



**DEPARTMENT OF AGRICULTURE
STATE OF NEW MEXICO**

**MSC 3189, Box 30005
Las Cruces, New Mexico 88003-8005
Telephone (575) 646-3007**

MICHELLE LUJAN GRISHAM
Governor

JEFF M. WITTE
Secretary

July 10, 2026

U.S. Department of Interior
Director (630)
Bureau of Land Management
1849 C St. NW
Room 5646
Washington, D.C. 20240
Attn: BLM Director

Dear Director Pearce:

The New Mexico Department of Agriculture, the New Mexico Environment Department, and the New Mexico Department of Wildlife (collectively, the State Agencies) appreciate the opportunity to submit these comments in response to the Bureau of Land Management (BLM) and Office of Hearings and Appeals' (OHA's) proposed rule *Revising Regulations for Grazing Administration*—Docket No. BLM–2026–0001; A2407–014– 004–065516, #O2509–014–004–125222; LLHQ220000], published in the *Federal Register* on May 12, 2026.

The State Agencies have missions to ensure that public lands and water and wildlife resources in New Mexico are maintained to the highest standards through federal and state partnerships, resulting in healthy, resilient, and diverse natural and aquatic environments that support high water quality, wildlife and their habitats, local food production, and a multitude of sustainable economic and recreational opportunities.

The State Agencies acknowledge from the plain reading of the proposed regulations that BLM's overall objectives include, but are not limited to (1) aligning land health standards with the multiple use mandate of the Federal Land Policy and Management Act (FLPMA), (2) streamlining grazing administration by focusing on the permittee and the states wherein BLM's lands lie; (3) ensuring grazing permits are provided foremost for the purpose of food and fiber production; (4) providing livestock producers with regulatory flexibilities that are needed to keep operations viable when environmental conditions necessitate adjustments to herd management; and (5) improving the clarity and the directness of the regulatory language. The State Agencies generally agree with these objectives and provide the following comments to assist with further improvements.

Part 4--Department of Interior Hearings and Appeals Procedures.

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

§ 4.170 Appealing a grazing decision

The State Agencies request that the BLM retain the entirety of this section from the current regulations minus paragraph (g), to be consistent with the carrying over of text from other parts of the regulations that do not change and to ensure permittees understand their rights and the proper procedures for appealing a grazing decision.

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

The State Agencies submit that the revision of this section obscures the plain language of the current regulations. The proposed text is more legally technical and convoluted (see our comments on § 4160.3(c)). It appears appropriate here to reiterate from § 4160.3 explicitly in § 4.171 (a)(1) that the time in which a person or entity may file an appeal is within 30 days of the final decision. Further, the State Agencies agree with the conjunctive obligation of proposed § 4.171 (b)(2)(i) and (ii) wherein placing a grazing decision into full force and effect during an appeal takes into consideration the level of harm the grazing decision imposes on the appellant.

Part 1700--Fundamentals of Land Health and Standards for Program Administration.

The State Agencies appreciate the expansion of the scope of land health concepts and standards across all BLM programs. While actions involving BLM grazing permits and other land use authorizations can be beneficial in addressing the causes of diminished land health, the State Agencies recognize that many factors may contribute to an area not meeting land health standards. The management and mitigation of a wide range of relevant factors can produce the best outcome for the environment, benefiting both wildlife and habitat, surface water quality, and livestock production.

Currently, land health regulations are buried within the grazing regulations at Title 43, Subtitle B, Chapter II, Subchapter D Part 4100. In a paradigm shift, the BLM proposes to remove land health standards from the grazing administration section to address significant causal factors that impair land health standards from all uses of BLM lands. This change aligns with the multiple use mandate of FLPMA. The proposal is to create a new part 1700 in Subchapter A: General Management. As requested by the BLM, the State Agencies submit that a better location might be Subchapter B: Land Resource Management (2000) Group 2000 – Land Resource Management; General, because land health standards should apply to the multiple use classifications and criteria outlined in other subparts of Subchapter B.

§ 1700.1. Fundamentals of land health.

The proposed revision eliminates the prior requirement for BLM to comply with state water quality standards, citing within the preamble that it is the states' responsibility to enforce water quality standards. While true, the State Agencies do not agree with the wholesale removal of the explicit requirement to comply with state water quality standards for the sole reason provided in the preamble. The State Agencies submit that to achieve the objectives described in this section and the ensuing sections related to land health standards, the BLM must have an integrated approach to land and water management and hope that the broadening of the application of Land Health Standards to multiple uses will effectuate more comprehensive causal determinations related to water quality. To this end, the State Agencies are eager to work with all land management agencies and local, state, and federal partners to improve surface water quality.

§ 1700.2 Standards.

The State Agencies disagree with eliminating the involvement of Resource Advisory Councils (RACs) in developing local and regional land health standards, per paragraph (a) because BLM land management is better served by engaging local knowledge and expertise on matters important to local communities. If the BLM determined that RACs have been ineffective, the State Agencies recommend that the proposed regulations explicitly require consultation and coordination with the appropriate state agencies wherein lie the pertinent knowledge and expertise for developing state or regional standards.

Additionally, the State Agencies have concerns with standard (a)(11) that provides for the use of non-native, non-invasive species in ecosystem management. The State Agencies recommend the BLM caveat this provision with a requirement to coordinate the use of non-native, non-invasive species with appropriate state agencies. While some non-native, non-invasive species provide excellent forage for wild and domestic grazers, and habitat for certain species, there is the potential for non-native species near surface waters to exacerbate existing scarcity of surface water and degrade water quality.

§ 1700.3 Rapid landscape scale condition assessment (RLSCA).

Previously, assessments were done at the allotment level because livestock grazing was the only use subjected to land health assessments. The BLM proposes to do assessments on the landscape scale, which would lead to fewer assessments, save resources, and allow step-down evaluations at appropriate scales so that causal factors from all authorized uses of BLM lands are identified.

The State Agencies have the following concerns with this new approach. First, the spatial and temporal scales of these RSLCAs may be inadequate to identify and address degradation of land and water resources. For example, if a watershed has minor degradation on a broad scale, but riparian areas are severely degraded, these areas would not be flagged as needing to be rested or restored. Additionally, if a problem arises soon after the assessment is completed, the problem will not be identified and addressed until the next assessment cycle, nearly a decade or more later. The temporal scale of the assessment method may lead to irreversible damage to both terrestrial environments and surface waters simply through lack of awareness. The New Mexico Environment Department (NMED) is especially concerned that the BLM's proposed 10-year, watershed-scale assessments will fail to capture severe localized degradation in critical riparian areas, forcing NMED to significantly increase its own water quality monitoring, sampling, and total maximum daily load (TMDL) and challenging NMED to absorb the monitoring gaps left by the BLM's proposed framework.

To partially address the above concerns, the State Agencies recommend that the BLM standardize the scale of land being assessed. The term 'landscape' in this section is vague and not defined by size. As referenced above, if land conditions are assessed across too large an area, some signs of degradation and disfunction may be overlooked and valuable local knowledge may be neglected. However, standardizing the scale for land health assessments would enhance management by allowing the BLM to determine precisely where and when issues arise and take more targeted and timely courses of action to address these issues. The BLM indicates some state offices have already made efforts to standardize assessments to the watershed level. The State Agencies recommend this be adopted BLM-wide and further specified to an appropriate scale of

Hydrologic Unit Codes (HUCs), specifically the HUC-10 watershed level. HUC-10 watersheds typically encompass a larger area than a single allotment while still allowing for adequate local assessment and the detection of smaller changes that may affect proper environmental function. To ensure monitoring can track and react to rapidly changing conditions, the State Agencies recommend land health assessments be updated every 3 years, or some other feasible yet more frequent interval, rather than on the proposed 10-year cycle. The State Agencies also recommend the BLM assess water quality as a part of these assessments to further support the goals of proper watershed condition, ecological process maintenance, and habitat restoration and maintenance.

§ 1700.4 Land health evaluation and causal factor determination.

This section provides the framework for step-down evaluations using information from the RLSCAs. This is the level at which BLM will determine what land uses or other causal factors are negatively affecting land health standards.

Regarding causal factors, the State Agencies acknowledge that some factors impacting the health of public lands may be outside the control of the BLM (e.g., natural disasters, changing baseline climatic conditions). However, the State Agencies encourage complete and careful evaluation when determining causal factors to ensure all the root causes and exacerbating forces driving land degradation are adequately addressed.

One concern that the State Agencies have is that § 1700.4(a) requires BLM officers *to rely* (emphases added) on the RLSCA when evaluating whether land health standards are being met, and for identifying causal factors when those standards are failing. What if there are information or data gaps in the RLSCA? Although §1700.3 and §1700.4 instill a reasonable and scientifically rigorous/robust flowchart approach to these evaluations, there may be data gaps, as § 1700.3 (b)(3) requires completion of RLSCA within 6 months using *available* (emphasis added) data. The State Agencies recommend replacing the word ‘rely’ with ‘incorporate’ in § 1700.4(a) such as: “To conduct land health evaluations, authorized officers must (1) Incorporate data and information from rapid landscape-scale condition assessments....” Following that is the logical extension in § 1700.4 (d)(2), which states that information may be needed on a finer scale if there is insufficient information to identify and address significant causal factors.

§1700.4 (a)(5) requires land health evaluations to be completed as soon as possible, but not later than 90 days after initiating the evaluations. The State Agencies recommend the BLM staff be given 120 days to complete land health evaluations to allow sufficient time for data analysis and formulation of sound conclusions regarding whether lands are achieving standards. It is important to have a solid evaluation on which to base the subsequent determination of causal factors for any resource conditions that are not achieving, or making significant progress toward achieving, land health standards.

Part 4100--Grazing Admin-Exclusive of Alaska.

The State Agencies provide the following comments and recommendations to assist the BLM with improving the grazing regulations.

§ 4100.0-5 Definitions. General comment: References to ‘leases’ and ‘lessees’ have been omitted in several definitions, but references to leases remain throughout the regulations. This is

a little confusing, so perhaps BLM can elaborate in the preamble on why references to lessees are omitted where those omissions occur or complete another scrub of the use of these terms to ensure its use only where verbatim of regulatory text.

Active Use. The new definition is cumbersome for the following reasons. It has the word ‘use’ in four different contexts: active use, permitted use, livestock grazing use, and temporary non-use. Only livestock grazing use is not further defined in the list of definitions, so perhaps omitting the word ‘use’ here would be appropriate (*i.e.*, livestock grazing ~~use~~). It is already confusing that the reader must look up two other terms to understand the definition of active use. To this end, only temporary non-use has a reference to its own definition, the same should be done for permitted use, and for the term ‘suspension’, the latter of which is another term the reader must look up to understand the definition of active use. The current definition is simpler and seems to be contextually correct.

Allotment Management Plan. The State Agencies suggest “resource condition, sustained yield, multiple use” be replaced with “land health standards” to read as “...for the management of livestock grazing on specified public lands to meet land health standards and other multiple use objectives.” This change will ensure that Allotment Management Plans align with the larger objectives of land health standards and allotment management is integrated with other uses of BLM lands.

Animal Unit Month. The intent of this revision to be consistent with the more detailed definition in § 4130.8-1(c) is relevant, but the definition loses reference to the well-established understanding that ‘use’ in this context means amount of forage needed to sustain the animal unit for a period of one month. Recommend the revision here and in 4130.8-1(c) be “...means a month’s use of forage and occupancy by...”

Base Property. Consistent with the prior comment on the definition of active use, the definition of base property should avoid the term “livestock use” in (1) as that term is not defined in the list. The definition of base property should only use terms further defined and the State Agencies suggest replacing “livestock use” with “permitted use” such as “... (1) ...capable of serving as a base of operations for the permitted use of public lands, ...”

Conservation Use. BLM proposes to remove this definition, but it is not contained within the current definition list.

Grazing Authorization. This term is out of alphabetical order. It should be after Ephemeral Rangelands and before Grazing District.

Sustained Yield. This term and its definition seems more appropriate under land health standards, rather than within the grazing regulations, as it seems to be a reference to the overall objective of resource management for multiple uses. For example, the use of the term sustained yield first appears in § 4100.0-8 in context of the overall requirement for land use plans, only part of which should address livestock grazing. However, in § 4100.3-1, the term is specifically applied to just one resource: forage available for livestock grazing. It may be worth distinguishing these distinct uses of the term. If BLM chooses to accept this comment and not

define this term under the grazing regulations, then this term should be removed from other parts of the grazing regulations where it appears.

Utilization. The replacement of the term “forage” with “current year’s growth” leaves the latter ambiguous. Current year’s growth of what? Perhaps the definition could be revised to “...the portion of the current year’s growth of vegetative matter that has been removed by grazers during a specified period of time....”

§ 4100.0-8 Land use plans. Much of the text here appears out of context within the grazing regulations, as land use plans are dealt with in detail in other parts of the regulations. Perhaps here it could be simply “The authorized officer shall manage production-oriented livestock in accordance with statutory authority and applicable land use plans as defined in 43 CFR 1601.0-5(b).”

Subpart 4110--Qualifications and Preference

§ 4110.2-3 Transfer of grazing preference

Paragraph (i) is new and allows for the transfer of a permit with the same terms and conditions and allows the new permit to be valid until BLM completes a new NEPA analysis. This is statutory text of FLPMA, section 402(c)(2), or 43 USC 1752(c)(2). BLM offers two options: first, the transferred permit would not require a new NEPA analysis until the permit comes up for renewal; or, secondly, BLM could do a NEPA analysis at the time of transferring the permit to ensure the new permit is fully processed. Under the second scenario, the new permit would be for the remaining duration of the transferred permit, or a brand new permit could be issued for a full new 10 years. The NEPA requirement for a duration transfer permit would be a NEPA adequacy analysis of the original permit. When a new 10-year permit is issued, BLM can rely on the original NEPA analysis or conduct a new or supplemental analysis if required.

However, in the proposed rulemaking, paragraph (i) (1) states “...it is presumed that the officer may ...make a determination of NEPA adequacy in support of the permit decision.” If this option is allowed pursuant to statutory text, there should be no presumption. The State Agencies support the continued use of determinations of NEPA adequacy where applicable.

§ 4110.3-1 Increasing active use.

The reference to ‘sustained yield’ in paragraphs (b) and (d) seems out of place for the same reason provided in our comment on this term in the definitions.

§ 4110.3-2 Decreasing active use.

Paragraph (c) appears to introduce a new concept not discussed in the section’s preamble, specifically that active use is suspended until the permittee *applies* for the active use to resume. The concept of an application to resume active use when conditions merit isn’t addressed elsewhere. Rather than requiring a permittee to make an application, the BLM should use the same methodology for resuming active use as was used to determine a suspension is in order (paragraph (b)), that is, when “site-specific analysis” described in § 4110.3(b) “shows that causal factors have been addressed and/or conditions have improved.”

Subpart 4130--Authorizing Grazing Use

§ 4130.2 Grazing Permits

The proposed language of paragraph (b) includes an exception per the 2015 National Defense Authorization Act (NDAA). Instead of citing the NDAA, the BLM should describe what this exception is in plain language. That would be a better segue into paragraph (i), which implies that there may be a ‘waiting list’ for required environmental reviews to support a permit renewal. Paragraph (b) should precede paragraph (i) to connect the two dots. Further, the order of topics in this section by paragraph seems jumbled. A more logical order of topics should be as follows: (a), (d), (e), (f), (h), (g), (b), (i), (c).

§ 4130.3-1 Mandatory terms and conditions.

The preamble states that the revision to paragraph (a) provides for how the BLM will determine the carrying capacity, yet the language of the proposed regulations only refers to a determination using “approved methodologies.” What are those methodologies, and who approves them? There are different outcomes and consequences depending on whether ecological capacity or biological capacity is used to apportion forage utilization.

§ 4130.3-2 Other terms and conditions.

Paragraph (e) seems overly specific, and it should be clarified that the provisions in paragraph (e) would be possible remedies when cattle grazing is determined to be a causal factor for failures to achieve land health standards.

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

Should “exchange-of-use-grazing agreements” be defined in the definitions section of the regulations? It is unclear what the following means in paragraph (b): “The term of an...may not exceed the length of the term for any leased lands that are offered in exchange of use.” To what does the term “leased lands” referring, and how does the exchange work? This provision is written in such a way that only a person who is familiar with these agreements understands the proposed regulatory text.

Subpart 4140--Prohibited Acts

§ 4140.1 Acts prohibited on public lands.

The BLM is specifically seeking comment on the term “substantial use,” the failure of which is a prohibited act, and whether that term should be included in the list of definitions. It seems evident that this term should be explicitly defined as a term of art in the regulations because it is designated as a civil penalty in § 4170.1-2. Therefore, the term “substantial use” has the force and effect of law and as such must be defined by a clear and unambiguous metric.

Subpart 4160--Administrative Remedies

§ 4160.1 Proposed decisions.

The State Agencies concur with updating acceptable means of service to include the use of electronic means, while still acknowledging that all may not utilize that means of service and therefore requiring consent for that type of communication. Official communications through email are becoming more common, and the use of electronic means has the potential to expedite communications by reducing the amount of time a decision in the form of a physical letter spends in the mail system or with a delivery service.

Additionally, the proposed rule will eliminate the requirement that proposed decisions be sent beyond identified participants. The interested public will have the ability to monitor the BLM website for management of allotments they are interested in, like any other federal action or member of the public. Like the updated inclusion of email as a mode of service, posting decisions to the BLM website, if it is executed in a timely manner aligned with the issuing timeframe identified in 4160.2 (20 days from point of issuance), is an acceptable approach to include the interested public.

The BLM is specifically seeking comments on additional categories of decisions that would not require first a proposed decision. The categories proposed in § 4160.1(c) are very specific, and while the preamble simply repeats these categories, there are no justifications or discussions on why these categories were selected. It is difficult to identify additional categories without knowing what criteria, if any, BLM used to identify those in the proposed rule.

§ 4160.2 Protests.

The BLM proposes to change the deadline for protests from 15 days after a notification is received, to 20 days after a notification is sent, because the prior method led to difficulties in tracking multiple deadlines depending on when parties received their notifications. Instead, the BLM is proposing the deadline to be 20 days after a notification is ‘sent’ but the proposed regulatory language uses the word ‘issued.’ There likely will be confusion between ‘sent’ and ‘issued’ by the notified parties. Further, will the required posting of proposed decisions on agency websites have an official ‘issued’ date? Will that be confused with the date a notification is sent? The State Agencies recommend BLM simplify this by requiring each notification letter to include the “issued date” of the proposed decision and a 30-day deadline to protest. There is no guarantee by any mode of communication for a confirmed delivery date, and it could take more than a week for parties to receive their notifications, so setting a deadline 20 days from a ‘sent date’ leaves parties with a highly unpredictable amount of time to protest.

§ 4160.3 Final Decisions.

Here, as elsewhere, the regulations delve deep into a topic covered by another section. For example, here there is great discussion on the effect of an appeal on a final decision, and appeals are specifically addressed in the next section and in part A. It is understood that appeals can have effects on final decisions, but rather than going into detail here, there should be a cross reference to § 4160.4, which should describe the effect of an appeal on a final decision. If this is done here, and elsewhere throughout the rule where there are significant redundancies, this would streamline the regulations even further.

Subpart 4170--Penalties

§ 4170.1-2 Failure to use.

The BLM requested comment on whether the term “substantial use” should be defined. The use of this term invokes the force and effect of law to which, if violated, civil penalties may be applied. Therefore, it is imperative this term be defined clearly with specific metrics so that an unambiguous violation is easily identified.

Thank you for the opportunity to review and comment on the proposed revised grazing regulations and for your consideration of these comments. Please contact Dr. Kelly Ebert at (575) 646-2670 or kebert@nmda.nmsu.edu if you have questions related to these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "JM Witte", with a long horizontal flourish extending to the right.

Jeff M. Witte

JMW/ke