

Decisions on who should bear the expense of constructing fences made necessary by adjustments in allotment boundaries will be made on a case-by-case basis. Depending on the circumstances, BLM, the grazing permittee or lessee, or others may bear the costs. For instance, an adjustment to an allotment boundary made at the request or for the benefit of a permittee may be made subject to the permittee's acceptance of fencing costs. Where a fence is to be constructed to enhance the establishment or re-establishment of, for example, bighorn sheep, BLM or State wildlife management agency may assume the costs.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with one change. The terms "cooperation and coordination" are included in the opening sentence.

Section 4110.3 Changes in Permitted Use

This section would have been amended by replacing the term "grazing preference" with "permitted use." This change is discussed at § 4110.2-2. The section would also have clarified that changes in permitted use must be supported by monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer. This change would have broadened the sources of information that could be relied upon by BLM as a basis for changing permitted use.

The Department received a number of comments on this section. The majority of the comments dealt with the information that BLM would use to establish permitted use. Other commenters added that BLM should consider the vegetation impacts that come from other resource uses in calculating permitted use. Some commenters stated that no grazing should be permitted until an accepted monitoring plan is carried out or that permitted use in riparian areas should be evaluated every three years and adjusted as needed.

The Department agrees that professionally accepted and scientific information is needed to justify changes in permitted use. Many factors affect the type of information needed, the appropriate level of detail, and the time span over which such information should be acquired—resource conditions, resource values, climate, local environmental conditions, etc. The BLM can obtain information from a number of sources in evaluating the need to change permitted use, in addition to the traditional source,

monitoring data. Other valid sources of information include direct observation, ecological site inventory and trend data. There is no sound scientific reason to limit the authorized officer's flexibility by restricting him or her to one source of information or to place specific timeframes for monitoring in the regulations.

Changes in permitted use are subject to consultation with permittees, States having lands or managing resources in the area, and interested publics. Furthermore, permittees and lessees can appeal final decisions regarding changes in permitted use (See §§ 4110.3-1 and 4110.3-2 and subpart 4160). Given these constraints, the Department does not agree that the authorized officer has too much latitude.

The Department agrees that other resource uses should be evaluated in calculating permitted use. At the present time, wildlife and wild horse and burro utilization levels are used in the calculations of permitted use within an allotment.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed, with the following minor changes. The phrase "assist in" is added before the words "restoring ecosystems to properly functioning condition." These words have been added to emphasize that the Department does not expect that rangeland health will be restored as a result of single grazing management decisions, such as changes in permitted use on one permit. Rather, restoration of rangeland health will result from a series of decisions and actions over time, including actions pertaining to uses other than grazing, all of which will work together to establish significant improvements in the condition of the rangelands.

Further, the phrase "to conform with land use plans or activity plans" is added as one objective of changes in permitted use to clarify that, under 43 CFR Part 1600 and provisions in subpart 4120 of this final rule, BLM is required to conform with decisions made in the land use plans or other activity plans. Where grazing use does not conform with such plans it must be modified.

Section 4110.3-1 Increasing Permitted Use

The proposed rule would have revised this section by requiring that a permittee, lessee or other applicant be determined to be qualified under subpart 4110, in order to be apportioned additional forage under subsection (c), by substituting the term "permitted use" in place of "grazing preference," and by clarifying the requirements for

consultation. Also, reference to a permittee's or lessee's demonstrated stewardship would have been added to factors to be considered in allocating available forage.

The final rule adopts the text of the proposed rule, except that the final rule requires that "consultation, cooperation, and coordination" take place prior to the apportionment of additional forage under paragraph (c).

The largest group of comments on this section asserted that the interested public should not be involved in BLM's decisions to increase forage temporarily. Others expressed concern about involvement of State agencies or that increases should be subject to local government land use plans. Other commenters stated that considering demonstrated performance and compliance made decisions to increase permitted use uncertain. Others stated that increases should be processed using the established consultation, coordination and cooperation procedures including Section 8 consultation.

The Department believes that it is appropriate to involve the public in the management of the public rangelands. Similarly, State and local governments will be given an opportunity to comment on such decisions. This is consistent with Section (202)(f) of FLPMA. Thus, any decisions to increase or decrease permitted use or forage within a grazing allotment will include not only the permittee but also the interested public and the State having lands or managing resources in the area. However, the BLM authorized officer will retain the authority and responsibility to make final decisions on increased permit usage.

Additional forage available for livestock grazing on a sustained yield basis is first apportioned to permittees or lessees in proportion to their stewardship efforts which resulted in increased forage production. Any additional forage (AUMs) following this apportioning could be available to other permittees/lessees or outside interested applicants, assuming they are qualified under § 4110.

Record of performance and compliance are criteria for adjudicating conflicting applications, not for allocating additional forage, unless the grazing allotment is a community grazing allotment involving several different permittees/lessees. Any final decision by the agency can be appealed under the procedures set forth in subpart 4160.

The Department agrees that increases should be done with consultation, coordination, and cooperation, and the