

Section 4130.6–2 Nonrenewable Grazing Permits and Leases

The proposed changes to this section would remove the requirement that BLM consult with the interested public before issuing nonrenewable permits and leases. BLM issues nonrenewable permits and leases to allow grazing use of additional forage that is temporarily available. One circumstance under which we would apply this is when BLM has approved an application for nonuse for personal or business reasons as described above. Another circumstance where this regulation might apply is to manage grazing use authorized on “cheatgrass” ranges.

Cheatgrass (*Bromus tectorum*), a nonnative introduced annual, is established on vast acreages in the intermountain west. Its growth characteristics are such that under favorable growing conditions, ranges dominated by cheatgrass may produce 5 times or more forage than what that same range produces in a year experiencing average growing conditions. Its value as forage, however, is limited (hence the common name) because its nutritional value diminishes rapidly by summer, when it dries and becomes highly flammable. Grazing permits issued for use of “cheatgrass range” specify stocking rates on the number of livestock that can be supported in the “average” growth year, and provide generally that we allow use during the spring, when the cheatgrass can meet livestock nutritional needs. When the growth year is favorable, cheatgrass range provides more forage, and in some cases considerably more forage, than that which is allowed to be grazed under the term grazing permit. When this occurs, BLM must be able to respond rapidly to applications for temporary and nonrenewable grazing use because forage quality declines rapidly as the season progresses. Because BLM provides full opportunity for the interested public to comment during the NEPA and planning processes, and because consultation can be a time-consuming process, not generally conducive to the “rapid response” needed to take advantage of situations that would give rise to approval of an application for temporary and nonrenewable use, BLM is proposing to remove the additional public consultation requirement before issuing temporary and nonrenewable grazing permits or leases.

Section 4130.8–1 Payment of Fees

BLM is proposing editorial changes to this section to make it easier to read and corrects a cross-reference in the existing

regulations in paragraph (f) (paragraph (h) in the proposed rule) to subpart 4160.

Section 4130.8–3 Service Charge

The proposed rule would remove the reference to conservation use in this section to conform to the Tenth Circuit decision.

BLM is authorized under FLPMA to assess a service charge that reflects our processing costs. The current regulations provide for periodic fee adjustments as costs change. BLM has not adjusted our service charges in many years. When BLM does make changes, the current regulations require public notification in the **Federal Register**.

Except when BLM initiates an action, we are proposing to increase service charge fees as shown in the following table:

Action	Current service charge	Proposed service charge
Issue Crossing Permit ..	\$10	\$75
Grazing Preference Transfer	10	145
Canceling and replacing grazing fee billing	10	50

As required by Section 304(b) of FLPMA, the service fees on this chart represent BLM’s average cost of processing these applications less the estimated portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant.

Subpart 4140—Prohibited Acts

The current regulations specify a number of prohibited acts. Some of the prohibited acts apply only to grazing permittees or lessees while others apply to anyone who commits those acts while on BLM lands. There are 3 different categories of prohibited acts in the current regulations.

The first category of prohibited acts is set forth in section 4140.1(a) which provides that permittees and lessees who perform any of the 6 prohibited acts listed under this section may be subject to civil penalties under § 4170.1 (e.g., withholding issuance, suspending, or canceling a permit or lease.) Examples of prohibited acts in this category include: violations of special terms and conditions of permits or leases and refusing to remove range improvements when BLM directs their removal. In this category, BLM is proposing to clarify the provision which prohibits the placement of supplemental feed on public lands without

authorization. Under the proposed regulation, we are proposing to add that placement of supplemental feed without authorization “or contrary to the terms and conditions of the permit or lease” is a prohibited act. This will further clarify the intent of this section to ensure strict compliance with the terms and conditions of the permit or lease.

A second category of prohibited acts is set forth in section 4140.1(b). Any person (not just a permittee or lessee) who performs one of the 11 prohibited acts in this section is subject to civil and criminal penalties under sections 4170.1 and 4170.2. Examples of the prohibited acts identified in this section include: allowing livestock or other privately owned or controlled animals to graze on or be driven across public lands without a permit or lease; destroying vegetation; and damaging property owned by the United States. BLM is proposing to clarify that a violation of any of the prohibited acts set forth in § 4140.1(b) must occur on BLM-administered lands to be considered a violation. BLM is also proposing to modify and clarify one of the prohibited acts in this section. The current rule at § 4140.1(b)(1)(i) states that it is a prohibited act to graze livestock without a permit or lease and “an annual grazing authorization.” This paragraph would be revised to state that it is a prohibited act to graze without a permit or lease or other grazing use authorization and “timely payment of grazing fees.” This revision would more accurately characterize the relationship between the document that authorizes grazing, the permit or lease, and the requirement to pay grazing fees as stated in Section 3 of the Taylor Grazing Act. Section 3 states:

The Secretary of the Interior is * * * authorized to issue * * * permits to graze livestock * * * to settlers, residents and other stock owners * * * upon the payment annually of reasonable fees * * *.

The requirement to pay fees annually has led to the characterization of a paid grazing fee billing as an “annual grazing authorization” for the purposes of applying other provisions of the regulations such as requirements for consultation, the ability to protest and appeal grazing decisions, and what grazing use BLM may authorize if a grazing permitting decision is stayed. This change is intended to make this regulation consistent with the regulation at section 4130.2 which provides that the grazing permit or lease is the document that authorizes grazing use on public lands.

The third category of prohibited acts is set forth in section 4140.1(c). Under this provision, the BLM may take civil