason offered by the permittee or lessee. We also modified the provision to clarify that applications for temporary changes in use, including nonuse, within the terms and conditions of a permit or lease must be submitted in writing to the BLM on or before the date the permittee or lessee wishes the change in grazing use to begin.

The proposed action includes moving the provisions addressing approval of “temporary nonuse” from §4130.2 to §4130.4 and revising them to allow the BLM to have the discretion to approve applications to temporarily not use all or part of the grazing use authorized by a permit or lease on a year-to-year basis when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. There would be no limit on the number of years of consecutive nonuse allowed under the proposed regulations; however, nonuse would only be approved by the BLM for a legitimate purpose or need to provide for (1) natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or (2) the business or personal needs of the permittee or lessee.

Events such as drought, fire, or less than average forage growth typically result in “rangeland conditions” that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease. When the BLM, in consultation with the grazing operator, determines rangeland conditions are such that less grazing use would be appropriate, the BLM encourages operators, if they have not already done so, to apply for nonuse for “conservation and

protection of rangeland resources.” This is the simplest way to temporarily reduce use in response to rangeland conditions. In some instances, approval of an application for temporary nonuse also precludes the need for the BLM to issue a decision to temporarily suspend use under §4110.3-3(b), although the BLM retains the discretion to do this. “Personal and business needs” of the grazing operator are actions operators take in the course of managing their business, such as livestock sale, that result in temporary herd size reductions.

2.2.7 Basis for Rangeland Health Determinations

Present policy and procedural guidance recommends that both standards assessments and monitoring data be used as the basis for making determinations. However, use of both assessments and monitoring is not required either by policy or regulation. Under the proposed regulations in §4180.2, determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be required to be based on the results of standards assessment and monitoring data. Assessments and monitoring would not both be required as a basis for other determinations.

2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards

Based on concerns raised during the review of the draft EIS, the proposed action for §4180.2 was revised to allow for more time to formulate, propose, and analyze an appropriate action to address a failure to meet standards or to conform to guidelines for grazing administration if a legally required process that is beyond the control

of the BLM, such as issuance of a biological opinion, prevented us from meeting the proposed 24-month deadline for making a decision. This provision for extension is likely to be used rarely. It recognizes the reality that the BLM is not always able to control timeframes when other agencies are involved.

Under the proposed action, the BLM would, under §4180.1, be required to take action to assist in achieving the fundamentals of rangeland health only if the fallback standards and guidelines are in place. Most BLM states have completed establishment of Secretarial-approved standards and guidelines, therefore this section would have limited applicability under present circumstances. This provision would provide for implementation of appropriate action no later than the start of the next grazing year after completing all consultation requirements and compliance with other laws and requirements.

Changes in timeframes would also be implemented through modifications in §4180.2(c). To allow sufficient time to complete all consultation and other legally mandated requirements, the Proposed Action would require the BLM to formulate, propose, and analyze appropriate actions to address the failure to meet the rangeland health standards or to conform to the guidelines for grazing management no later than 24 months after the determination. The conclusion of this process would be documented by either execution of an applicable and relevant documented agreement or issuance of an applicable final decision. The BLM would be able to extend the deadline for meeting the above timeframe requirements when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24-month timeframe. Upon executing the agreement or in the absence

of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable but not later than the start of the next grazing year (§4180.2(c)).

The timeframe adjustments in both §4180.1 and §4180.2(c) are based on the need for providing adequate time for the BLM to complete mandated consultation and other legal requirements prior to taking action. The BLM has certain specific requirements for consultation, cooperation, and coordination prior to issuing any proposed decisions, including those proposed decisions related to changes in active use, renewal, issuance, or modification of grazing permits and leases; changes in allotment boundaries; preparation and modification of allotment management plans and resource activity plans; and plans for range improvements. As part of the planning and decision-making process, the BLM is also required to comply with applicable laws and regulations, including but not limited to the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA). After a determination has been made that livestock grazing management practices or levels of use are significant factors in the failure to achieve the rangeland health standards or conform with the guidelines for grazing administration, the BLM must comply with the above analysis and consultation requirements mandated by these laws and regulations prior to implementing any decision. It is the BLM's belief that allowing additional time to develop, formulate, and analyze appropriate actions with sufficient opportunity for consultation and satisfaction of legal requirements will result in better and more sustainable decisions.

2.2.9 Conservation Use

Under the Proposed Action, all references to and provisions on "conservation use"

would be deleted from the regulations. This would bring the regulations into conformance with the 1999 10th Circuit Court decision (Public Lands Council v. Babbitt, 929 F.Supp. 1436 (D. Wyo. 1996), rev'd in part and aff'd in part, 167 F.3d 1287 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000)).

2.2.10 Definition of Preference, Permitted Use, and Active Use

The BLM would define “grazing preference” or “preference” as “the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.”

This definition is similar to how the term was defined when it first was defined in the grazing regulations in 1978, and to how it was defined before 1995. The concept of grazing preference as it would be defined in this rulemaking includes two elements: (1) a livestock forage allocation on public lands; and (2) that priority for receipt of that allocation is attached base property. Ownership or control of base property gives the owner preference for receipt of a grazing permit or lease authorizing grazing use to the extent of the active preference, as well as priority for receipt of forage that may later be determined to be available for livestock grazing to the extent of any preference that is in suspension.

Under the proposed regulations, the BLM would also remove the term “permitted use” from the definitions (§4100.0-5) and generally replace this term wherever it occurs in the regulations with either “grazing preference” or “preference,” or “active use,” depending on the regulatory context.

With respect to the definition of “active use”, we did make one minor change based on comments on the draft EIS. We substituted the word “livestock” for “rangeland” in the reference to carrying capacity to make the definition consistent with all other references to carrying capacity in the regulations. Under the proposed action, the definition of “active use” would be modified to mean that portion of the grazing preference that is available for livestock grazing use based on livestock carrying capacity and resource conditions in an allotment under a permit or lease, and that is not in suspension (§4100.0-5). This change would remove the term “conservation use” and “livestock use” and make it clear that “active use” refers to a forage amount that it is based on the carrying capacity of, and resource conditions in, an allotment and that it does not refer to forage that had been allocated at some point in the past, but has since been determined to no longer be present and which now is held in suspension.

Although the connection between land use plans and grazing preference would not be stated in the definition of “grazing preference” as it is being proposed, the regulatory text would reflect the relationship between “active use” and land use plans at §4110.2-2 , §4110.3(a)(3), §4110.3-1 and between grazing permits and leases and land use plans at §4130.2.

The forage amount available on public lands that is available for livestock grazing use would continue to fluctuate because of changed resource conditions, or changed administrative or management circumstances. It is well settled that livestock forage allocations made before enactment of the Federal Land Policy and Management Act of 1976 may be adjusted based on BLM land use planning decisions, or the need to change grazing use to meet objectives specified in land use plans (see, for example, Public

Lands Council v. Babbitt, 529 U.S. 728 (2000)).

2.2.11 Definition and Role of the Interested Public

Based on concerns raised during the review of the draft EIS, we modified the proposed definition of interested public to make it clear that a request to be considered as interested public must identify the specific allotments in which the person or entity is interested. We also added language providing that when the interested public submits comments or otherwise participates, they must address the management of a specific allotment.

Under the proposed action, the BLM proposes amending the present definition of “interested public” to mean an individual, group, or organization that has either (1) submitted a written request to the authorized officer to be given an opportunity to be involved in the BLM decision-making process as to the management of a specific allotment and who has followed up on that request by commenting on or otherwise participating in the decision-making process as to the management of a specific allotment; or (2) submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Under the proposed rule, the BLM would retain requirements for consultation, cooperation, and coordination with the interested public for the following BLM actions:

1. Apportioning additional forage on BLM-managed lands;

2. Developing or modifying an allotment management plan or grazing activity plan;
3. Planning of the range development or improvement program; and
4. Reviewing and commenting on grazing management evaluation reports.

In addition, the requirement for the authorized officer to provide copies of proposed and final grazing decisions would be retained.

This proposed rule would remove the regulatory requirement that the authorized officer consult, cooperate, and coordinate with the interested public on the following actions:

1. Designating and adjusting allotment boundaries;
2. Changing active use;
3. Issuing emergency closures or modifications;
4. Issuing or renewing a grazing permit or lease;
5. Modifying a grazing permit or lease; and
6. Issuing temporary nonrenewable grazing permits.

Generally, the above actions involve the day-to-day operational aspects of the grazing program. These changes would not remove the BLM’s discretion to consult with the interested public at its option on these actions.

This change would not affect the requirement to consult with the interested public where such input would be of the greatest value in setting management

direction for public lands, such as when planning vegetation management objectives in an allotment management plan, or by providing input to reports evaluating range conditions. The change would allow the authorized officer and the grazing operator the discretion to determine appropriate on-the-ground management actions to achieve plan objectives or respond to variable resource conditions. The BLM would retain the discretion to consult, cooperate, and coordinate on any item if the authorized officer determined that value would be added to grazing management decisions or actions, above and beyond what the regulation requires. Also, this proposed revision will not affect the BLM's practice of making all National Environmental Policy Act (NEPA) documents available to the public in accordance with Council of Environmental Quality regulations. As previously indicated, the interested public will be provided a copy of the proposed decision and associated NEPA documents and will be able to protest proposed decisions. The interested public will also receive a copy of the final decision.

2.2.12 Water Rights

The BLM proposes to amend this section by removing the reference to the effective date of this provision in the first sentence and removing the second sentence. This would remove the provision stating that, to the extent allowed by state law, livestock water rights must be acquired, perfected, maintained, and administered in the name of the United States. The proposed provision would read as follows: Any right acquired by the United States to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located. Under the revised provision, the BLM would have whatever

flexibility state law provides and would clarify BLM's administrative options, including joint ownership of water rights with permittees and lessees.

2.2.13 Satisfactory Performance of Permittee or Lessee

The BLM would move provisions regarding what constitutes "satisfactory performance" of an applicant for a permit or lease from §4110.1, Mandatory qualifications, to §4130.1-1, Filing applications, to better organize the regulations. The provisions addressing what constitutes satisfactory performance for applicants for new permits and leases would also be revised.

The present rule provides that applicants for renewal of permits and leases would be deemed *to have* a satisfactory record of performance if they have substantially complied with the terms and conditions of the expiring permit or lease and other rules applicable to the permit or lease, whereas applicants for new permits or leases would be deemed *to not have* a satisfactory record if they have had a Federal or state lease canceled within the previous 36 months, or have been legally barred from holding a grazing permit or lease. The existing sentence construction does not specify the circumstances under which the BLM will consider an applicant for a new permit or lease to have a satisfactory record of performance.

The changes proposed would clarify that the scope of the criteria that the BLM would consider when determining whether an applicant for a new permit has a satisfactory record of performance is limited to the criteria stated in the regulations. The proposed rules do this by changing the sentence construction for applicants for new permits or leases to reflect what would be required for an applicant for a new permit or lease *to have* a satisfactory record of

performance. Basically, the regulations would now clearly state that the BLM would deem applicants for new permits or leases and for permits and leases after a preference transfer to have a record of satisfactory performance when the applicant or affiliate has not had any Federal grazing permit or lease canceled for violations of the permit or lease within the 36 months immediately preceding the date of the application; or the applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled for violation of the permit or lease within 36 months of the date of the application; or the applicant or affiliate is not barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

Based on concerns raised during the review of the draft EIS, we made changes in the proposed action addressing changes in grazing use within the terms and conditions of a permit or lease. We removed the reasons listed in the draft for allowing temporary changes in grazing use. In the draft, we indicated that changes could be granted either in response to annual fluctuation in time and amount of forage production or to meet locally established range readiness criteria. Comments objected to the use of range readiness criteria, claiming that it has many interpretations and we would not be able to adequately define it to serve as a regulatory criterion. We were also concerned that, by listing the reasons, we would unnecessarily restrict our management options. We also added language that would allow for greater flexibility in the period of use if specified in the appropriate allotment management plan.

As indicated in the discussion of “temporary nonuse” (see 2.2.6), we also clarified in this section that applications for changes in grazing use within the terms and conditions of a permit or lease had to be made in writing on or before the date they wish the change in grazing use to begin.

Under the revised proposed action the BLM would amend section §4130.4 to indicate what is meant by the phrase “within the terms and conditions of the permit or lease.” The BLM would define “temporary changes within the terms and conditions of the permit or lease,” to mean changes to the number of livestock and period of use, or both, that would:

1. Result in temporary nonuse of all or part of the allotment; or
2. Result in forage removal that does not exceed the amount of “active use” specified by the permit or lease; and that, unless otherwise specified in the appropriate allotment management plan, occurs not earlier than 14 days before the grazing begin date specified by the permit or lease, and not later than 14 days after the grazing end date specified by the permit or lease; or
3. Result in both of the above conditions.

The new provisions would also require that the BLM consult, cooperate, and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

Livestock periods-of-use established by the grazing permits are based on the anticipated average dates that the range is “ready” to be grazed. The range is considered “ready” when plant growth has reached the stage at which grazing may begin without

doing permanent damage to vegetation or soil. The point where the range is “ready” for grazing use can and does vary from year to year around a long-term average date of readiness. The BLM believes that a 14-day flexibility period on either side of the grazing begin and end dates specified by the permit or lease is a reasonable way to allow for minor adjustments in grazing use in response to these variations.

The BLM would consider applications for changes in grazing use “within the terms and conditions of the permit or lease” on a case-by-case basis. If the BLM approves the change, no formal action other than the issuance and payment of a relevant grazing fee billing would be required. The change would not constitute a formal permit or lease modification. In other words, a temporary change that was allowed in 1 year to respond to the conditions of that year would not be carried forward to the next year. An application for grazing use that falls outside of this flexibility would be not be considered “within the terms and conditions” of the authorizing permit or lease unless a special term or condition was attached to the permit or lease that allowed for greater flexibility. In some cases, allotment management plans identify conditions which would allow for greater flexibility.

Temporary changes in grazing use that are determined to be “within the terms and conditions of the permit or lease” would not typically require additional NEPA analysis because the effects would fall within the scope of those effects analyzed in the existing applicable NEPA document for the permit or lease. Exceptions would only occur if the 14-day period overlapped some critical time periods that were not addressed or were time periods that were required to be avoided in the existing NEPA document (e.g., desert tortoise emergence in spring or fall).

2.2.15 Service Charges

Based on concerns raised during the review of the draft EIS, we incorporated language in the proposed action to provide procedures for periodically adjusting the service charges through publication of a notice in the Federal Register.

Comments on the draft EIS also suggested that we did not provide detailed information on the basis for our changes in the service charges proposed. The BLM does not collect itemized cost data on the specific processing actions addressed in this rulemaking.

Although we do not specifically collect cost data on just crossing permits or billings, we do collect such data in one of the cost categories in our management information system. Data on the costs to process billings and miscellaneous permits are shown by BLM State Office in Table 2.2.15 A. The average Bureauwide unit cost for the items in that cost category was \$339.00 in fiscal year 2003. Based on our professional judgment, we determined that the processing costs of issuing a crossing permit and canceling and replacing a grazing billing fee that more closely reflects our actual costs was a proportionally smaller amount than represented by that subset of costs.

Cost data on the transfer of grazing preference and related actions are also collected by the BLM in our management information system. Those data are shown by BLM State Office in Table 2.2.15 B. The average Bureauwide unit cost for the items in that cost category was \$2,255.00 in fiscal year 2003. We estimated that the actual processing costs for just the preference transfer is substantially less than represented by that cost category. Most of the costs captured in that cost category are for processing the permit or lease issuance following the transfer, including the NEPA

Table 2.2.15-A. BLM costs to process billings and miscellaneous permits, 2003.

Costs associated with issuance of billings, free use permits, exchange of use permits, trailing permits, temporary nonrenewable permits. Includes: 1) Preparing stipulations for the authorization; 2) Data management support of range records and GIS support; 3) Generating the billing; and 4) Collection of the grazing fee.

2003 State	Units	State Direct Cost	State Direct Unit Cost	Bureau's Full Cost	Bureau's Unit Cost
Arizona	775	\$203,044	\$262	\$439,854	\$568
California	657	\$275,013	\$419	\$657,748	\$1,001
Colorado	2359	\$355,784	\$151	\$762,549	\$323
Idaho	2660	\$389,775	\$147	\$790,500	\$297
Montana	4879	\$429,643	\$88	\$956,003	\$196
New Mexico	3137	\$215,507	\$69	\$473,115	\$151
Nevada	1284	\$425,181	\$331	\$839,903	\$654
Oregon	1710	\$442,353	\$259	\$973,603	\$569
Utah	2728	\$510,525	\$187	\$1,115,804	\$409
Wyoming	3788	\$554,581	\$146	\$1,124,855	\$297
Total	23977	\$3,801,406	\$159	\$8,133,935	\$339

Source: BLM Management Information System.

and other legal compliance actions that are labor intensive. The actual processing of the preference transfer is relatively straightforward and quickly accomplished—a small component of that cost category. Again, we based our estimate of the appropriate service charge for preference transfers to more closely reflect our actual costs on our best professional judgment.

Under the proposed regulations at §4130.8-3, the service charge for processing various actions would more closely reflect the actual processing costs. Except when initiated by the BLM, the following service charges would be assessed for the processing of the following actions:

- Issuance of a crossing permit—\$75
- Transfer of grazing preference—\$145

- Cancellation and replacement of a grazing fee billing—\$50

A crossing permit may be issued to any applicant showing a need to cross the public land or the land under BLM control with livestock for proper and lawful purposes. A crossing permit for trailing livestock would contain terms and conditions deemed necessary by the authorized officer for temporary grazing use that would occur (§4130.6-3).

A grazing preference transfer occurs when base property is sold or leased and an application is made to the BLM for the transfer of the grazing preference to the new owner or lessee. A grazing preference may also be transferred from one base property to another.

Table 2.2.15-B BLM Costs to process grazing preference transfers and related actions, 2003.

Costs associated with processing a preference transfer. Includes costs of complying with National Environmental Policy Act, Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, Land Use Plan and other concerns as appropriate; cost of preparing a Final Decision on transfer of preference; costs associated with processing an appeal and participating in a hearing on the appeal; and costs of data management support of range records and Global Information System.

2003 State	Units	State Direct Cost	State Direct Unit Cost	Bureau's Full Cost	Bureau's Unit Cost
Arizona	50	\$75,947	\$1,519	\$162,632	\$3,253
California	31	\$20,401	\$658	\$47,980	\$1,548
Colorado	93	\$65,748	\$707	\$137,830	\$1,482
Idaho	123	\$71,934	\$585	\$144,269	\$1,173
Montana	242	\$201,307	\$832	\$441,669	\$1,825
New Mexico	113	\$244,320	\$2,162	\$511,458	\$4,526
Nevada	50	\$106,687	\$2,134	\$207,504	\$4,150
Oregon	70	\$68,674	\$981	\$151,266	\$2,161
Utah	99	\$64,132	\$648	\$138,468	\$1,399
Wyoming	194	\$231,317	\$1,192	\$458,880	\$2,365
Total	1065	\$1,150,467	\$1,080	\$2,401,956	\$2,255

The service charge for cancellation and replacement of a grazing fee billing is intended to cover the administrative costs associated with canceling and issuing a new billing when a permittee or lessee requests changes in grazing use after the bill has been issued.

2.2.16 Prohibited Acts

As indicated in the discussion of the No Action Alternative, there are three categories of prohibited acts. Under the proposed change, the third category of prohibited acts found in §4140.1(c) would be changed to clarify that this section would be applicable only when the permittee or lessee

commits a prohibited act on an allotment for which he holds a permit or lease from the BLM. Otherwise, permittees or lessees would be treated similarly to any other individuals committing a similar prohibited act (i.e., other laws or regulations may apply). The effect of this change is to limit applicability of the section to circumstances where there is a geographical connection between the prohibited act and the grazing permit or lease. This change is also intended to ensure that the performance of the prohibited act is related to the operator's permit or lease.

Editorial changes to improve the clarity of the regulations are also incorporated in the proposed changes for this section.

2.1.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

The BLM would continue to operate under the administrative remedies regulations set forth in Subpart 4160. Described in detail are the procedures for issuing and protesting proposed decisions (§4160.1 and §4160.2) and issuing and appealing final decisions (§4160.3 and §4160.4). Procedures for requesting a stay of a final decision and allowable grazing use if a final decision is stayed are identified in §4160.3.

When the Office of Hearings and Appeals stays a final decision regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed. This provision does not apply if the grazing use in the preceding year was authorized on a temporary nonrenewable basis under §4110.3-1(a). Where the applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the grazing use under the stay is consistent with the final decision pending a final determination on the appeal (§4160.3(d)).

When the Office of Hearings and Appeals stays a final decision to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized (§4160.3(e)).

2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The Proposed Rule, at §4160.1(d), would clarify that a biological assessment or

biological evaluation prepared in accordance with Section 7 of the Endangered Species Act would not be a decision for purposes of protest or appeal.

A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to: (1) adversely affect a listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify critical habitat. A biological evaluation (BE) is a documented review of an agency's programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species, or proposed or designated critical habitat

This regulatory revision would address concerns regarding the *Blake* decision wherein the Interior Board of Land Appeals ruled that BAs were to be treated as decisions subject to the protest and appeals provisions of §4160. *Blake v. Bureau of Land Management*, 145 IBLA 154 (1998), *aff'd on reconsideration*, 156 IBLA 280 (2002). The *Blake* ruling raised concerns about the potential for major delays in the decision-making process as a result of this requirement.

The *Blake* decision has led to a situation where a BLM BA or BE addressing possible grazing changes may trigger the need for *two* final decisions, the first of which cannot be directly implemented. The BLM believes a BA or BE is better viewed as an intermediate step that may later lead to a *single* final decision that can be implemented. This regulatory change is designed to implement that view—a view that formed the basis of BLM actions prior to the *Blake* decisions

2.3 Alternative Three: Modified Action

Alternative Three is essentially the same as Alternative Two (Proposed Action) with modifications to four key elements. Modifications involve the following elements: Implementation of Grazing Decisions, Temporary Nonuse, Basis for Rangeland Health Determinations, and Prohibited Acts.

2.3.1 Implementation of Changes in Grazing Use

This provision is the same as the proposed action, except that the 5-year phase-in of changes in use would be discretionary rather than mandatory. In other words, changes in active use in excess of 10 percent may not have to be implemented over a 5-year period. The BLM-authorized officer may, at his or her discretion, determine that a shorter period is appropriate or no phase-in period is warranted. For example, if a special status species that is not presently covered by the Endangered Species Act is being affected by levels of active use, the BLM could decide to immediately implement a reduction in active use without agreement of the affected permittees, following the required consultations and allowing for protest and appeal of the decision.

2.3.2 Temporary Nonuse

Under this proposal, permittees or lessees could submit and the BLM could approve applications for nonuse for no more than 5 consecutive years. All other provisions related to the authorization of temporary nonuse would be the same as for the Proposed Action.

2.3.3 Basis for Rangeland Health Determinations

This provision would be similar to the proposed action except that the BLM would not be required to use both assessments and monitoring as the basis for determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines; that is, rangeland health determinations such as those could be based on either standards assessments or monitoring data, or both. This would increase BLM manager flexibility and discretion over the proposed action.

2.3.4 Prohibited Acts

Section 4140, Prohibited Acts, would be the same as the proposed action except for changes described below.

The following would be **added** to the second category of prohibited acts (§4140.1(b)): “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.” This would enable the BLM to enforce weed seed free requirements in states which do not have weed seed free certification programs.

The following would be **deleted** from the third category of prohibited acts (§4140.1(c)): Violation of Federal or state laws or regulations pertaining to the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides, or other hazardous materials; alteration or destruction of natural stream courses without authorization; pollution of water sources; illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and illegal removal or destruction of archaeological or cultural

resources. Such acts would still be prosecuted by the appropriate Federal or state agency, however, after conviction, the permittee or lessee could not be additionally penalized by having his permit or lease denied, suspended, or canceled.

2.4 Alternatives Considered But Not Analyzed in Detail

Some comments on the draft EIS stated that additional alternatives should have been considered for the timeframe for taking action to meet rangeland health standards and for implementing changes in grazing use. In the draft EIS, we proposed allowing as long as 24 months following the determination on whether or not an allotment met standards or conformed to guidelines to formulate, propose and analyze an appropriate action and complete all legal and consultation requirements. We also proposed a 5-year phase-in of changes in active use in excess of 10 percent.

We believe that we examined an appropriate range of alternatives and we have not added additional ones in this final EIS. When considering time limitations, an infinite array of options is theoretically possible. The alternatives considered here were reasonable given the nature of this rule and sufficiently distinct to allow for meaningful comparisons in the analysis.

With respect to the timeframe for taking action to meet rangeland health standards, the current regulations, in §4180.2(c), provide that corrective action should be taken by the start of the next grazing season when grazing is determined to be a significant factor in the failure to achieve a rangeland health standard. Although the BLM desires to take effective corrective action as quickly as possible, recent experience has demonstrated that complex circumstances

can sometimes require extended periods of time to form effective long-term solutions. Rangeland standards failures have often developed slowly over many years and may take years to remedy completely. Factors complicating the formulation of action plans include the legal requirements of NEPA, NHPA, and ESA; water rights adjudications; and the presence of multiple permittees on an allotment. We determined the proposed action timeframe of 24 months to be the shortest reasonable timeframe that would accommodate the vast majority of corrective actions. The proposed regulation in this final EIS adds language to recognize that, in some instances, even more time may be required due to delays outside the control of the BLM. We initially considered other timeframes, such as 12 or 18 months, but we viewed them as inadequate to deal with the more complicated situations. Removal of any timeframe guidance was also considered, but we determined that a reasonable deadline would be useful to help ensure that BLM actions were not inadvertently delayed.

With respect to the implementation of changes in grazing use, the current regulations, in §4110.3-3, do not include any provisions regarding a phase-in period. We examined two alternatives for active use changes greater than 10 percent in the EIS, in addition to the current regulations. Scoping indicated that permittees and lessees supported a 5-year option to address the financial shocks that can come in the rare instances when large decreases are made in active use. Scoping did not indicate strong support for longer or shorter timeframes. The BLM addressed the impacts associated with mandatory or discretionary phase-in systems. This was a reasonable range of alternatives for this issue.

Many substantive issues and recommendations were also provided by the public during the scoping period. Public

comments were fully considered and many of their recommendations are reflected in the proposed action or in the modified action alternative. Many other issues raised or recommendations made were considered but not analyzed in detail in this EIS, because they are either beyond the scope of the document, did not meet the basic purposes of these proposed changes to the regulations, or the BLM decided it could better address the issues through the development of policy.

The following are alternatives the BLM has considered but has not analyzed in detail in this EIS:

- **Increasing grazing fees or providing for competitive bidding for assignment of permits and leases.** In the Advance Notice of Proposed Rulemaking (ANPR) for proposed amendments to BLM's grazing administration regulations, the BLM stated that grazing fees would not be addressed in this rulemaking. However, several commenters raised the issue of fees and requested changes to the grazing fee system. Some commenters asked the BLM to develop a competitive bidding process to replace the present system for assigning grazing permits and allocating grazing preference and the present grazing fee formula. Modifications to the fees and the method for allocating permits or leases would require legislative action. The BLM determined that such proposals are outside the scope of this rulemaking.
- **Removing Grazing Fee Surcharge Requirements.** Several commenters requested that the BLM consider removing the grazing fee surcharge provisions from the regulations. The grazing fee surcharge was added by the 1995 regulations to address concerns

raised by to the General Accounting Office and Office of the Inspector General regarding the potential for rancher windfall profits arising from the BLM's practice of allowing for the subleasing of public land grazing privileges. Some BLM grazing permittees enter pasturing agreements wherein they take temporary control of a third party's livestock and graze them under their permit or lease. The permittee pays the Federal grazing fee and charges the third party an amount negotiated between them for the forage and care of the livestock. The BLM assesses a fee surcharge in this circumstance that equals 35 percent of the difference between the present Federal grazing fee and the private grazing land lease rate. An exception to the surcharge requirement is provided for children of permittees and lessees. The BLM continues to believe that the surcharge is an equitable way in which to address this issue. In addition, this is a grazing fee issue and, as indicated in the ANPR, the BLM has determined that grazing fees are outside the scope of this rulemaking.

- **Reestablishing BLM Grazing Advisory Boards.** A number of commenters recommended that the BLM reestablish BLM Grazing Advisory Boards to provide local advice and recommendations to BLM on grazing issues. The BLM Grazing Advisory Boards were "sunset" on December 31, 1985, by FLPMA. The 1995 grazing regulation amendments incorporated several requirements for BLM to consult, cooperate, and coordinate with BLM Resource Advisory Councils that were established in 1995 to advise and recommend strategies for managing public lands under the multiple-use mandate. The Resource Advisory

Councils have generally assumed the role of the previous Grazing Advisory Boards, and it would be duplicative and unnecessary to establish another advisory body. Although the BLM does not consider the reestablishment of BLM Grazing Advisory Boards in this rulemaking, it is proposing a provision requiring BLM to cooperate with state, county, or locally established grazing boards in reviewing range improvements and allotment management plans on public lands. This review would supplement the advice of Resource Advisory Councils.

- **Changing management of wild horses and burros.** Some commenters identified the need to change how the BLM manages wild horses and burros as necessary to address rangeland health issues. Any changes to the Wild Horse and Burro Act or management regulations are, however, outside the authority and scope of this rulemaking.
- **Changing Conversion Ratio for Sheep for Billing Purposes.** Counting seven sheep, rather than the present five, as the equivalent of one animal unit for the purposes of calculating grazing fee billings was recommended by commenters during scoping. However, as indicated in the ANPR, matters involving grazing fees are outside the scope of this rulemaking.
- **Establishing “Reserve Common Allotments.”** In the ANPR, the BLM identified that it was considering proposing provisions to define, establish a regulatory framework, and otherwise support the creation of Reserve Common Allotments. The BLM has

decided not to proceed with developing Reserve Common Allotments at this time for several reasons. During the BLM’s public scoping period, many commenters expressed concern about adding special provisions for Reserve Common Allotments in the grazing regulations. Many commenters said they did not think such regulatory provisions were warranted or necessary. Ranching interests indicated they would rather have “normal” allotments, whereas environmental interests questioned whether this would be the best use of the land. After considering the unenthusiastic reception to this concept, the BLM determined it was not in the public interest to proceed with this provision through regulations. The BLM may continue to examine the concept of forage reserves through policy making processes

- **Assigning Burden of Proof.** Several commenters recommended that the BLM consider including a provision in the regulations requiring the BLM to assume the burden of proof in an appeal before the Office of Hearings and Appeals. The Administrative Procedure Act (APA) at 5 U.S.C. 556(d) provides that “except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” The burden of proof has recently been clarified by the Supreme Court to mean the “burden of persuasion,” which refers to “the notion that if evidence is evenly balanced, the party who bears the burden of persuasion must lose.” (Director, Office of Workers’ Compensation Program v. Greenwich Collieries, 512 U.S. 267, 272 (1994)). Previously, the burden of proof had been confused with the burden of production, which refers to a party’s obligation to come forward

with evidence to support its claim. The burden of proving a fact remains where it started, but once the party with this burden establishes a prima facie case, the burden to produce evidence shifts. The burden of persuasion, on the other hand, does not shift except in the case of affirmative defenses. The APA, as interpreted by the courts, establishes the burden of persuasion and it is not necessary to further treat this issue in these regulations.

- **Monitoring.** Few commenters directly addressed the definition of “monitoring,” although many of the comments the BLM received pertained to procedural matters; that is, recommendations on how the BLM should conduct monitoring. The BLM received many comments from the livestock industry and environmental and conservation groups, asking that the BLM increase monitoring efforts on public lands. The BLM considered including new language regarding monitoring intending to provide explicit direction on the development of allotment-specific resource management objectives and short- and long-term monitoring programs in consultation with the permittee or lessee. The present regulations already allow the BLM to develop resource management objectives and monitoring plans as part of its allotment management plans. The BLM determined that establishing monitoring methodologies and working with permittees and lessees in collecting and interpreting data and developing monitoring reports are more appropriately handled through BLM’s policy guidance in Manuals and Handbooks. The BLM did incorporate a requirement for using monitoring as a basis for rangeland

health determinations (see proposed action).

- **Requiring Applications for Permit or Lease Renewals.** The present regulations do not explicitly state whether or not permittees or lessees must submit an application to BLM when their permit expires. Although there is no explicit requirement for an application when a permit expires, the actions involved in processing a renewal are the same as if there were an application, thus it was determined that the regulations did not have to be changed.
- **Providing for Appeals to the State Director.** During the scoping period, the BLM received comments recommending we consider adding another opportunity for administrative remedy by allowing a protesting party to appeal a BLM field office decision to the BLM State Director. Such a provision would allow the BLM State Director to have authority to stay a decision pending further review. The BLM determined it was not advisable to include this provision in the regulations as it did not meet BLM’s objective of increasing administrative efficiency and effectiveness.
- **Redefining Affected Interest and Interested Public.** Some commenters urged the BLM to remove the definition of interested public from the grazing regulations and incorporate the use of “affected interest” as it was defined in the regulations before 1995. Under such a change, the BLM would consider an “affected interest” to be a party who has expressed an interest in management of a specific allotment and that the BLM has

determined to be an affected interest. This change would require that the BLM focus its limited resources on determining who is, and who is not, an affected interest. The BLM desires that meaningful public involvement in developing grazing-related resource management objectives or actions not be unduly restricted or hindered by BLM processes and procedures. In working with the interested public provisions of these regulations, the BLM has found that there are interested public who express initial interest in management of a grazing allotment but do not maintain meaningful involvement in the process leading to creating allotment resource objectives and strategies to achieve those objectives. The regulations would modify the definition of interested public to provide that once a party becomes an interested public by expressing in writing an interest in management of an allotment, it maintains that status by continued participation in the decision-making process for that allotment. This modification would also narrow the circumstances in which the BLM **must** involve the interested public before taking a management action. The BLM believes that these changes will maintain meaningful public involvement while streamlining BLM processes leading to day-to-day, on-the-ground grazing management decisions.

- **Providing for control of water developments authorized under a range improvement permit.** During the scoping period, the BLM received recommendations that the regulations include provisions explicitly stating that the use of stock ponds, wells, and pipelines authorized under a range improvement permit should be controlled by the permittee or lessee holding the

permit. The present rule does not allow for water developments under a range improvement permit. Other commenters asked that the BLM include in the regulations a provision requiring that the permittee or lessee enter into a Memorandum of Understanding with the BLM to allow the use of improvements by livestock owned or controlled by anyone other than the permit holder. This is an administrative detail that is not appropriate for inclusion in a regulation.

- **Establishing criteria for full force and effect decisions.** Some commenters recommended that the BLM develop criteria for decisions implemented under §4110.3-3 for immediate implementation (i.e., full force and effect). The specific proposal was to use the same criteria as are applied to a request for a stay. The BLM disagrees that such criteria are necessarily relevant to the decision to issue a full force and effect decision to protect resources.
- **Modifying exchange of use agreements provisions.** The BLM received comments requesting that it remove the requirement that private lands offered in exchange of use be located in the same allotment being permitted for grazing to allow for “trade-of-use” arrangements such as that described below. A possible need for a trade-of-use arrangement, for example, is illustrated by the situation where one permittee or lessee owns or controls unfenced intermingled private lands that are not within his allotment, but are within a second permittee’s allotment. Because the first permittee is not authorized to graze in the second permittee’s allotment, the first permittee cannot derive economic gain from the grazing use made on his private lands

by the second permittee, absent action to proactively control use of his land such as through fencing or through sale of the land or assignment of the land lease to the second permittee. The commenter urged that the BLM facilitate the trade-of-use between these permittee's by collecting a grazing fee from the second permittee for grazing use of lands owned by the first permittee but located in the second permittee's allotment, and by crediting the fees collected from the second permittee for these lands to the first permittee's grazing fee billing. The BLM does not agree that this type of arrangement is best handled through the regulation change suggested by the commenter.

- **Nonwillful unauthorized livestock use.** The BLM received comment urging that it modify the regulations to allow the BLM to have unfettered discretion to determine circumstances that would warrant nonmonetary settlement of a nonwillful grazing trespass. The present regulations identify the following four conditions—all of which must be satisfied before the BLM can approve a nonmonetary settlement for nonwillful unauthorized livestock use: evidence shows that the unauthorized use occurred through no fault of the livestock operator; the forage use is insignificant; the public lands have not been damaged; and nonmonetary settlement is in the best interest of the United States. The BLM believes this is a reasonable approach, and therefore has decided not to change this provision.
- **Eliminate Secretarial approval of amendments to regional standards for healthy rangelands.** The BLM received comments urging that it revise the process

for approving standards for rangeland health to allow approval of revisions to the standards by BLM State Directors, Resource Advisory Councils, and other advisory boards established by state or local governments. The BLM believes that the requirement for Secretarial approval of Standards developed by BLM State Directors ensures that the basic components of rangeland health are reflected by the regionally developed standards and is not proposing any changes to the applicable provisions of the regulations.

- **Locked gates.** Commenters were nearly unanimously opposed to the idea of the BLM allowing grazing operators to temporarily lock gates on public lands when necessary to protect private property or livestock. This provision was not considered further.
- **Requiring posting of a bond before filing an appeal.** The BLM received comments asking it to require a bond before a party filed an appeal. The BLM considered the implications and challenges to such a provision and has determined that this provision is not feasible. Therefore, it is not included in either the rulemaking or the EIS.
- **Fundamentals of Rangeland Health.** Some commenters recommended that the BLM move the general requirements related to the fundamentals of rangeland health and the standards and guidelines for grazing administration to BLM's planning regulations at 43 CFR 1610. The BLM did not consider the timing of such an action appropriate and therefore it is not included in either the rulemaking or the EIS.

2.5 Comparison of the Alternatives

Table 2.5. Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Improving Working Relations with Permittees and Lessees</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Social, Economic, and Cultural Considerations in the Decision-Making Process	* No provisions specifically address NEPA documentation of social, economic, and cultural considerations in the regulations regarding changes in permitted use.	* Before changing grazing preference, the BLM would undertake appropriate analysis as required by NEPA. The BLM would analyze and document, if appropriate, the relevant social, economic, and cultural effects of the proposed action.	* Same as Proposed Action
Implementation of Changes in Grazing Use	* The present regulations do not address the timing of implementation of decisions to change grazing use.	* Changes in active use in excess of 10% would be implemented over a 5-year period unless: an agreement is reached with the permittee or lessee to implement the increase or decrease in less than 5 years; or the changes must be made before 5 years to comply with applicable law (e.g., Endangered Species Act).	*Same as proposed action, except that the 5-year phase-in of changes in use would be discretionary , i.e., change in active use in excess of 10% may be implemented over a 5-year period.
Range Improvement Ownership	* The United States holds title to permanent range improvements such as fences, wells, and pipelines authorized after August 21, 1995.	* Title to permanent range improvements such as fences, wells, and pipelines authorized under a cooperative range improvement agreement would be shared among cooperators in proportion to their initial contribution to on-the-ground project development and construction costs.	* Same as Proposed Action

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Improving Working Relations with Permittees and Lessees (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Cooperation with Tribal, State, County, or Local Government-Established Grazing Boards	* The BLM is required to cooperate with state, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds, including state cattle and sheep sanitary or brand boards and county or other weed control districts.	* Tribal agencies would be added to the list of agencies with which BLM would be required to cooperate in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds * In addition, BLM would be required to cooperate with Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands.	* Same as Proposed Action
Review of Biological Assessments and Evaluations	* BLM is required, to the extent practicable, to provide affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public an opportunity to review, comment, and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease. This provision has been interpreted to include biological assessments and biological evaluations as among the body of reports subject to this requirement.	* Same as existing regulations except for some minor edits Note: In the draft EIS, it was proposed to specifically identify biological assessments (BAs) and biological evaluations (BEs) prepared under the Endangered Species Act as reports during the preparation of which BLM would be required to provide affected permittees or lessees, the State, and the interested public an opportunity to review and give input. Based on concerns raised during the review of the draft EIS, it was determined to be inappropriate to highlight BAs and BEs in this fashion; implying that they had greater value or emphasis than other reports such as grazing management evaluations.	* Same as existing regulations

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Protecting the Health of the Rangelands</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Temporary Nonuse	* Grazing permittees or lessees may submit and the BLM may approve an annual application for temporary nonuse for no more than 3 consecutive years. Reasons for temporary nonuse include but are not limited to financial conditions or annual fluctuations of livestock.	* Grazing permittees or lessees could submit and the BLM could approve nonuse for no longer than 1 year at a time for resource reasons as well as for business or personal needs of the permittee or lessee (i.e., there would be no limit on consecutive years of nonuse allowed).	* Same as Proposed Action except that permittees or lessees could submit and the BLM could annually approve an application for nonuse for no more than 5 consecutive years.
Basis for Rangeland Health Determinations	* The present regulations do not prescribe how the BLM determines that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the rangeland health standards and conform with the guidelines.	* Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessments and monitoring.	* Same as proposed action except that the BLM would not be required to use both assessments and monitoring as basis for determinations, i.e., may be based on assessment or monitoring.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Protecting the Health of the Rangelands (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Timeframe for Taking Action to Meet Rangeland Health Standards	* The BLM is required to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the fundamentals of rangeland health conditions exist or progress is being made toward achieving the fundamentals of rangeland health	* Where standards and guidelines have not been established , the BLM would take appropriate action as soon as practicable but not later than the start of the next grazing year following completion of relevant and applicable requirements of law, regulations and consultation requirements to ensure <u>fundamentals of rangeland health</u> conditions exist or progress is being made toward achieving rangeland health.	* Same as Proposed Action.
	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and conform with guidelines for grazing administration, the authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year.	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines, the BLM would, in compliance with applicable laws and with the consultation requirements, formulate, propose, and analyze appropriate action to address failure to meet standards or conform to guidelines no later than 24 months after determination is made. Upon execution of agreement or documented decision, the BLM would implement appropriate actions as soon as practicable but not later than start of next grazing year. * BLM could extend the deadline when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24 month timeframe.	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Conservation Use	* <u>Conservation use</u> is defined, is identified as a component of permitted use, may be authorized for up to 10 years, and is addressed in other provisions. However, no conservation use permits can or have been issued due to the 10 th Circuit Court decision in 1999 that issuance of conservation use permits exceeds the Secretary's authority under the Taylor Grazing Act.	* All references to and provisions on <u>conservation use</u> would be deleted.	* Same as Proposed Action.
Definition of Grazing Preference, Permitted Use, and Active Use	* <u>Grazing preference or preference</u> is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.	* <u>Grazing preference or preference</u> would mean the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference would include active use and use held in suspension. Grazing preference holders would have a superior or priority position against others for the purpose of receiving a grazing permit or lease.	* Same as Proposed Action.
	* <u>Permitted use</u> is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS. The term permitted use encompasses authorized use including livestock use, suspended use and conservation use.	* The term <u>permitted use</u> would be dropped from the regulations and replaced with the term grazing preference, preference or active use , depending upon the context, throughout the regulations.	* Same as Proposed Action.
	* <u>Active use</u> means present authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use doesn't include temporary nonuse or suspended use within all or a portion of an allotment.	* <u>Active use</u> would be redefined to mean that portion of the present authorized use that is available for livestock grazing based on livestock carrying capacity and resource conditions in an allotment under a permit or lease and that is not in suspension.	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public	* <u>Interested public</u> is defined as an individual, groups or organization that has 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 specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.	* <u>Interested public</u> would be defined as an individual, group or organization that has: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the decision-making process as to a specific allotment and followed up on that request by commenting on or otherwise participating in the decision-making process on management of a specific allotment; or (2) Submitted written comments to the BLM regarding management of livestock grazing on a specific allotment.	* Same as Proposed Action.
	* The BLM is required to consult, cooperate and coordinate with interested public on the following: <ul style="list-style-type: none"> • Designating/adjusting allotment boundaries. • Apportioning additional forage • Reducing permitted use • Emergency closures or modifications • Development or modification of grazing activity plan. • Planning of the range development or improvement program • Renewing/issuing grazing permit/lease • Modifying a permit/lease • Reviewing/commenting on grazing evaluation reports. • Issuing temporary non-renewable grazing permits. 	* Requirements to consult, cooperate and coordinate with the interested public would be modified as follows: <ul style="list-style-type: none"> • Removed • Retained • Removed • Removed • Retained • Retained • Removed • Removed • Retained (dropped reference to commenting) • Removed 	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public (continued)	* BLM is required to send copies of proposed and final decisions to the interested public.	* Same as existing regulations.	* Same as existing regulations.
Water Rights	* Any right acquired on or after 8/21/95 to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the State within which land is located. To the extent allowed by State law, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.	* The phrase – “on or after 8/21/95” - would be dropped from the first sentence. The second sentence of this provision - stating that, to the extent allowed by State law, any water right would be acquired, perfected, maintained, and administered in the name of the United States - would be removed.	* Same as Proposed Action.
Satisfactory Performance of Permittee or Lessee	* Requirements for satisfactory performance for renewal of permits and leases and for new permits or leases are defined in terms of when the applicant for such permits or leases is deemed not to have a satisfactory record of performance.	* The provisions on satisfactory performance would be moved from the section on “mandatory qualifications” to the section on “filing applications”. Minor editorial changes would be made in the definition of “satisfactory performance” for a new applicant for a permit or lease or for a permit or lease subsequent to a preference transfer – basically changing the definition from a negative (what “is not” satisfactory performance) to a positive (what “is” satisfactory performance).	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Changes in Grazing use Within Terms and Conditions of Permit or Lease	* Changes within the terms and conditions of the permit or lease may be granted by the authorized officer.	* Same as existing regulations.	* Same as existing regulations.
	* The present regulations do not define what is meant by “temporary changes in grazing use within the terms and conditions of the permit or lease.”	* “Temporary changes in grazing use within the terms and conditions of the permit or lease ” would be defined to mean temporary changes to livestock number, period of use, or both that would: (1) Result in temporary nonuse; or (2) Result in forage removal that does not exceed the amount of active use specified in the permit or lease ; and, unless otherwise specified in an allotment management plan, occurs no earlier than 14 days before the begin date specified on the permit or lease, and no later than 14 days after the end date specified on the permit or lease ; or (3) Result in both temporary nonuse and forage removal as defined above.	* Same as Proposed Action.
	* The present regulations do not include consultation requirements for such changes.	*The BLM would consult, cooperate and coordinate with the permittee or lessee on such changes.	* Same as Proposed Action.
Service Charges	* A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse and each replacement or supplemental billing notice except for actions initiated by the authorized officer. A specific fee is not identified in the present regulations, however the present fee for these actions is \$10.	* Except where BLM initiates the action, BLM would assess a service charge as shown below: (1) Issuance of crossing permit: \$75; (2) Transfer of grazing preference: \$145; (3) Cancellation and replacement of grazing fee billing: \$50	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Prohibited Acts	* There are three categories of acts that are prohibited on public lands.	* Same as existing regulations.	* Same as existing regulations.
	* The first category provides that permittees or lessees may be subject to civil penalties if they perform any of the 6 prohibited acts listed in this section.	* Same as existing regulations with several minor editorial changes and clarifications.	* Same as Proposed Action.
	* The second category provides that anyone, not just permittees or lessees, shall be subject to civil or criminal penalties if they perform any of the 11 prohibited acts listed in this section. Prohibited acts in this category include actions such as littering, damaging or removing U.S. property without authorization, and failing to reclose any gate or other entry during periods of livestock use.	* Same as existing regulations with some minor editorial changes.	* Same as the Proposed Action plus the following prohibited act would be added to this section: “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.”
	* The third category provides that permittees or lessees could be subject to civil penalties for performance of acts listed in this section where: public lands are involved or affected; the violation is related to grazing use authorized by BLM; the permittee has been convicted or otherwise found to be in violation of any of these laws or regulations; and no further appeals are outstanding.	* The performance of prohibited acts in the third category of prohibited acts would be further limited to the performance of such acts on an allotment where the permittee or lessee is authorized to graze under a BLM permit or lease. In addition, there would be some minor editorial changes.	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Prohibited Acts (continued)	* The third category consists of three sets of prohibited acts including: <ul style="list-style-type: none"> • Specific laws or regulations (e.g., Endangered Species Act) • Federal or state laws pertaining to natural, environmental, or cultural resources • State laws related to livestock operations 	* Same as existing regulations.	The third category would consist of only 2 sets of prohibited acts including: <ul style="list-style-type: none"> • Specific laws or regulations (e.g., Endangered Species Act) • State laws related to livestock operations * Federal or state laws pertaining to natural, environmental, or cultural resources would be deleted from the prohibited acts list.

Table 2.5 (concluded). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	* If a decision is stayed, the permittee or lessee will graze in accordance with the authorization issued the previous year.	* If a stay is granted on an appeal to a decision to cancel, suspend, change or renew a term permit or lease or to deny or offer a permit or lease to a preference transferee, then the BLM will authorize grazing under the immediately preceding permit or lease, or the relevant term or condition thereof.	* Same as Proposed Action.
	* If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.	* Decisions on ephemeral or annual rangeland grazing use and nonrenewable grazing permits would be effective immediately or on the date specified in the decision. There would be no special provisions for grazing use if a stay is granted on such decisions, therefore if a stay is granted the decision would be inoperative and, if appropriate considering the specific stay, the livestock may have to be removed from the allotment.	
Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process	* Present regulations do not specifically address biological assessments or biological evaluations prepared in compliance with the Endangered Species Act. However, in accordance with the IBLA <i>Blake</i> decision, biological assessments are to be treated as decisions subject to protest and appeal.	* A biological assessment or biological evaluation prepared for Endangered Species Act consultation or conference would not be a decision for purposes of protest or appeal.	* Same as Proposed Action.

2.6 Comparison of the Effects

Table 2.6. Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Grazing Administration</i>		
<p>*BLM grazing administration would provide some partnership opportunities.</p> <p>*Mechanisms for changing grazing management would be hurried, impractical, inefficient, and discourage partnerships, and may result in decisions of inconsistent quality.</p> <p>*The consideration and documentation of social, economic and cultural effects of grazing decisions would remain inconsistent.</p> <p>*The timeframe for implementing changes in use would be determined on a case-by case basis.</p> <p>*Cooperation with government established grazing boards would be inconsistent.</p> <p>*Decisions on day-to-day operations would cumbersome, inefficient and untimely.</p> <p>*Biological assessments and evaluations could be appealed, creating workloads that would displace other high priority work such as monitoring, and delaying implementation of grazing decisions.</p>	<p>*The regulations would promote greater partnership with grazing permittees, lessees, and grazing advisory boards.</p> <p>*The extended timeframe for developing appropriate action following a determination would yield reasoned, comprehensive and sustainable decisions. This timeframe would delay on-the-ground action in a relatively small number of allotments but would improve cooperation and build partnerships with permittees and lessees.</p> <p>*Ensure greater consistency in the consideration and documentation of relevant social, economic, and cultural impacts.</p> <p>*The requirement to use monitoring data to support determinations on allotments that fail to meet standards because of existing grazing management may result in an additional workload for BLM.</p> <p>*Reprioritizing data collection efforts to conduct monitoring may effect watershed assessment schedules and could delay permit renewal where current monitoring data is not available.</p> <p>*Allowing shared title to permanent structural range improvements may stimulate private investment.</p> <p>*BLM would focus communications with interested public on significant issues occurring on grazing allotments where input would be of the greatest value.</p> <p>*By providing that biological assessments are not subject to appeal, BLM would be able to more efficiently and timely make changes in grazing management.</p>	<p>*Similar to Alternative 2 but with additional overall flexibility at the local level.</p> <p>*Allowing BLM discretionary authority for phase-in period instead of requiring 5-year timeframe could provide additional protection for wildlife or other sensitive resources.</p> <p>*Allowing discretionary use of monitoring data for standards determinations rather than requiring it would allow BLM to flexibility at the local level to prioritize data and information collection.</p> <p>*The provision allowing the requirement to use weed seed free forage, grain, straw or mulch would provide enforcement authority as a preventative measure to reduce the spread of noxious weeds.</p>

Table 2.6 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Vegetation</i>		
<p>*Vegetation would move toward achievement of management objectives. *Timelines for formulating management changes may limit vegetation management alternatives and strain working relationships with permittees or lessees. *Riparian vegetation would remain static or improve slightly.</p>	<p>*Vegetation would move toward achievement of management objectives. *Potential for short-term adverse effects where vegetative conditions are in a downward trend and recovery is delayed. *Additional resources may be invested in improvements due to partnerships and improved working relationships. *Increased flexibility for temporary nonuse may result in greater alignment between forage production and utilization levels. *Increased flexibility to negotiate cooperative water developments may stimulate private investments and assist BLM to achieve vegetation management objectives. *Riparian vegetation would remain static or improve slightly.</p>	<p>*Similar to Alternative 2 but the flexibility in the use of monitoring or standards assessments data for making determinations and the timeframe for implementing management changes would allow BLM to accelerate short-term vegetative recovery. *Weed seed-free forage enforcement authority would result in slower weed expansion rates..</p>
<i>Fire and Fuels</i>		
<p>*A minimal effect on the ability to reach a more historical fire regime.</p>	<p>*A slight improvement in the ability to reestablish historical fire regimes resulting in vegetation improvements.</p>	<p>*Similar to Alternative 2.</p>
<i>Soils</i>		
<p>*Short-term adverse impacts would be minimal except at the local scale. *Would result in maintenance of or slight improvement in conditions in the long term.</p>	<p>*Short-term adverse impacts would be minimal except at the local scale where watershed cover is inadequate. *Maintenance or slight improvement would be expected in the long-term due to maintenance of adequate watershed cover.</p>	<p>*Overall the effects would be neutral to slightly beneficial because of maintenance or slight improvement in watershed cover. * Allowing greater discretion in the phase-in schedule, and choice of data used for making determinations may allow more rapid implementation of changes, accelerating recovery of watershed cover. A weed-seed free forage provision that reduces the spread of weeds might enhance watershed cover.</p>

Table 2.6 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Water Resources</i>		
*The proposed changes would have little or no impact on short-term water resource conditions. *Slow improvement in watershed conditions would be expected for the long term. *Water quality would remain static or improve slowly.	*Similar to Alternative 1.	*Similar to Alternative 1.
<i>Air Quality</i>		
*Air quality would be expected to be maintained or improved and within standards.	*Similar to Alternative 1.	*Similar to Alternative 1.
<i>Wildlife</i>		
*Risks and benefits to wildlife and wildlife habitat, are not expected to change. *Current timeframes for developing grazing management changes would impede adequate analysis and consultation, resulting in less effective and acceptable decisions on wildlife.	*In the long-term, there would be little or no effect on wildlife due to better partnerships with permittees and lessees and longer timeframes for developing effective and acceptable decisions. *Implementation of changes in grazing use and timeframes for taking action could have an adverse effect on wildlife in the short-term in a small number of allotments. *The elimination of the 3 consecutive year limit on temporary non-use could improve opportunities for cooperation to benefit wildlife resources by allowing a longer recovery period. *The extended timeframe would allow formulation of reasoned, comprehensive and sustainable decisions that, in the long term, may benefit wildlife.	*Changes in temporary non-use over current regulations from 3 to 5 consecutive years would slightly benefit wildlife. *Allowing greater discretion for BLM managers to schedule phasing in changes in grazing use would allow more rapid implementation benefiting wildlife. * Allowing greater discretion on the type of data used for making rangeland health determinations would allow more rapid implementation, benefiting wildlife resources. *A weed-seed free forage provision that reduces the spread of weeds would enhance wildlife habitat. *Removal of certain prohibited acts would eliminate a mechanism for protecting wildlife.
<i>Special Status Species</i>		
* Risks and benefits to special status species, are not expected to change *Effects similar to wildlife in Alternative 1.	*No effect on most special status species. *At risk species and those designated by each BLM State Director as BLM-sensitive may be affected in the short-term in a small number of allotments however, in the long-term, there would be little or no effect.	*Similar to wildlife effects in Alternative 3.

Table 2.6 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Wild Horses and Burros</i>		
*Little affect on wild horse and burro populations on public lands.	*Slight long-term beneficial impact from improved condition of the vegetation on habitat areas through an improved decision making process.	*Similar to Alternative 2.
<i>Recreation</i>		
*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved.	*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved. *Effects could be adverse in the short term if corrective actions are delayed.	*Similar impacts to alternative 2. *The reduction of weed expansion would have an additional benefit to recreation interests.
<i>Special Areas</i>		
*Little impact due to existing good conditions and Special Area mandates.	*Little impact due to existing good conditions and Special Area mandates.	*Slight improvement of conditions on the long term due to reduction of weed expansion.
<i>Heritage Resources: Paleontological and Cultural Resources (Properties)</i>		
*Heritage resources are protected through case-by-case, site specific surveys and analysis. *Prohibited act regarding removal or destruction of cultural resources may act as a deterrent.	*There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.	* There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.
<i>Economic Conditions</i>		
*Local/regional economic effects would be minor. *On-going effects include: 1) low flexibility; 2) lack of incentive to participate in range improvements; 3) lack of time to implement land health determinations; and 4) lack of cost recovery.	*Local/regional economic effects would be minor. *Primary effects would be: 1) Increased flexibility; 2) Increased BLM costs; 3) reduced adverse impacts on ranchers from herd reductions; 4) increased service charges for ranchers and increased cost recovery for BLM.	*Similar to Alternative 2. *Greater discretion for BLM managers in implementing changes in use and using monitoring data for land health determinations could have an adverse economic impact on ranchers.

Table 2.6 (concluded). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Social Conditions</i>		
<p>*Ranchers would continue to face increasing stress related to public land grazing.</p> <p>*Ranchers would continue to have difficulty passing ranch on to the next generation.</p> <p>*Ranchers would continue to sell ranches for amenity reasons and subdivision.</p>	<p>*Ranching, environmental and recreation interests perceive the monitoring requirements as being positive and believe this provision would provide beneficial social impacts.</p> <p>*Ranchers would experience beneficial social effects as a result of most provisions – particularly documentation of social, economic, and cultural impacts, phasing in of implementation of changes, required cooperation with grazing boards, focusing stock water rights provision on following state law and providing more time for developing appropriate action following rangeland health determination.</p> <p>*Ranchers would experience adverse social effects from the removal of the limit on consecutive years of nonuse.</p> <p>*Environmental groups would experience adverse social effects from the stock water rights provision change.</p> <p>*Social effects on environmental interests and recreation interests would generally be minimal or neutral for most of the other proposed revisions.</p>	<p>*There could be minimal social effects on ranchers and conservation groups due to BLM having discretion to use monitoring for rangeland health determinations.</p> <p>*Elimination of certain prohibited acts would have an adverse effect on conservation, environmental and recreation groups.</p>
<i>Environmental Justice</i>		
<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles.</p>	<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles..</p>	<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles.</p>

