

4. Non-monetary settlement is in the best interest of the United States.

We believe this continues to be a reasonable approach, and therefore BLM has decided not to change this provision.

- Removing the requirement for Secretarial approval of amendments to regional standards for healthy rangelands was not addressed in this proposed rule. BLM received a comment urging that we revise the process for approving standards for rangeland health to allow approval of revisions to the standards by BLM State Directors. BLM believes that the requirement for Secretarial approval of standards that BLM State Directors develop ensures that the basic components of rangeland health are reflected in the regionally developed standards. We are not proposing any changes to the applicable provisions of the current regulations.

- Allowing grazing operators, when authorized by BLM, to temporarily lock gates on public lands when necessary to protect private property or livestock was initially considered for incorporation in this proposed rule. Comments during the scoping were nearly unanimously in opposition to this suggestion. This proposed rule does not include this provision.

- Using competitive bidding for assigning permits and leases in place of the current system for allocating grazing preference, assigning grazing permits and the present grazing fee formula was recommended by several commenters. This recommendation would require legislative action and is therefore beyond the scope of this proposed rule.

- Requiring the posting of a bond before filing an appeal was recommended by several commenters. BLM considered the implications and potential challenges to such a provision, and determined that such a provision would burden the general public as well as permittees and lessees. Therefore, it is not included in the proposed rule.

- Moving the general requirements in section 4180 related to the fundamentals of rangeland health and public land health standards and guidelines to BLM's planning regulations at 43 CFR 1610 was recommended during scoping. BLM did not consider such an expansion of the scope of this rulemaking appropriate at this time, and therefore it is not included in the proposed rule.

Whenever BLM proposes changes to these regulations, we are continuing a public dialogue. These proposed changes seek to keep administrative processes as simple, understandable, and flexible as possible.

When we developed proposed changes to the grazing regulations, we considered whether each specific change facilitates any of the following:

1. Promoting cooperation, especially with directly affected permittees and landowners;
2. Promoting practical mechanisms for protecting rangeland health; and
3. Improving administrative efficiency.

By incorporating these criteria, BLM can improve the regulations while creating a climate for communication and cooperation. Working together, BLM, and the public we serve, can obtain better information about observed trends in the vegetative communities of the West. BLM can improve some of the administrative processes so that we can sharpen our focus on the issues that are truly in need of attention as we seek to conserve the rural landscapes of the West.

IV. Section-by-Section Analysis

Rules of Construction: Words and Phrases

For simplicity and to make the rule easier to read and understand we use words that signify the singular to include and apply to the plural and vice versa as provided in 43 CFR 1810.1. Words that signify the masculine gender also include the feminine. Words used in the present tense also apply to the future. The terms "BLM" and "authorized officer" are used interchangeably and include any person authorized by law or by lawful delegation of authority to perform the duties described in this proposed rule.

Section 4100.0-2 Objectives

The proposed rule would remove reference to 43 CFR part 1720, subpart 1725, to reflect changes made to the regulations in 1994 (59 F.R. 29206). Today's proposal acknowledges that the Public Rangelands Improvement Act (PRIA) contributes to the objectives of the regulations. These are technical and editorial corrections.

Section 4100.0-3 Authority

The proposed rule would make 3 editorial corrections to this section. These are non-substantive and would not change the existing regulations.

Section 4100.0-5 Definitions

During the scoping period, BLM received public comments addressing specific definitions. Several commenters asked BLM to keep all current terms consistent with their use, definition, and intent in the TGA. The following describes the proposed changes in

definitions and the rationale for each change.

Active use: BLM proposes amending this definition to make clear that the term refers to a forage amount based on the carrying capacity of, and resource conditions in, an allotment. The term does not refer to forage that had been allocated in the past but which BLM has determined is no longer present. We now consider such forage to be in suspension, not in active use. The current definition of "active use" includes "current authorized use including livestock grazing and conservation use." BLM must remove conservation use from the definition because of the 1999 10th Circuit Court decision in *Public Lands Council v. Babbitt*.

The 1995 final rules defined conservation use as "authorized active use," in contrast to "nonuse" and "suspended use" even though the term conservation use did, by definition, exclude livestock grazing. The 1995 definition used the term livestock grazing to distinguish between "active" authorized grazing use and "active" authorized conservation use. Removing conservation use from this definition eliminates the need for this distinction. We propose that the amended definition of active use refer to that portion of grazing preference (see proposed definition, this section) that is now available for livestock grazing use based on the known livestock carrying capacity of the rangeland and the resource conditions in an allotment under a permit or lease. The definition would make it plain that "suspended use" is not active use.

Conservation use: The proposed rule would remove the term conservation use, from the definition of "active use," and anywhere else it appears in the existing regulations, in keeping with the 10th Circuit Court decision discussed above. Removing the term conservation use includes revising the definitions of grazing lease and grazing permit to remove all references to conservation use.

Grazing lease: In addition to removing conservation use, BLM proposes editorial changes to this definition to make it easier to read. These changes will not substantively change the current regulations. Several commenters stated that the original meaning of "grazing lease" comes from the TGA and has been subsequently changed and therefore, BLM should restore it. The definition is consistent with the TGA. We intend only to make it clear that BLM issues grazing leases to authorize grazing on lands that are not within grazing districts established under the