

in the penalty provisions of the grazing program was outside the Secretary's legal authority, which they asserted applies only to public lands governed by a grazing permit. Others asserted that the provisions placed too much emphasis on other values, that under this program only grazing values should be considered.

Section 2 of TGA directs the Department to preserve public rangeland and its resources from destruction or unnecessary injury and to provide for the orderly use, improvement, and development of the range to ensure that the public grazing lands are administered in a reasonable and orderly fashion. The Department believes that the language of this section represents a reasonable and practical balance between those responsibilities and limitations placed on it by resource and other practical considerations.

The Secretary has full authority to establish terms and conditions for grazing permits to ensure compliance with the laws affecting public lands. Consideration of natural and cultural resource values is fully consistent with the Department's responsibility for multiple resource management under its statutory authorities. The Department cannot condone violations of other statutes and expects that principal users of public lands, such as grazing permittees, will comply with these statutes in the conduct of their activities. These related statutes do have separate enforcement provisions that would be unaffected by this rule. However, as discussed at § 4140.1, there are limitations placed on the Secretary's authority to impose penalties for violations under other laws. These limitations are that public land administered by the Bureau of Land Management must be involved or affected, the violation must be related to grazing use authorized by a permit or lease, and the permittee or lessee must be convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, with no further appeals outstanding.

Some commenters asked whether lesser violations of State laws would be cause for loss of a permit, or suggested that only repeated, willful violations should be penalized. Others asserted that paragraph (c) should be amended to limit the provision to penalizing violations resulting from court decisions.

The Department does not intend that *de minimis* violations of State or even Federal laws or regulations will result in

penalties affecting the grazing permit or lease under this provision. However, the rule as adopted will not affect how violations of State or Federal law or regulations are dealt with initially by the various enforcement or regulatory agencies.

Others stated that the provisions were too narrow, and should apply to additional statutes addressing natural resource protection. One specific suggestion was the American Indian Religious Freedom Act. Some of these commenters suggested that penalties for violation be nondiscretionary. Other comments suggested omitting paragraph (c) altogether on the basis that there is no legal argument to support such a limitation on the Department's responsibility under FLPMA and TGA to promulgate and enforce its own regulations.

As stated in the preamble to the proposed rule, a list of relevant laws will be made available to grazing permittees and lessees. No State or Federal statutes were added to the list presented in the preamble to the proposed rule.

In accordance with the above discussion, the Department has decided to retain the substance of § 4170.1-3, as proposed. However, in response to comments on §§ 4140.1 and 4170.3, the Department has moved the entire section establishing conditions limiting when violations of certain laws and regulations would constitute prohibited acts for the purposes of grazing administration to § 4140.1(c). This change from the proposed rule is intended to clarify the provision by removing cumbersome cross-references and by consolidating discussions of prohibited acts. Further discussion of this provision can be found at that section.

#### Section 4170.2-1 Penal Provisions Under the Taylor Grazing Act

Under the proposal, this section would have clarified a confusing existing statement by rewriting the provision to state that any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations, is punishable by a fine of not more than \$500, under the penal provisions of TGA.

The Department received no comments on this section, and it is finalized as proposed.

#### Section 4170.2-2 Penal Provisions Under the Federal Land Policy and Management Act

The proposed rule would have amended this section to adopt the

alternative fines provisions of Title 18 U.S.C. section 3571, which was enacted after enactment of FLPMA. This action would have strengthened the protection of natural or cultural resources under the grazing program. Other language changes consistent with similar changes to § 4170.2-1 regarding willful commission of acts prohibited under § 4140.1(b) would also have been made.

The Department received very few comments on this section. The major theme of the comments was that the establishment of civil and criminal sanctions are outside the authority of the Secretary, but rather are within the exclusive jurisdiction of the legislature.

The Department disagrees that the provisions of this section are outside the authority of the Secretary. The Secretary has full authority to enforce provisions of FLPMA, TGA and other statutes, and has authority to promulgate rules to implement FLPMA and other statutes pertaining to public lands (43 U.S.C. 1740). Section 4170.2-2 establishes the penalty provision for criminal acts.

#### Subpart 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration (Titled "National Requirements and Standards and Guidelines for Grazing Administration" In Proposed Rule)

Under the proposed rule, this subpart would have been added to establish national requirements for the administration of grazing on public lands. It would also have included a provision for the development of State or regional standards and guidelines for grazing administration. These requirements, standards, and guidelines were proposed to establish clear direction for managing rangelands in a manner that would achieve or maintain ecological health, including the protection of habitats of threatened or endangered species and candidate species, and the protection of water quality.

The heading of the subpart is modified from the proposed rule, as noted above.

#### Section 4180.1 Fundamentals of Rangeland Health (Titled "National Requirements for Grazing Administration" In Proposed Rule)

Under the proposed rule, this new section would have established national requirements for grazing administration on public rangelands. Permits, leases, other grazing authorizations and grazing related plans and activities on public lands would have incorporated, as applicable, grazing practices that help achieve healthy, properly functioning ecosystems and riparian systems. All