

Subject: Justification for two new proposed categorical exclusions for issuance of grazing permits and leases authorized by the Bureau of Land Management

Date: 12/12/2005

Analysts: Richard Mayberry
US Department of the Interior
Bureau of Land Management
Rangeland Resources WO-220
1620 L Street
Washington, DC

Bob Bolton
US Department of the Interior
Bureau of Land Management
Rangeland Resources WO-220
1620 L Street
Washington, DC

Introduction

The purpose of this document is to explain the basis for the Bureau of Land Management (Bureau) to establish categorical exclusions (CXs) as defined by the National Environmental Policy Act (NEPA) for (1) issuing grazing permits and leases (permits) and for (2) authorizing temporary non-renewable grazing use permits. The proposal covers the following activities:

Proposed 516 DM citation 11.9(D)(11):

Issuance of livestock grazing permits/leases where: (a) the grazing allotment(s) has been assessed and evaluated and the authorized officer documents in a determination that the allotment is 1) meeting land health standards, or 2) not meeting standards solely due to factors other than existing livestock grazing; or (b) issuing the permit is the result of an administrative action, such as, but not limited to, changing permit termination date or permittee/lessee name.

Proposed 516 DM citation 11.9(D)(12):

Authorize temporary non-renewable grazing use where the grazing allotment(s) has been assessed and evaluated and the authorized officer documents in a determination that the allotment is 1) meeting land health standards, or 2) not meeting standards solely due to factors other than existing livestock grazing. The authorized officer documents that the temporary non-renewable use will not change the status of land health in the allotment(s).

Definitions

The following definitions, except for the definition of “temporary non-renewable use”, are from the Bureau’s Rangeland Health Standards Handbook (H-4180-1) dated January 19, 2001.

Allotment: An area of land designated and managed for livestock grazing (43 CFR 4100.0-5).

Assessment: The estimation or judgment of the status of ecosystem structures, functions, or processes, within a specified geographic area (preferably a watershed or a group of contiguous watersheds) at a specific time. An assessment is conducted by gathering, synthesizing, and interpreting information, from observations or data from inventories and monitoring. An

assessment characterizes the status of resource conditions so that the status can be evaluated (see definition of evaluation) relative to land health standards. An assessment sets the stage for an evaluation. An assessment is not a decision.

Determination: Document recording the authorized officer's finding that existing grazing management practices or levels of grazing use on public lands grazing either are or are not significant factors in failing to achieve the standards and conform with the guidelines within a specified geographic area (preferably watershed or a group of contiguous watersheds).

Evaluation: An evaluation is conducted to arrive at two outcomes. First, an evaluation conducts an analysis and interpretation of the findings resulting from the assessment, relative to land health standards, to evaluate the degree of achievement of land health standards. Second, an evaluation conducts an analysis and interpretation of information—be it observations or data from inventories and monitoring—on the causal factors for not achieving a land health standard. An evaluation of the causal factors provides the foundation for a determination (see definition for determination).

Land Health: Degree to which the integrity of the soil and the ecological processes of ecosystems are sustained.

Standard: Standards of land health are expressions of levels of physical and biological condition or degree of function required for healthy lands and sustainable uses, and define minimum resource conditions that must be achieved and maintained.

Temporary Non-renewable Use: If additional forage is available outside of the established permit parameters, non-renewable grazing permits may be issued when: 1) forage is temporarily available, 2) the use is consistent with multiple use objectives, 3) the use does not interfere with existing livestock operations, and 4) consultation, cooperation and coordination has been conducted. The permits issued are always issued as temporary and non-renewable because the additional forage is limited in space and time and the conditions that created the opportunity are not expected to recur on a regular basis.

Background on Issuing Grazing Permits and Leases

The Process

The Bureau's Rangeland Health Standards Handbook (H-4180-1) describes the process used to assess and evaluate whether land health standards are being met. The resulting report is not a decision document. If the evaluation finding indicates that land health standards are not achieved, a "determination" is made identifying causal factor(s) for not achieving land health standards. The process leading to a determination document can be summarized as follows. The Bureau:

- selects area to be evaluated (allotment or group of allotments);
- selects indicators to be evaluated;

- reviews existing data and the information regarding current condition in relation to applicable land health standards;
- supplements “gaps” in information using assessments and additional monitoring; and
- determines whether standards are achieved or not achieved.
- If determination is made that the allotment(s) area is not meeting standards, information regarding causal factors is gathered and reviewed; and
- if determination is made that existing livestock management is cause for not meeting standards, the Bureau develops and proposes one or more action alternatives, which are analyzed through an appropriate NEPA process.

The determination document contains a statement of achievement or non-achievement for each of the land health standards, a list of causal factors for not achieving standards (when appropriate), a statement of conformance or non-conformance with livestock grazing guidelines, and the signature of the authorized officer with the date of signing. Information used to determine the causal factors includes, as available: assessments, monitoring and inventory data, information provided by other agencies and public land users, qualitative information, and professional knowledge (Manual Handbook H 4180-1).

Once a determination is made and appropriate NEPA documentation is completed (potentially through the proposed grazing permit CX administrative review procedures), the Bureau issues a decision. If the management decision supports the issuance of a grazing permit, the Bureau issues the permit and monitors whether the grazing activities permitted are maintaining or making progress toward achieving target land health standards.

Background on Temporary Non-renewable Grazing Permits

Temporary Non-Renewable (TNR) grazing permits may be issued if one of the following conditions occurs:

- Additional forage is available because of growing conditions
- Forage is available to other applicants because of temporary non-use by the permittee
- Forage is available because adjustments were made in the season of use (e.g., livestock were turned out onto the allotment 30 days later than usual, and the permittee wants to stay 25 days past the normal closing date).

Opportunities to issue TNR grazing permits vary annually. Specific opportunities are not predictable and therefore changes in permit terms cannot be prejudged nor can the Bureau count on TNR applications from individual permittees. What is predictable is that the Bureau will get TNR applications (e.g., in 2003 and 2004, ~1,000 TNRs were authorized each year.)

Basis for Proposed Changes to 516 DM part 11

Both of the proposed grazing permit CXs are dependent on an assessment and evaluation of the affected allotment’s land health status, a determination document that land health standards are or are not meeting land health standards, an evaluation of non-achievement causal factors, and

review of the 12 “extraordinary circumstances” in DM 2 Appendix 2. This process should be sufficient to ensure that significant individual and cumulative impacts will not occur if either of the proposed grazing CXs are established; this claim is substantiated by the following evidence.

Factual Evidence

The Bureau administers approximately 18,000 permits on 22,000 allotments, and issues an average of approximately 2,300 grazing permits and leases annually (derived from Rangeland Administration System (RAS) records). The Bureau has assessed “land health standards” and completed evaluations and issued determinations on over 10,450 allotments since 1998. The Bureau’s Annual Range Inventory, Monitoring, and Evaluation Report for the past five years tells us that 78% of these allotments were found through the assessment and evaluation process to be meeting land health standards (Table 1). Nearly 15% (1,537) of the allotments with permitted grazing did not meet standards due to livestock grazing. In addition, 7% (730) of the allotments did not meet land health standards because of factors other than existing livestock grazing.

Table 1: Allotments Meeting Standards and NEPA Review Results for Issued Permits

Year	Allotments evaluated and determination documented	Allotments meeting all land health standards	Allotments not meeting standards because of factors other than existing livestock grazing	Allotments not meeting standards because of existing livestock grazing	Grazing permits issued with NEPA	Grazing Permits issued with NEPA documents completed, resulting in FONSI
Prior to 2001	3686	3557	199	499	6991	6991
2001	1249	909	101	239	1659	1659
2002	1443	979	331	133	1042	1042
2003	1393	776	189	428	1729	1729
2004	1489	1104	262	123	1303	1277
2005	1195	863	217	115	Not Available	Not Available
Total	10,455	8188	730*	1537	12,724**	12,698

* In 2004, Montana decreased the number of allotments reported in this category by 569; therefore, this column is not additive.

** Represents permits issued from 1999 – 2004. Permits and allotments are not congruent.

The Bureau has records on the results of NEPA review for 12,724 grazing permits issued. Of the permits issued only 26 (0.2%) did not meet the criteria for a “Finding of No Significant Impact” (FONSI) as defined by NEPA. Twelve (12) of these permits were issued in Nevada and required an Environmental Impact Statement (EIS) to analyze effects on special status species (one of the extraordinary circumstances in DM 2 Appendix 2. Fourteen (14) grazing permits issued in Colorado were based on a Land Use Plan Amendment EIS for a National Conservation Area. Because of the relatively small area involved, the office decided to include an analysis of the effects of grazing together with other management issues and to amend the land use plan.

Logic for Issuance of Grazing Permits/Leases through a Proposed CX

Grazing regulations in 43 Code of Federal Regulations 4180.2 and Bureau policy in Manual Handbook 4180-1 provide direction for conducting assessments and evaluations of land health to determine condition status and, when standards are not met, the significant cause(s) for non-achievement. The Bureau is required to take corrective action when it is determined that existing livestock management is a causal factor for not meeting land health standards (43 CFR 4180.2, Manual Handbook 4180-1, Washington Office Instruction Memorandum (IM) 2002-124). Bureau policy requires that adequate site-specific analysis of livestock grazing be performed each time a grazing permit expires (Washington Office IM 99-039; IM 2000-022). The Department of the Interior has established 12 extraordinary circumstances (DM 2 Appendix 2) to consider when a CX may be indicated. Based on the factual evidence from the data provided in this report, it appears that the established permitting review process is sufficient to prevent significant individual and cumulative impacts that would warrant a higher level NEPA review; and when it is warranted the process identifies the need so that appropriate review takes place.

When preference for a grazing permit is transferred, the old permit is cancelled and BLM receives an application for a grazing permit from the transferee. Often, the only change from the old cancelled permit is a change in the name of the permit holder and the termination date on the permit. The ability to transfer permit preference is categorically excluded from NEPA through 516 DM citation 11.9(D)(1). However, the administrative action to issue the grazing permit is not covered in a CX. The proposed CX would cure the inconsistent review requirements for clearly related administrative actions.

Since 1999, the Bureau has processed approximately 5,400 transfers of grazing preference applications. All NEPA review documents created to issue permits following a permit transfer action have resulted in a FONSI. All permits and leases issued as a result of the linked administrative actions required to issue a preference transfer permit could be issued under consistent CX review procedures. The average annual number of grazing permit preference transfers completed from 2002 through 2004 was 1,068. The cost saving of administratively establishing the transfer preference permits should be substantial and permit processing time significantly reduced.

Logic for Authorizing Temporary Non-renewable Permits through a Proposed CX

Temporary non-renewable (TNR) grazing use is allowed when forage is temporarily available because of increased production, non-use taken by other permittees, or changes in season of use. Allocation of temporarily available forage or additional forage is discussed and provisions made for TNR allocations in land use plans. Grazing Regulations in 4110.3-1(a) *Increasing permitted use*, and 4130.6-2 *Nonrenewable grazing permits and leases* provide direction for determining when additional forage is available, and the process for allocating it.

Once a grazing TNR application has been received the length of time to process an environmental assessment (EA) or EIS is likely to take longer than the discovery of an opportunity to use previously unavailable forage. The proposed grazing TNR CX would increase the probability of effective use of forage.

Conclusion

Approximately 99.9% of the 12,774 grazing permits issued between 1999 and 2004 with verifiable NEPA review, resulted in a FONSI. The Bureau has grazing permit issuing procedures in place which virtually guarantees that a grazing permit that will result in significant individual or cumulative impacts will be properly directed to an appropriate level of NEPA review. The assessment and evaluation instrument for this determination is prescribed in regulation and policy. Given that current administrative procedures are in place to prevent the issuance of permits through a CX when significant individual and cumulative impacts are likely to occur, we recommend the proposed CX 516 DM citation 11.9(D)(11) be established.

When additional forage is temporarily available, it is on an ephemeral basis, and usually not known until near the end of the regular grazing period. This results in a short window of opportunity to use the forage. This window can easily be missed because of the timeframe involved for completing an EA or EIS. Where land health standards are met, or current livestock grazing is not a causal factor for not meeting standards, we recommend authorizing the temporary non-renewable use of the additional forage under CX 516 DM citation 11.9(D)(12).