

applicable land use plans. The amendments would have been consistent with the themes of protection, improvement, and restoration of the rangelands to increase overall productivity, and would have enhanced multiple-use management as required by applicable laws.

Furthermore, the amendments would have allowed responsive action in preventing damage that could result from grazing during nontypical natural conditions (such as delaying spring turnout during extreme drought).

Additionally, the section would have been amended by the addition of a new paragraph, (h), allowing terms and conditions to specify that BLM shall have administrative access across the permittee's or lessee's owned or leased private lands for purposes of administering the public lands. This provision would have addressed attempts to prevent BLM from performing functions such as range use supervision, compliance checks, and trespass abatement that are needed to administer the Federal grazing permit or lease.

This section attracted a number of comments. Many of the comments expressed concern over the proposed language of paragraph (h). Comments ranged from opposition to paragraph (h) on the grounds that a requirement for administrative access was an "unwarranted intrusion" to asserting that such a condition on a permit would constitute a "taking."

Other commenters recognized a need for BLM to conduct administrative functions on the public land. They stated that the rule needs to make it clear this provision can only be used by BLM personnel to conduct "BLM business on the Federal lands." Commenters also expressed concerns that paragraph (f) would allow for "permit cancellation" without notifying or consulting the permittee. Other commenters viewed the riparian improvement provisions of paragraph (f) as vague.

The provisions of paragraph (h) regarding administrative access refer to access across private lands to reach public lands in order for agency staff to perform necessary resource management activities on the public lands. These include such activities as monitoring of resource conditions, range use supervision, and evaluating the conditions of or the need for range improvements. Land management agencies, like any landowner, need appropriate access to the lands they administer. Efficient access to allotments is needed and is consistent with the partnership between permittees

or lessees and the agency to manage rangelands properly. In cases where BLM is unable to obtain permission to cross private lands to perform necessary administrative functions on public lands, BLM may not be able to allow grazing or other use.

A discussion regarding "takings" can be found above in the General Comments section of this preamble.

This provision does not pertain to public access across private lands. The need for public access is typically considered through the land use planning process. Efforts are made through agreement and acquisition of easements to acquire access where appropriate.

Paragraph (f) of the proposed rule was intended only to provide for temporary delays, cessation, or modification of livestock grazing, not permanent actions. The word "temporary" is moved in the final rule adopted today to make clear that paragraph (f) does not provide for permanent changes in livestock use. In all cases the permittee or lessee will be given reasonable notice, subject to the limitations that result from unforeseen natural factors such as drought or flood.

The Department disagrees with the commenters' assertions that provisions of paragraph (f) pertaining to riparian areas are vague. The importance of riparian areas in the stabilization of soils, maintenance of water quality, reduction of flood hazard and provision of habitat have been well established. Although the standards for proper functioning conditions for specific riparian sites are not provided in this rule, the basic factors of healthy riparian areas are presented in subpart 4180 and will be addressed in the development of State or regional standards and guidelines. The development of these standards and guidelines will involve public input and consultation with the RAC, which will help ensure that they are reasonable and implementable.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed.

#### Section 4130.3-3 Modification of Permits or Leases (Formerly, Section 4130.6-3)

The proposed rule would have amended this section to provide for consultation with States and the interested public concerning modification of permits or leases. It would also have added lack of conformance with the national requirements or the standards and guidelines as a reason to modify terms and conditions of a permit or lease. Finally, it would have broadened

opportunities for input during the preparation of reports that evaluate monitoring and other data used as a basis for making decisions to change grazing use or terms and conditions. These changes were intended to enhance opportunities for input by permittees, lessees, States, and the interested public in decisions regarding the management of the public rangelands.

The Department received a few comments on this section. Commenters objected to the deletion of the terms "cooperation and consideration;" to use of land use plan objectives as a test of whether grazing is being properly managed; and to the involvement of nongrazing interests in making forage allocation decisions. Some were concerned that the authorized officer would use land use plan objectives as a reason to reduce grazing use without evidence that a problem was caused by such use. Others supported an annual public review of allotments to determine whether they are in compliance with the land use plan.

The rule as adopted today includes the terms "cooperation and coordination." This decision is discussed at § 4100.0-5. Conformance with land use plan objectives is a reasonable test of whether livestock grazing is being properly managed. Land use plan objectives form the basis for all management decisions within the area covered by the plan. Should actions taken on a given allotment not lead to achieving those objectives it is incumbent upon the authorized officer to take appropriate action to assure that they do. In the final rule adopted today, language is added to clarify that this section relates to the "active use or related management practices." This specifies that the authorized officer can modify terms and conditions of a permit or lease when the grazing use is the cause of a failure to meet land use plan objectives. Additionally, decisions to increase or decrease the grazing use or to change the terms and conditions of a permit or lease must be based upon monitoring and other data.

The final rule requires the authorized officer to provide the public with the opportunity for review and comment and to give input during the preparation of reports that evaluate monitoring. The Department believes that providing the maximum opportunity for public input assures that all factors are adequately considered by the authorized officer when he/she is making allocation decisions.

The Department does not agree that the rule should require an annual evaluation of all allotments to determine