

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COLORADO STATE OFFICE
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In Reply Refer To:
4160 (CO-930) P

October 5, 2011

EMS TRANSMISSION 10/14/2011
Instruction Memorandum No. CO-2012-002
Expires: 09/30/2013

To: District, Center and Field Managers
Attn: Colorado NEPA Program Leaders

From: State Director

Subject: Processing Livestock Grazing Permit Applications

Program Area: Rangeland Management

Purpose: The purpose of this Instruction Memorandum (IM) is to provide guidance concerning the issuance of new livestock grazing permits/leases resulting from applications for new permit/leases; applications to transfer permits/leases; and renewing permit/leases that are expiring. This Management Guidance establishes a consistent approach to the issuance of livestock grazing permits based on Grazing Regulations (43 CFR 4100), and the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) The following guidance is the prescribed approach for livestock grazing decisions addressing permits/leases issued throughout the Bureau of Land Management (BLM) in Colorado.

Policy/Action: Follow the guidance in the grazing regulations (43 CFR 4100) and the BLM NEPA Handbook (H-1790-1) as clarified in this memorandum.

1. Applications

New grazing permit/leases, including livestock Crossing Permits and Temporary, Non-Renewable grazing authorizations:

All applications to graze and/or trail livestock on or across BLM administered lands are required to be sufficiently completed and filed with the authorized officer prior to and with sufficient time for proper processing and approval before the grazing/crossing can occur. All grazing and/or crossing applications filed for BLM administered lands are required to be reviewed through the NEPA process.

Renewal of Livestock Grazing permit/lease:

Permittees/lessees must file a timely and sufficient "Application for Grazing Permit/Lease Renewal" with the authorized officer four months prior to the permit/lease expiration date. All Field Offices/Centers must send an application for permit/lease renewal to permittees/lessees six months before their permit/lease will expire. This provides for a 60-day notice period preceding the four month application deadline. This policy applies only to renewal of existing permits and leases. It does not apply to permit/lease transfers or for new permit applications.

Transfer of grazing permit/lease:

Applications for permit/lease transfers must be sufficiently completed (Grazing Application forms 4130-1a, 4130-1b, and 4130-1c) and filed with the authorized officer before the field office processes the request. The process for permit/lease transfer is a two step process:

1. The approval to transfer the grazing preference from one base property to another or from one individual/organization to another, or both.
2. Issue the new grazing permit/lease to the approved applicant. This second step may not be required if the transfer does not result in the issuance of a new permit. For example, the permittee/lessee requests to transfer the base property to other property that they own.

Step one, approval of the application to transfer grazing preference, is an administrative action only and does not normally require NEPA review. The Departmental Manual 6, Section 516, Chapter 11.9, Actions eligible for Categorical Exclusions (CX) under 9.D(1) lists; Approval of Transfers of Grazing Privileges. Therefore, follow field office policies for documenting this CX and briefly discuss this in the introduction section of the NEPA review document necessary to support the issuance of the new grazing permit/lease.

Step two, requires conformance with NEPA, through a Determination of NEPA Adequacy (DNA), an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), or an Environmental Impact Statement (EIS), as appropriate.

2. Appropriations Act Authority

If the application to renew a permit/lease cannot be fully processed through NEPA before the current grazing permit/lease expires, and the new permit/lease to be issued contains the same terms and conditions, including the length of the permit/lease period, as the expiring grazing permit/lease for which the grazing permitted use is based upon, the issuance of the renew permit/lease may be accomplished through the authority provided in the Fiscal Year (FY) 11 Appropriations Act (SEC. 325. of Public Law 108-108), through the end of fiscal year 2011, and subsequent fiscal years if future Appropriations Acts contains similar permit/lease renewal language. If the renew permit/lease is authorized during the 2011 fiscal year, using the authority within the Appropriations Act, include the language below in the new permit/lease. This applies to issuing new permits for either an expiring permit or a transferred permit.

"In accordance with Public Law 111-322, an extension of Public Law 111-242 *Continuing Appropriations Act, 2011*, this permit or lease is issued under the authority of Section 416, Public

Law 111-88 and contains the same mandatory terms and conditions as the expired or transferred permit or lease. This permit or lease may be canceled, suspended, or modified, in whole or in part to meet the requirements of applicable laws and regulations."

If future fiscal year appropriations Act language substantially changes, and still allows for grazing permit/lease renewal while deferring NEPA review, that specific language will be provided to the field offices to include in future permit/lease renewals.

3. NEPA Analysis

a. Discontinuance of Grazing Permit/Lease Issuance CX (516 DM 11.9D(11)):

Consistent with the Washington Office Instruction Memorandum 2009-199, Categorical Exclusions are not to be used when issuing livestock grazing decisions for livestock grazing permits/leases, trailing permits, or temporary non-renewable grazing authorizations.

b. Determination of NEPA Adequacy:

To determine whether you can rely on existing NEPA documents to satisfy the NEPA requirements for the proposed action under consideration, you must look to see whether new analysis is warranted because of new circumstances, new information, or environmental impact not previously analyzed, you must document your findings in the administrative record. The documentation must adequately address the five NEPA Adequacy Criteria described in the NEPA Handbook, H-1790-1, Appendix 8.

You must accomplish this review through an interdisciplinary process. Upon completion permit/lease, referencing the DNA and applicable NEPA document (i.e. EA or EIS).

c. Preparation of Environmental Assessment:

The field office must consult, cooperate, and coordinate (CCC) with affected permittees or lessees, the state having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases (43 CFR 4130.2(b)). This process should be initiated during the scoping period, after formulating the "Purpose and Need" for the action, and prior to writing the EA. The extent and the results of this CCC must be documented in the EA. The CEQ regulations direct agencies to encourage and facilitate public involvement in the NEPA process to the fullest extent possible (40 CFR 1500.2(d), 40 CFR 1506.6). For the preparation of an EA, public involvement may include any of the following: external scoping, public notification before or during the preparation of an EA, public meetings, or public review and comment of the completed EA and unsigned Findings of No Significant Impacts (FONSI). The type of public involvement is at the discretion of the authorized officer.

When you prepare an EA for issuing/renewing a livestock grazing permit(s), you must consider a range of reasonable alternatives. At a minimum, you must address the following: (1) issuing a new permit based on the application (proposed action), (2) issuing a new permit with the same

terms and conditions as the expiring permit (no action alternative); (3) any reasonable alternative the field office may develop that differs from the applicant's proposal; and (4) a "no grazing" alternative. If the application for a permit is the same as the expiring permit (no changes to the terms and conditions), then the proposed action and the no action alternative are the same. In this case, document that they are the same and analyze them as a proposed action. If the "no grazing" alternative is not fully analyzed, it must be described in the "Alternatives Considered, but Eliminated from Detailed Analysis" section and a clear, concise justification for not fully analyzing the "no grazing" alternative should be provided in this section of the EA.

In addition to the alternatives identified above, there may also be other reasonable alternatives that should be analyzed, including alternatives that address unresolved conflicts for the specific permit(s) being considered. If one of the unresolved conflicts includes not meeting rangeland health standards, where current livestock grazing may be determined to be a significant factor, a reduced grazing strategy (i.e., changed stocking levels, length of season, and/or season of use) must be considered in detail. In addition, if it has been determined that RMP – or activity - level resource objectives are not being met, and a reduced grazing alternative can facilitate movement towards meeting those objectives, a reduced and/or no grazing alternative should also be considered in detail.

Upon completion of an EA addressing livestock grazing administration under 43 CFR 4100, if the authorized officer determines the EA should be provided to the public for review, an unsigned FONSI must be included to communicate to the public, the BLM's rationale for determining that the proposed selected alternative does not result in a significant effect on the human environment. If changes to the EA are necessary after public review of the unsigned FONSI, revise the EA and FONSI accordingly and sign both revised documents before issuing the grazing decision.

4. Issuing Grazing Decisions:

After completing the NEPA compliance process (CX for preference transfer, DNA, EA, or EIS), the authorized officer shall issue a proposed livestock grazing decision in accordance with 43 CFR 4160.1 (See Attachment 1 for recommended Decision Template). In the case of grazing preference transfer, the proposed decision authorizing the new grazing permit should include language approving the transfer of grazing preference. This decision process is set forth in the Federal Regulations 43 CFR Subchapter D Part 4100, Rangeland Management.

Neither the EA nor the FONSI is a decision document. The FONSI is a document that explains the reasons why an action will not have a significant effect on the human environment and why, therefore an EIS is not required (40 CFR 1508.13). The EA must be attached to the FONSI or incorporated by reference into the FONSI (40 CFR 1508.13). The FONSI is signed before issuance of the decision record. The FONSI must not be combined with the EA or decision record, although these may be attached to each other (516 DM 2.3(C)).

Most proposed grazing decisions will indicate that they will be adopted as final decisions if no protests are received. The proposed decision should reference the completed NEPA review document and, in the case of an EA, the signed FONSI. In some circumstances, the level of

complexity and/or controversy requires the issuance of a proposed decision that does not automatically become the final decision. If the proposed livestock grazing decision does not include provisions to become the final decision without further notice (43 CFR 4160.3(a)), the FONSI should not be signed at this time.

The proposed decision, including the EA and signed FONSI, shall be served by certified mail or personal delivery on any affected applicant, permittee or lessee, as well as any agent and lien holder of record, who is affected by the proposed actions, terms and conditions, or modifications related to applications, permits and agreements or leases. Copies of proposed decisions shall also be sent to the interested public (43 CFR 4160.1). All proposed decisions shall provide for a 15-day protest period (43 CFR 4160.2).

Upon the timely filing of a protest from any applicant, permittee, lessee or other interested public (within 15 days after the receipt of the proposed decision), the authorized officer shall reconsider the proposed decision in light of the protestant's statement of reasons for the protest and in light of other information pertinent to the case. If the BLM received protests that provide information warranting the field office to make changes to the EA that in turn causes a signed FONSI to be altered, a new EA with a new number (designating a new EA based on necessary changes to the previous EA) and a new FONSI must be produced.

After reviewing and/or resolving a protest, the field office would then, either issue a new proposed decision, if this new information warrants BLM to vacate the previous proposed decision, or issue a final decision explaining BLM's rationale and how the protestant's statement of reasons were addressed.

For the Range Management program, the Decision Record is the final grazing decision. If a protest was timely filed, the authorized officer's final decision, with the EA and signed FONSI attached, shall be served on the protestant or her/his agent, or both, and the interested public (43 CFR 4160.3(b)).

A period of 30 days following the receipt of the final decision, or thirty days after the date the proposed decision becomes final, is provided for filing an appeal and petition for stay of the decision. The final decision will not be effective during the 30-day appeal period, except as provided for in 43 CFR 4160.3(c).

Timeframe: This IM is effective upon receipt. Where final decisions have not been issued, you may need to supplement your NEPA documentation and/or your decision document based on this IM.

Budget Impact: None.

Background: Past practices for issuing livestock grazing permits and leases by field offices in Colorado have been inconsistent and have not always followed established regulations and policies placing the BLM at a higher risk of litigation. The application of NEPA with regards to livestock grazing administration also has not been consistently applied across all field offices. Some Determinations of NEPA Adequacy (DNA's) have not been thoroughly reviewed which

has led to the issuance of grazing permits and leases without an adequate "hard look" at the potential impacts to the resources affected. Some field offices have issued Temporary Non-renewable grazing authorizations and livestock trailing permits without the benefit of a NEPA review. Some permits and leases have been issued without adequate consultation, coordination or cooperation with affected permittees/lessees, affected interests or interested publics. In some circumstances EAs have been provided for public comment without an associated FONSI.

Some field offices in Colorado have issued a Decision Record, formatted as described in the NEPA handbook as well as a livestock grazing decision which resulted in issuing the same decision twice. This practice has led to overlapping and inconsistent appeal periods and procedures for the public seeking administrative review. Decisions regarding proposed actions in an EA are documented in accordance with program-specific requirements.

Directives Affected: H-1790-1, National Environmental Policy Handbook (01/30/2008), Chapter 8, with respect to grazing permit decisions only. 43 CFR 4100, Range Management.

Coordination: This policy was coordinated with the Deputy State Director, Resources and Fire Management (CO-930), the Branch Chief of Natural Resources (CO-932), and the Branch Chief of Social and Cultural Resources (CO-931).

Contact: If there are any questions regarding this IM, please contact David Sjaastad, Rangeland Management Specialist, at (303) 239-3717; James Wood, Planning and Environmental Coordinator, at (303) 239-3709; Bruce Rittenhouse, Branch Chief, Branch of Natural Resources, at (303) 239-3804; or Leigh D. Espy, Deputy State Director, Division of Resources and Fire Management, at (303) 239-3801.

Signed by:
John Mehlhoff
Acting State Director

Authenticated by:
Cathy Cooney
Branch of IRM & Access

1 Attachment:

1 – Recommended Decision Template (3 pp)