

### *Section 4130.3–3 Modifications of Permits or Leases*

BLM proposes to amend this section to make it clear that BLM may modify terms and conditions of a permit or lease if we determine that either the active use or related management practice is no longer meeting the management objectives specified in the land use plan, an allotment management plan, or an applicable decision issued under section 4160.3. In addition, BLM is removing the regulatory requirement that we consult with the interested public on any decisions to modify terms and conditions on a permit or lease for the reasons discussed previously.

In the proposed rule the interested public retains, to the extent practical, the opportunity to review and provide input on reports supporting BLM's decisions to increase or decrease grazing use. In clarifying this provision, BLM recognizes that the interested public, permittees and lessees, and the state should all have opportunity to review and submit input to Biological Assessments when they are used to supplement grazing management evaluations.

BLM also proposes to reorganize this section for the sake of clarity and logical flow.

### *Section 4130.4 Authorization of Temporary Changes in Grazing Use Within the Terms and Conditions of Permits and Leases*

BLM is proposing to amend section 4130.4 to provide additional detail on what is meant by the phrase "within the terms and conditions of the permit or lease." BLM proposes that when we refer to "temporary changes within the terms and conditions of the permit or lease," we mean changes to the number of livestock and period of use that BLM may grant in any one grazing year. We would authorize such changes in response to annual variations in growing conditions that arise from normal year-to-year fluctuations in temperature and the timing and amounts of precipitation and to meet locally established range readiness criteria. Under the proposed regulations, "within the terms and conditions of a permit or lease" means that grazing use will:

1. Not result in removing more forage than the "active use" specified by the permit or lease;
2. Begin no earlier than 14 days before the grazing begin date specified by the permit or lease, and end no later than 14 days after the grazing end date specified by the permit or lease.

Providing for temporary changes allows sufficient flexibility to BLM land

managers, permittees, and lessees to address seasonal and annual changes, thereby supporting efficient and responsive management of public rangelands.

Livestock periods of use established by the grazing permits are based on the anticipated average dates that the range is "ready" to be grazed. "Range readiness" is the stage of plant growth at which grazing may begin without doing permanent damage to the vegetation community or the soil. The point where the range is "ready" for grazing use can and does vary from year to year around a long-term average date of readiness. A 14-day flexibility period on either side of the grazing begin and end dates specified by the permit or lease is a reasonable way to allow for minor adjustments in grazing use in response to these variations to better correspond grazing use to rangeland conditions. BLM would consider applications for changes in grazing use "within the terms and conditions of the permit or lease" on a case-by-case basis. If BLM approves the change, no formal action other than the issuance and payment of a relevant grazing fee billing would be required. The change would not constitute a formal permit or lease modification. In other words, a temporary change that BLM allowed in one year to respond to the conditions of that year would not be carried forward to the next year. BLM would not consider an application for grazing use that falls outside of this flexibility "within the terms and conditions" of the authorizing permit or lease.

BLM proposes to move provisions addressing approval of "temporary nonuse" from section 4130.2 to this section and amend them to allow BLM to have the discretion to approve applications on a year-to-year basis for temporary nonuse of all or part of the grazing use authorized by a permit or lease when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. Events such as drought, fire or less than average forage growth typically result in "rangeland conditions" that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease.

When rangeland conditions are such that less grazing use would be appropriate, BLM encourages operators, if they have not done so already, to apply for nonuse for "conservation and protection of rangeland resources." This is the simplest way to achieve temporary reduced use to respond to rangeland condition needs. In some cases, approval of an application for temporary nonuse precludes the need

for BLM to issue a decision to temporarily suspend use under section 4110.3–3(b), although BLM retains the discretion to do this. "Personal and business needs" of the grazing operator refer to actions operators take in the course of managing their business, such as livestock sale, that result in temporary herd size reductions.

Paragraph (e) of this section (paragraph 4130.2(h) in the existing regulations, as revised for clarity) would continue BLM's current discretion to issue a nonrenewable authorization to other qualified applicants to use the forage that became temporarily available as a result of nonuse approved for business or personal reasons. When BLM approves nonuse because we agree that rangeland conditions would benefit from temporary nonuse, we would not authorize another operator to use it. We propose moving the current paragraph (a) to the end of this section and redesignating it as paragraph (f). In newly designated paragraph (f), BLM makes several editorial changes.

BLM also proposes to remove the current three-consecutive-year limit on temporary nonuse. In the ANPR we stated that we would be considering increasing the number of consecutive years that we could authorize temporary nonuse from 3 years to 5 years. In response, BLM received numerous comments on this topic. Some commenters appeared to be confused about this provision as presented in the ANPR because they did not distinguish between the permittee-initiated action of applying for nonuse in proposed section 4130.3 and a BLM initiated action to change preference in proposed section 4110.3. Other commenters asked BLM to allow longer periods of temporary nonuse, and some expressed concerns that extending the authorized nonuse could have impacts on a permittee's ability to retain water rights. We are proposing that BLM have the same discretion to approve temporary nonuse as existed before the 1995 rule changes, to provide us with management flexibility needed to respond to the common occurrence of site-specific fluctuations in available forage levels that may occur for a variety of reasons as explained above.

### *Section 4130.5 Free-Use Grazing Permits*

The proposed rule would remove reference to conservation use in paragraph (b)(1) of this section to conform the regulation to the decision of the Tenth Circuit Court of Appeals. We also propose to remove the word "authorize" to keep the rule internally consistent.