

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2514]

43 CFR Parts 4100

Grazing Administration, Exclusive of Alaska

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315(a)-(r), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1181(d)) and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1701 et seq.), Part 4100, Subchapter D and Part 9260, Subchapter I, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below.

Note.—The information collection requirements contained in 43 CFR Part 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers: 1004-0005; 1004-0016; 1004-0019; 1004-0020; 1004-0041; 1004-0047; 1004-0048; 1004-0049; 1004-0051; and 1004-0068. The information is being collected to allow the authorized officer to determine if an application to utilize the public lands for grazing purposes should or should not be granted. This information will be utilized in making this determination. The obligation to respond is required to obtain a benefit.

PART 4100-GRAZING ADMINISTRATION-EXCLUSIVE OF ALASKA

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§ 4100.0-1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska.

§ 4100.0-2 Objectives.

The objectives of these regulations are orderly use, improvement and development of the public lands, enhancement of their productivity by prevention of overgrazing and soil deterioration, stabilization of the livestock industry dependent upon the public range, provide for inventory and categorization of public rangelands on the basis of range conditions and trends, consistent with land-use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR Subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.).

§ 4100.0-3 Authority.

- (a) The Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r);
- (b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);
- (c) Executive Orders transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act;
- (d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 118(d));
- (e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.); and
- (f) Public Land Orders, Executive Orders, and agreements authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

§ 4100.0-5 Definitions.

Whenever used in this part, unless the context otherwise require, the following definitions apply:

The "Act" means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r).

"Actual use" means a report of the actual livestock grazing use certified to be accurate by the permittee or lessee.

"Affected interest" means an individual or organization that has expressed in writing to the authorized officer concern for the management of livestock grazing on specific grazing allotments and who has been determined by the authorized officer to be an affected interest.

"Allotment" means an area of land designated and managed for grazing of livestock.

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"Allotment management plan (AMP)" means a documented program which applies to livestock grazing on the public lands, prepared in consultation, cooperation and coordination with the permittee(s), lessee(s) or other involved affected interests.

"Animal unit month (AUM)" means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

"Authorized officer" means any person authorized by the Secretary to administer regulations in this part.

"Base property" means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible to the authorized livestock when the public lands are used for livestock grazing.

"Cancelled or cancellation" means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

"Class of livestock" means age and/or sex groups of a kind of livestock.

"Consultation, cooperation and coordination" means an interactive process for seeking advice, agreement, or interchange of opinions on issues, plans, or management actions from other agencies and affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by an allotment management plan and other affected interests.

"Cooperative management agreement" means a mutually agreed to plan of action embodied in an agreement between the Bureau of Land Management and a qualified applicant or operator that identifies the responsibility of the cooperative partner and performance standards applicable to the grazing operation.

"District" means the specific area of public lands administered by a District Manager.

"Grazing district" means the specific area within which the public lands are administered under section 3 of the Act. Public lands outside grazing district boundaries are administered under section 15 of the Act.

"Grazing fee year" means the year, used for billing purposes, which begins on March 1 of a given year and ends on the last day of February of the following year.

"Grazing lease" means a document authorizing use of the public lands outside grazing districts under section 15 of the Act for the purpose of grazing livestock.

"Grazing permit" means a document authorizing use of the public lands within grazing districts under section 3 of the Act for the purpose of grazing livestock.

"Grazing preference" means the total number of animal unit months of livestock grazing on public lands apportioned and attached to base property owned or controlled by a permittee or lessee.

"Land use plan" means a planning document developed in accordance with the provisions of the Federal Land Policy and Management Act which establishes coordinated management direction for resource uses on public lands.

"Livestock" or "kind of livestock" means species of domestic livestock—cattle, sheep, horses, burros, and goats.

"Livestock grazing capacity" means the estimated number of animal unit months of forage available for livestock grazing on a sustained yield basis.

"Monitoring" means the orderly collection of data to evaluate:

- (1) Effects of management actions; and
- (2) Effectiveness of actions in meeting management objectives.

"Public lands" means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands held for the benefit of Indians.

"Range improvement" means authorized activities or programs which contribute to accomplishing allotment goals and objectives.

"Secretary" means the Secretary of the Interior or his authorized officer.

"Service area" means the area that can be properly grazed by livestock watering at a certain water.

"State Director" means the State Director, Bureau of Land Management, or his or her authorized representative.

"Supplemental feed" means a feed which supplements the forage available from the public lands and is provided to improve livestock nutrition or rangeland management.

"Suspension" means temporarily withholding, in whole or in part, a grazing preference from active grazing use. The withholding may be done voluntarily by the permittee or lessee.

§ 4100.0-7 Cross-references.

The regulations in Subpart 1784 of this chapter govern advisory boards and the regulations in Part 4 of this title govern appeals and hearings.

Subpart 4110—Qualifications and Preference

§ 4110.1 Mandatory qualifications.

Except as provided under §§ 4110.1-1, 4130.3 and 4130.4-3, to qualify for grazing use on the public lands an applicant must be engaged in the livestock business, must own or control land or water base property, and must be:

(a) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(b) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(c) A corporation authorized to conduct business in the State in which the grazing use is sought.

§ 4110.1-1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management (BLM) through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that BLM shall honor existing grazing permits or leases, such permittees or lessees shall be considered qualified for grazing use on those acquired lands.

§ 4110.2 Grazing preference.

§ 4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see § 4100.0-5) if:

(1) It serves as a base for a livestock operation which utilizes public lands within a grazing district, or

(2) It is contiguous land, or noncontiguous land when no applicant owns or controls contiguous land, used in conjunction with a livestock operation which utilizes public lands outside a grazing district.

(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, relative to the multiple-use management objective of the public lands.

(c) An applicant shall provide a legal description, or plat, of his base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section.

§ 4110.2-2 Grazing preference allocation.

(a) Grazing preference shall be allocated to qualified applicants following the allocation of the vegetation resources among livestock grazing, wild free-roaming horses and burros, wildlife, and other uses in the land use plan.

(b) Applicants who own or control base property contiguous to or cornering upon public land outside of a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall have a preference right for 90 days after the tract has been offered for lease to lease the whole tract.

(c) The animal unit months of grazing preference are attached to: (1) The acres of land base property on a pro rata basis, or (2) water base property on the basis of the livestock grazing capacity within the service area of that water.

(d) Allotments.

After consultation, cooperation and coordination, the authorized officer may designate and adjust allotment boundaries.

§ 4110.2-3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all necessary qualifications for a grazing preference under the regulations of this part.

(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under § 4120.3 and maintained in conjunction with the transferred preference (see § 4120.3-5). The terms and conditions of the cooperative agreements and range improvement permits are binding on the transferee.

(3) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see § 4130.2) with such modifications as he may request which are approved by the authorized officer or with such modifications as may be required by the authorized officer.

(4) The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with the authorized officer a properly executed transfer application showing the base property and the amount of grazing preference being transferred in animal unit months.

(c) If a grazing preference is being transferred from one base property to another base property, the transferee shall file with the authorized officer a properly completed transfer application in advance for approval.

(d) At the date of approval of a transfer, the

existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary deposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Failure of either the transferee or the transferor to comply with the regulations of this section may result in rejection of the transfer application or cancellation of grazing preference.

§ 4110.3 Changes in available forage.

§ 4110.3-1 Additional forage.

Additional forage may be allocated to qualified applicants for livestock grazing use consistent with multiple-use management objectives.

(a) Additional forage temporarily available for livestock grazing use, including forage which is temporarily available within an allotment because of a change in grazing use under § 4130.1-1, may be allocated on a nonrenewable basis.

(b) Additional forage permanently available for livestock grazing use shall first be allocated in satisfaction of grazing preferences to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.

(c) After consultation, cooperation and coordination, additional forage permanently available for livestock grazing use over and above the preference(s) of the permittee(s) or lessee(s) in an allotment may be allocated in the following priority to:

(1) Permittee(s) or lessee(s) in proportion to their contribution or efforts which resulted in increased forage production;

(2) Permittee(s) or lessee(s) in proportion to their preference; (3) Other qualified applicants under § 4130.1-2 of this title.

§ 4110.3-2 Decrease in forage.

(a) When authorized grazing use exceeds the amount of forage available for livestock grazing within an allotment on a temporary basis:

(1) Due to drought, fire, or other natural causes, or (2) to facilitate installation, maintenance, or modification of range improvements, grazing permits or leases may be suspended in whole or in part.

(b) When authorized grazing use, which includes active use and any approved nonuse, exceeds the amount of forage available and allocated for livestock grazing within an allotment, or where reduced grazing use is necessary to facilitate achieving multiple-use management objectives for the allotment, the authorized grazing use shall be reduced to the livestock grazing capacity. The difference between the authorized grazing use and the grazing preference shall be held in suspension.

§ 4110.3-3 Implementation of changes in available forage.

(a) Permanent increases in the allocation of livestock forage (see § 4110.3-1(b)) or suspensions of preference (see § 4110.3-2(b)) shall be

implemented over a 5-year period, unless after consultation with the affected permittees or lessees and other affected interests, an agreement is reached to implement the increase or suspension in less than 5 years.

(b) After consultation, coordination and cooperation, suspensions of preference shall be implemented through a documented agreement or by decision. If data acceptable to the authorized officer are available, an initial reduction shall be taken on the effective date of the agreement or decision and the balance taken in the third and fifth years following the effective date, except as provided in paragraph (a) of this section. If data acceptable to the authorized officer to support an initial reduction are not available, additional data will be collected through monitoring. Adjustments based on the additional data shall be implemented by agreement or decision that will initiate the 5-year implementation period.

(c) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, after consultation with affected permittees or lessees and other affected interests, action shall be taken to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use. Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under § 4160.3(c) of this title.

§ 4110.4 Changes in public land acreage.

§ 4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the livestock forage available may be allocated to qualified applicants at the discretion of the authorized officer. Grazing use shall be allocated under § 4130.1-2 of this title.

§ 4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing use within an allotment, grazing permits or grazing leases and grazing preferences shall be canceled in whole or in part. The cancellations will be equitably apportioned by the authorized officer or as agreed to among authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed, the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see § 4120.3-6).

§ 4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431-433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to

be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. The provisions of these laws are incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

Subpart 4120—Grazing Management

§ 4120.1 Cooperative management agreements.

(a) The authorized officer of the Bureau of Land Management may enter into a cooperative management agreement with any permittee or lessee who has demonstrated exemplary rangeland management practices.

(1) A cooperative management agreement establishes the responsibilities and performance standards of the cooperating parties in managing and using of the public lands to graze livestock.

(2) A cooperative management agreement shall be consistent with, and incorporate by reference, all applicable provisions of any existing land use plan as well as the terms of the authorization(s) issued to the cooperative party to graze livestock on the allotment(s).

(3) A cooperative management agreement shall not empower the cooperating party to exclude or limit other authorized uses on the allotment(s).

(b) A cooperative management agreement shall be issued for a term of 10 years and, at the discretion of the authorized officer of the Bureau of Land Management, may be renewed.

(c) A cooperative management agreement, and a cooperating party's performance under it, shall be periodically evaluated by the Bureau of Land Management.

(d) A cooperative management agreement may be transferred by operation of law. If the cooperating party is organized as a corporation or partnership, the cooperative management agreement may, upon notice to the authorized officer, also be transferred as an incident to any change of less than 100 percent in the business organization. All other transfers of the cooperative management agreement are prohibited and shall result in its automatic termination.

§ 4120.2 Allotment management plans.

When allotment management plans are developed, the following provisions apply:

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation and coordination with affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by such an allotment management plan and other affected interests. The allotment management plan shall include terms and conditions under § 4130.6 of this title, and shall describe the livestock grazing practices necessary to meet specific multiple-use management objectives. The plan shall specify the limits of flexibility within which the permittee or lessee may adjust their operations without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of management actions in achieving the specific multiple-use management objectives of the plan.

(b) Private and State lands shall be included in allotment management plans with the consent or at the request of the party(ies) who owns or controls those lands.

(c) Completed allotment management plans shall be incorporated into the terms and conditions of the affected grazing permits and leases.

§ 4120.3 Range Improvements.

§ 4120.3-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under § 4130.6-2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

§ 4120.3-2 Cooperative agreements.

Any person may enter into a cooperative agreement with the Bureau of Land Management for the installation, use, maintenance, and/or modification of range improvements needed to achieve management objectives. The cooperative agreement shall specify the division of costs or labor, or both, between the United States and cooperator(s). Title to structural or removable improvements shall be shared by the United States and cooperator(s) in proportion to the actual amount of the respective contribution to the initial construction. Title to nonstructural or nonremovable improvements shall be in the United States.

§ 4120.3-3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify range improvements that are needed to achieve management objectives within his/her designated allotment. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee shall have title to removable range improvements authorized under range improvement permits.

(c) The use by livestock of stock ponds or wells authorized by a range improvement permit shall be controlled by the grazing permittee or lessee holding the range improvement permit.

§ 4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative agreements shall specify the standards, design, construction, and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§ 4120.3-5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2-3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for fair market value of his/her interest in the authorized improvements within the allotment as of the date of the transfer. If the parties are unable to agree as to the amount or manner of reasonable compensation, the matter shall be resolved by the authorized officer.

§ 4120.3-6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under § 4120.3-4 of this title.

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer.

Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative agreement to salvage material owned by them and perform rehabilitation measures necessitated by removal.

§ 4120.3-7 Contributions.

The authorized officer may accept contributions of labor, materials, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

§ 4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon approval, shall become effective when published in the Federal Register as final rules. Special rules shall be published in a local newspaper.

(b) Where the Bureau of Land Management administers the grazing use of other Federal agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply.

SUBPART 4130—AUTHORIZING GRAZING USE

§ 4130.1 Applications.

Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

§ 4130.1-1 Changes in grazing use.

(a) Applications for changes in grazing use should be filed with the authorized officer before the billing notices for the affected grazing use have been issued. Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued, and which require the issuance of a replacement or supplemental billing notice shall be subject to a service charge under § 4130.7-3 of this title.

(b) Changes in grazing use may be granted by the authorized officer.

§ 4130.1-2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional livestock forage or additional acreage becomes available, the authorized officer may allocate grazing use of such land or forage on the basis of § 4110.3-1 of this title or on the basis of any of the following factors:

(a) Historical use of the public lands (see § 4130.2(1)(d));

(b) Proper range management and use of water for livestock;

(c) General needs of the applicants' livestock operations;

(d) Public ingress or egress across privately owned or controlled land to public lands;

(e) Topography; and

(f) Other land use requirements unique to the situation.

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to authorize livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management. These grazing permits or leases shall specify terms and conditions as required by § 4130.6 of this title.

(b) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.

(c) Grazing permits or leases authorizing livestock grazing on the public lands and other lands under administration of the Bureau of Land Management shall be issued for a term of 10 years, unless: (i) The land is pending disposal; (ii) the land will be devoted to a public purpose which precludes grazing prior to the end of 10 years; or (iii) it will be in the best interest of sound land management to specify a shorter term.

(d) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease;

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease.

(e) Permits or leases may incorporate the percentage of public land livestock use (see § 4130.6-2) or may include private land offered

under exchange-of-use grazing agreements (see § 4130.4-1).

§ 4130.3 Free-use grazing permits.

A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to § 4130.1-2. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

§ 4130.4 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

§ 4130.4-1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to any applicant who owns or controls lands which are unfenced and intermingled with public lands when use under such an agreement would be in harmony with the management objectives for the allotment.

(b) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock grazing capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use.

§ 4130.4-2 Nonrenewable grazing permits or leases.

Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands.

§ 4130.4-3 Crossing permits.

Any applicant showing the necessity for crossing the public land or other land under Bureau of Land Management control with livestock for proper and lawful purposes may be issued a crossing permit upon such terms and conditions deemed necessary by the authorized officer to achieve the objectives of this part.

§ 4130.4-4 Special grazing permits or leases.

Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.

§ 4130.5 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands

are located relating to branding of livestock, breed, grade and number of bulls, health and sanitation.

(c) The authorized officer may require counting and/or additional special marking or tagging of the authorized livestock in order to promote the orderly administration of the public lands.

§ 4130.6 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management objectives for the public lands and other lands under Bureau of Land Management control identified in land use plans.

§ 4130.6-1 Mandatory terms and conditions.

(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock grazing capacity and may be limited or excluded to the extent necessary to achieve the objectives established for the allotment.

(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.

§ 4130.6-2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

(a) The class of livestock that will graze on an allotment;

(b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;

(c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;

(d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;

(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction, establishment or restoration of vigor of plants, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth; and

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee.

§ 4130.6-3 Modification.

Following careful and considered consultation, cooperation and coordination with the lessees, permittees, and other affected interests, the authorized officer may modify terms and conditions of the permit or lease if monitoring data show that present grazing use is not meeting the land use plan or management objectives.

§ 4130.7 Fees.

§ 4130.7-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) The full fee shall be charged for each paying animal unit which is defined as each animal six (6) months of age or over at the time of entering the public lands, for all weaned animals regardless of age, and for such animals as will become twelve (12) months of age during the authorized period of use. No charge will be made for animals under six (6) months of age at the time of entering the public lands that are the natural progeny of animals upon which fees are paid, provided they will not become twelve (12) months of age during the authorized period of use or for progeny born during that period.

(d) Fees are due upon issuance of billings. When billings are issued prior to the grazing season, payment will be made prior to grazing use. If allotment management plans or cooperative management agreements provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance.

§ 4130.7-2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part or postpone fee payment for as long as the emergency exists.

§ 4130.7-3 Service charge.

A service charge shall be assessed for each crossing permit, transfer of grazing preference and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)), calculation of the Bureau service charge assessed shall reflect processing costs and shall be adjusted periodically as costs change. Notice of changes shall be published periodically in the Federal Register.

§ 4130.8 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, Provided, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

§ 4140.1 Acts prohibited on public lands.

The following acts are prohibited on public lands and other land administered by the Bureau of Land Management:

(a) Persons performing the following prohibited acts may be subject to civil penalties under § 4170.1:

(1) Violating special terms and conditions incorporated in permits or leases;

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years;

(3) Placing supplemental feed on these lands in violation of the terms and conditions of the lease or permit;

(4) Failing to comply with the terms, conditions, and stipulations of range improvement cooperative agreements or range improvement permits;

(5) Refusing to install, maintain, modify or remove range improvements when so directed by the authorized officer.

(b) Persons performing the following prohibited acts may be subject to civil and criminal penalties under §§ 4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands;

(i) Without a permit, lease or other grazing use authorization;

(ii) In violation of the terms and conditions of a permit, lease or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4130.5(c) of this title.

(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing United States property without authorization;

(5) Molesting livestock authorized to graze on these lands;

(6) Littering;

(7) Interfering with lawful uses or users;

(8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative agreements, actual use reports, and/or amendments thereto;

(9) Violating State livestock requirements relating to branding of livestock; breed, grade, and number of bulls; and health and sanitation requirements;

(10) Violating the Bald Eagle Protection Act or the Endangered Species Act.

SUBPART 4150—UNAUTHORIZED GRAZING USE

§ 4150.1 Violations.

Violation of § 4140.1(b)(1) constitutes unauthorized grazing use.

Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock and may be subject to civil penalties or criminal sanction for such unlawful acts.

§ 4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and

order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under § 4150.3.

(b) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under § 4150.4.

§ 4150.3 Settlement.

The authorized officer shall determine if the violation is nonwillful, repeated nonwillful, willful, or repeated willful. Where violations are repeated nonwillful, the authorized officer may take action under § 4170.1-1(a) of this title.

Where violations are repeated willful, the authorized officer shall take action under § 4170.1-1(b) of this title. The amount due for all settlements shall include: the full value for all damages to the public lands and other property of the United States; all expenses incurred by the United States including those incurred in gathering, impounding, caring for, and disposing of livestock in cases which necessitate impoundment under § 4150.4; and shall include the amount due the United States for unauthorized grazing use as described in paragraphs (a), (b), or (c) of this section.

(a) For nonwillful violation: The value of forage consumed as determined by the average monthly rate for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture.

(b) For repeated nonwillful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For willful and repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section.

(d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.

(e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under § 4160.1-2 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.

§ 4150.4 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under § 4150.2 may be impounded and disposed of by the authorized officer as provided herein.

§ 4150.4-1 Notice of intent to impound.

(a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.

(b) Where the owner and his agent are unknown, or where both a known owner and his agent refuses to accept delivery, a notice of intent to impound shall be published in a local

newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

§ 4150.4-2 Impoundment.

After 5 days from delivery of the notice under § 4150.4-1(a) of this title or any time after 5 days from publishing and posting the notice under § 4150.4-1(b) of this title, unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of the notice.

§ 4150.4-3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. Any known owners or agents, or both, shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

§ 4150.4-4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under § 4150.3 or adequate showing that there has been no violation.

§ 4150.4-5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed, or otherwise disposed of under these regulations or, if a suitable agreement is in effect, in accordance with State law.

SUBPART 4160—ADMINISTRATIVE REMEDIES

§ 4160.1 Proposed decisions.

§ 4160.1-1 Proposed decisions on permits or leases.

In the absence of a documented agreement between the authorized officer and the permittee(s) or lessee(s), the authorized officer shall serve a proposed decision on any applicant, permittee or lessee, or the agent of record, or both who is affected by the proposed action on applications for permits (including range improvement permits) or leases, or by the proposed action relating to terms and conditions of permits (including range improvement permits) or leases, by certified mail or personal delivery. The authorized officer shall also send copies to other affected interests. The proposed decision shall state reasons for the action, including reference to pertinent terms, conditions and/or provisions of these regulations, and shall provide for a period of 15 days after receipt for the filing of a protest.

§ 4160.1-2 Proposed decisions on alleged violations.

If the authorized officer determines that a permittee or lessee appears to have violated any provision of this part he shall serve a proposed decision on the permittee or lessee, or his agent, or both, by certified mail, or personal delivery of the proposed decision. The proposed decision shall state the alleged violation and refer to the specific terms, conditions, and/or provisions of these regulations alleged to have been violated and the reasons for the proposed decision. As applicable, the proposed decision shall state the amount due under § 4130.7-1 or § 4150.3 and the action to be taken under § 4170.1. The proposed decision shall provide for a period of 15 days after receipt for the filing of a protest.

§ 4160.2 Protests.

Any applicant, permittee, lessee or other affected interests may protest the proposed decision under § 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision shall become the final decision of the authorized officer without further notice.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to his review of the protest, the authorized officer shall serve his final decision on the protestant or his agent, or both, and on other affected interests.

(c) A period of 30 days after receipt of the final decision is provided for filing an appeal. Decisions that are appealed shall be suspended pending final action except as otherwise provided in this section. Except where grazing use the preceding year was authorized on a temporary basis under § 4110.3-1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal. The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal.

§ 4160.4 Appeals.

Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge under § 4.470 of this title by filing his notice of appeal in the office of the authorized officer within 30 days after the receipt of the decision.

SUBPART 4170—PENALTIES

§ 4170.1 Civil penalties.

§ 4170.1-1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under Subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under Subpart 4160 of this title for repeated willful violation by a permittee or lessee of § 4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates § 4140.1(b) of this title and has not made satisfactory settlement under § 4150.3 of this title, the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

§ 4170.1-2 Failure to use.

After consultation, coordination, and cooperation, the authorized officer may cancel a grazing preference to the extent of failure to use when a permittee or lessee has failed to make substantial grazing use as authorized for 2 consecutive years. (See § 4140.1(a)(2).)

§ 4170.1-3 Bald Eagle Protection Act and Endangered Species Act.

Violation of the Bald Eagle Protection Act or the Endangered Species Act may result in penalty under § 4170.1-1 where:

(a) Public land administered by the Bureau of Land Management is involved or affected;

(b) Such violation is related to grazing use authorized by permit or lease;

(c) The permittee or lessee has been convicted or otherwise found to be in violation of the law or regulations by a court or by final determination of any agency charged with the administration of the law where no further appeals are outstanding.

§ 4170.1-4 Cooperative management agreement.

Violation of the terms and conditions of a cooperative management agreement may result in the cancellation of the agreement. Where violation of Subpart 4140 Prohibited Acts occurs, the authorized officer may take appropriate action under § 4170.1-1 of this title.

§ 4170.2 Penal provisions.

§ 4170.2-1 Penal provisions under the Taylor-Grazing Act.

Under section 2 of the Act any person who willfully violates the provisions of § 4140.1(b) or of approved special rules and regulations is punishable by a fine of not more than \$500.

§ 4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), any person who knowingly and willfully violates the provisions of § 4140.1(b) or of approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine of not more than \$1,000 or imprisonment for no more than 12 months or both.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
February 21, 1984