

result in the limitation of flexibility otherwise provided under an allotment management plan.

*Subleasing.* The Department's proposed rule would have imposed a surcharge on authorized leasing or subleasing in two situations: (1) the subleasing of public land grazing privileges associated with the leasing of privately-owned base property; (2) the pasturing of livestock owned by someone other than the grazing permittee or lessee where the permittee or lessee controls such livestock. This proposal was made in response to findings of the General Accounting Office (GAO) (see, e.g., RCED-86-168BR), and the Office of the Inspector General (OIG) (see report #92-1-1364) that permittees and lessees who sublease are unduly benefitting from their permits or leases. Sons and daughters of grazing permittees and lessees were exempted from the surcharge.

In response to comments that putting a surcharge on authorized subleasing would adversely affect the ability of new ranchers with limited capital to enter the livestock business, the Department has not included the surcharge associated with the authorized leasing or subleasing of public land grazing privileges associated with base property in the final rule. However, in order to address the Secretary's intent to establish a fair and reasonable return to the public, the surcharge on pasturing agreements is adopted in the final rule. The Department recognizes the need to avoid penalizing children of grazing permittees and lessees who graze cattle under their parents' permits or leases and has included an exemption from the surcharge for pasturing for sons and daughters of public land permittees and lessees. The Department believes that, as landlord of the public lands, it must obtain a fair share, on behalf of the American public, of any income received by the permittee for pasturing cattle belonging to others. Additionally, the policy of charging a surcharge for pasturing is consistent with standard practices on most State grazing lands.

Commenters also stated that the proposed method for calculating the surcharge did not reflect local conditions. The Department has addressed this concern by modifying the method for calculating the surcharge on pasturing agreements. The final rule provides that the surcharge on pasturing agreements will be equal to 35 percent of the difference between the Federal grazing fee per AUM and the prior year's private lease rate for the appropriate State for forage used by

livestock owned by another party other than the permittee or lessee. A surcharge of 35 percent of the difference between the Federal grazing fee and the private lease rate for the appropriate State will recover an appropriate "landlord's share" and will result, on the average across all States, in a surcharge approximating the surcharge presented in the proposed rule and analyzed in the EIS for this rule. Pasturing agreements must have authorization from the authorized officer. Under this final rule, to calculate the surcharge BLM will use the per animal unit month (AUM) private grazing land lease rate for the appropriate State as reported annually by the National Agricultural Statistics Service (NASS).

### III. Summary of Rules Adopted

These final rules revise Parts 4, 1780, and 4100 of Title 43. The following summary highlights changes from the current regulations, most of which were also included in the proposed rule. The following provisions are included:

#### *Part 4 of Title 43—Department Hearings and Appeals Procedures*

Section 4.477, Effect of decision suspended during appeal, is revised to reflect that grazing decisions will no longer be suspended automatically when an appeal is filed. Instead, final grazing decisions will be subject to the provisions of 43 CFR 4.21, which governs the effect of administrative decisions pending appeal before the Department's OHA.

#### *Part 1780—Cooperative Relations*

Section 1784.0-5 is amended by replacing the term "Authorized representative" with the term "Designated Federal officer." These changes provide consistency with the terminology of FACA.

Section 1784.2-1, Composition, is amended to remove the eligibility requirement for grazing advisory board members. The final rule also adds a requirement that advisory committee members have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

Section 1784.2-2, Avoidance of conflict of interest, is amended to provide that no advisory committee member, including members of RACs, can participate in any matter in which such member is directly interested, and must disclose his or her direct or indirect interest in Federal permits, leases, licenses, or contracts administered by BLM.

Section 1784.3, Member service, establishes that appointments to advisory committees will be for two-year terms unless otherwise specified in the committee charter or appointing document. Specific references to grazing advisory board, district advisory council and National Public Lands Advisory Council appointments and terms and election procedures have been removed. The rule also provides that travel and per diem will be paid to committee members but not to members of any subgroups formed under the committees.

Sections 1784.5-1, Functions and 1784.5-2, Meetings, are amended by replacing the term "authorized representative" with the term "designated Federal officer." These changes provide consistency with the terminology of FACA.

Section 1784.6-1, Resource Advisory Councils—Requirements, establishes requirements for RACs. It provides that, with certain exceptions, councils will be established to cover all BLM lands. RACs will provide advice to the BLM official to whom they report regarding the preparation, amendment and implementation of land use plans and the development of standards and guidelines. The councils will also assist in establishing other long-range plans and resource management priorities, including plans for expending range improvement funds. RACs will not provide advice on personnel management, nor on the allocation and expenditure of funds subsequent to budget planning.

Appointments to RACs will be made by the Secretary. In making appointments, the Secretary will consider nominations from the Governor of the affected State and nominations received in response to a public call for nominations. All nominations will be required to be accompanied by letters of recommendation from interests or organizations to be represented, and members must be residents of a State in which the area covered by the council is located.

Council members will be selected in a balanced manner from persons representing interest groups. There are 3 general groups: Commodity Industries—including ranching and developed recreational activities; Recreational/Environmental—nationally or regionally recognized environmental or resource conservation groups, wild horse and burro interest groups, archeological and historical interests, dispersed recreational activity interests—such as bicyclists and hikers; and Local Area Interest—persons who hold State,