

right as long as we do so in compliance with state water law.

Section 4120.5-2 Cooperation with State, County, and Federal Agencies

BLM proposes amending this section by making an editorial correction and adding a new paragraph (c) to specify that BLM would add state, local, and county-established grazing boards to those groups we routinely cooperate with in administering laws and regulations relating to livestock, livestock diseases, and sanitation. Currently BLM's Resource Advisory Councils provide advice to BLM on the broad range of multiple use activities on public lands including grazing management. Field-level range improvement and allotment management planning programs would also benefit from the additional perspective that locally established grazing advisory boards could provide.

Many states have state, county, or locally established grazing advisory boards whose function is to provide guidance on range improvements on public lands. Section 401(b)(1) of FLPMA states that a portion of the grazing fees BLM collects are set aside for range betterment. BLM is authorized to use one-half the amount collected from the area in which the moneys were derived. BLM may direct these funds after consulting with local area user representatives, to implement on-the-ground range rehabilitation, protection, and improvements on the lands.

Grazing interests and state and local governments expressed concern that BLM has not used state, county, and locally established grazing advisory boards effectively. They commented that these grazing advisory boards are underutilized, yet are a valuable tool for gathering local input for BLM's decision-making processes related to range improvements and allotment management planning. This proposed rule would require BLM to cooperate with state, county, or locally established grazing advisory boards when reviewing range improvements and allotment management plans on public lands. A requirement for BLM to cooperate with such boards would ensure a consistent community-based decision-making process throughout the BLM.

Subpart 4130—Authorizing Grazing Use

Section 4130.1-1 Filing Applications

The existing regulations are somewhat unclear as to the circumstances under which BLM will consider an applicant for a new permit or lease not to have a satisfactory record of performance.

The existing regulations state that we deem applicants for renewals of permits and leases not to have a satisfactory record of performance if:

1. They have had a Federal lease canceled within the previous 36 months;
 2. They have had a state lease canceled, for lands in the grazing district where they are seeking a Federal permit, within the previous 36 months, or
 3. They have been legally barred from holding a grazing permit or lease.
- Under the proposed regulations BLM would limit the number of possible infractions that we would take into account for determining whether an applicant for a new permit has a satisfactory record of performance. The proposed rule would deem applicants for issuance of a new permit or lease to have a satisfactory record of performance if:

1. The applicant or affiliate has not had a Federal lease canceled within the previous 36 months;
2. The applicant or affiliate has not had a state lease canceled, for lands in the grazing district where they are seeking a Federal permit, within the previous 36 months, or
3. The applicant or affiliate has not been legally barred from holding a federal grazing permit or lease by a court of competent jurisdiction.

In addition, BLM proposes moving provisions specifying what we consider to be "satisfactory performance" by an applicant for a permit or lease from section 4110.1 to this section to better organize the regulations.

Section 4130.2 Grazing Permits or Leases

BLM proposes revising this section to make it clear that the grazing permit or lease is the document BLM uses to authorize grazing use for those who hold grazing preference on BLM-managed lands. BLM has been questioned about what we consider to be the fundamental document authorizing preference holders' grazing use. This section makes it clear that it is the permit or lease that authorizes such grazing use and no other document. An example of such a non-authorizing document is a paid grazing fee billing. Although not paying a fee when it is due is a prohibited act, the document upon which BLM bases fees, either a permit or lease, is the document that authorizes the grazing use, not the billing. BLM also uses "other grazing authorizations" such as free use permits, exchange-of-use permits, and crossing permits to authorize grazing for preference and non-preference holders

in limited circumstances. These are addressed in §§ 4130.5 and 4130.6.

We propose removing the phrase "types and levels of use authorized" from paragraph (a) and replacing it with the term "grazing preference" because the level of use, the forage amount expressed in AUMs, and the "type" of use, whether active or suspended, are embodied in the term "grazing preference."

We also propose removing the requirement in paragraph (b) that BLM would consult, cooperate, and coordinate with the interested public prior to the issuance or renewal of grazing permits and leases because this consultation is redundant to consultation that already would have occurred as part of the process of completing NEPA analysis and other documentation that is pre-requisite to permit or lease issuance or renewal.

Section 4130.3 Terms and Conditions

BLM proposes adding a new paragraph to this section to specify that when BLM offers a permit or lease, the terms and conditions may be protested and appealed unless the terms and conditions are not subject to OHA appeals (e.g. terms and conditions mandated by a biological opinion issued under the Endangered Species Act) or terms and conditions that are part of a permit or lease offered for grazing use on additional land acreage (see 4110.1). The proposed rule further states that if those terms and conditions are stayed, BLM could authorize grazing use in accordance with section 4160.4. By adding this language, BLM seeks to clarify that we are providing the opportunity to protest and appeal decisions that specify the terms and conditions of the permit or lease we are offering.

Section 4130.3-2 Other Terms and Conditions

BLM proposes removing paragraph (h) from this section because it is unnecessary. There is no need to disclose on the permit or lease the requirement that the permittee or lessee provide administrative access to BLM. The absence of such disclosure under the proposed rule would not affect the underlying requirement. In 1999 IBLA held that administrative access is an implied condition of a grazing permit whenever administrative access is necessary in order for BLM to carry out its statutory responsibilities on the public lands. (IBLA 98-180R; 98-404R)