DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

Bureau of Land Management

43 CFR Parts 1780 and 4100

[WO–400–1110–00 24 1A]

RIN 1004–AB89

Department Hearings and Appeals Procedures; Cooperative Relations; Grazing Administration—Exclusive of Alaska

AGENCY: Office of the Secretary and the Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that govern how the Secretary of the Interior, through the Bureau of Land Management (BLM), administers livestock grazing. This rule applies to all lands on which BLM administers livestock grazing. This rule also amends the Department of the Interior's appeals regulations pertaining to livestock grazing to provide consistency with administrative remedies provided for in the grazing regulations, increases public participation in the management of the public grazing lands, and amends the regulations on cooperative relations to reflect changes in the organization of certain advisory committees. The changes will improve the management of the Nation's public rangeland resources.

DATES: This rule will be effective August 21, 1995.

Section 4130.8–1(d) will not be implemented until the grazing year beginning March 1, 1996.

ADDRESSES: Inquiries should be sent to the Director, Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Charles Hunt, 202–208–4256.

SUPPLEMENTARY INFORMATION:

I. Introduction

This rule governs the Bureau of Land Management's (BLM) administration of livestock grazing on public rangelands. The provisions of this rule will ensure proper administration of livestock grazing on the public rangelands. Many of the provisions will result in greater consistency between the administration of grazing on public rangelands by BLM and administration of grazing on National Forest System lands by the United States Forest Service (Forest Service). The rule is promulgated under the principal authorities of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1739, 1740), and the Taylor Grazing Act of 1934 (TGA) (43 U.S.C. 315a–r).

An advance notice of proposed rulemaking was published in the **Federal Register** on August 13, 1993 (58 FR 43208). A notice of intent to prepare an associated environmental impact statement (EIS) was also published in the **Federal Register** on July 13, 1993 (58 FR 37745). The Department also developed a booklet entitled *Rangeland Reform '94,* describing the Department of the Interior's (Department) proposal. Approximately 35,000 copies were distributed in late August and September of 1993 to all BLM grazing permittees and lessees, interested Congressional staff, and other interested parties. The Department received a total of about 12,600 letters from about 8,000 persons on the advance notice of proposed rulemaking, notice of intent to prepare an EIS, and the Rangeland Reform '94 summary booklet. The Department considered these comments in identifying and refining key components of the rangeland improvement effort and in preparing a proposed rule and a draft EIS.

During a three-month period beginning November 17, 1993, Secretary of the Interior Bruce Babbitt (Secretary) met on 20 occasions around the West with groups that included western governors, State and local officials, ranchers, environmentalists and other public land users. He visited local groups in Colorado, Wyoming, and Oregon who were already engaged in addressing how land management decisions should be made, and participated in extensive discussion about the components of rangeland improvement. These meetings resulted in many productive suggestions that were reflected in the proposed rule. Additionally, at the invitation of Colorado's Governor Roy Romer, the Secretary met on nine separate occasions with a group of Colorado State and local officials, ranchers, conservationists and other land users in Denver and Gunnison, Colorado, for discussions regarding a process for building a consensus-driven local approach to rangeland management. Similar meetings and follow-up discussions took place in Idaho, Oregon, and Nevada, in addition to meetings in Arizona, New Mexico, Utah and Wyoming. These meetings with the Secretary involved hundreds of hours of discussion.

On March 25, 1994, the Department published proposed rules in the **Federal Register** (59 FR 14314), with a 120 day comment period to July 28, 1994. Subsequently, at the request of commenters, the comment period was extended through September 9, 1994.

On May 13, 1994, the Department published in the **Federal Register** (59 FR 25118) a notice of availability of the draft EIS. Approximately 11,000 copies of the draft EIS were mailed to State and Federal legislators, western governors, major industry and environmental groups, the media, individuals who had commented on the advance notice of proposed rulemaking, and anyone else who requested a copy. All BLM permittees and lessees were mailed an executive summary, and provided a copy of the full document on request. Copies were also available through all BLM State Offices as well as Forest Service Regional Offices. The draft EIS analyzed in detail the proposed action and alternatives for improving the management of the Nation's public rangelands, including the proposed rule changes. On June 8, 1994, BLM and the Forest Service held 48 hearings throughout the West on the draft EIS and the proposed rulemakings; one hearing was also held that day at BLM's Eastern States Office in Virginia. Hearings were preceded by open houses staffed by Federal personnel to answer individual questions about the proposed rule. The location and procedures for the open houses and hearings were published in the May 16, 1994, **Federal Register** and announced in news releases. More than 1,900 people testified at the hearings. A transcript was made of each hearing. The transcripts are part of the public comment record and were considered during preparation of this final rule.

The Department received and considered more than 20,000 letters from over 11,000 persons on the notice of proposed rulemaking and the draft EIS. These letters included over 38,000 individual comments. The specific aspects of the notice of proposed rulemaking generating the most comments were the definitions, grazing fees, standards and guidelines for grazing, and Resource Advisory Councils (RACs). The objectives statement, mandatory qualifications, cooperative range improvement

agreements, water rights, permits, and prohibited acts also generated a great number of comments. Many letters expressed opinions that the overall rangeland improvement proposal was a disincentive for good stewardship, would have major economic impacts on rural western communities, and would result in the ''taking'' of private property. Others supported aspects of the proposal, such as broadening participation in the decisionmaking process, requiring permittees or lessees to be good stewards, cancellation of permits for nonuse, and nonmonetary settlement of minor violations. All original letters and transcripts have been kept on file in sequential order.

On December 30, 1994, the Department published in the **Federal Register** a notice of availability of the Final EIS (FEIS). The agency mailed over 14,000 individual copies to Federal agencies, United States Senators and Representatives, the western governors, major environmental and industry groups, individuals who commented either on the draft EIS or the notice of proposed rulemaking or testified at the field hearings, and anyone else who requested copies. Copies are available from any BLM Resource Area office or Forest Service Forest Office throughout the western States.

II. Major Elements of the Department's Program to Promote Healthy Rangelands

This section presents the general provisions of the Department's program to improve the public land grazing program.

Public Participation in Rangeland Management

Allowing more Americans to have a say in the management of their public lands is an important element of improving the management of the public rangelands. The American rangelands can be—and are—used for far more than grazing. Hiking, birding, camping, fishing, hunting, mountain biking and mineral development activities are among the activities that are compatible with sound grazing practices. Section 102(a)(8) of FLPMA makes it clear that the Secretary is to manage the public lands in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air, atmospheric, water resource, and archeological values.

The Department believes that the public interest will be best served if a wide range of interests are represented when decisions are being made. Thus, increased public participation is essential to achieving lasting improvements in the management of our public lands.

Under FLPMA, the Secretary is required to involve the public in many phases of public land management, including the development of regulations (section 102) and plans and programs (section 202). Section 309 authorizes the Secretary to provide for public participation in the preparation and execution of plans and programs for the management of public lands by establishing advisory councils that conform to the requirements of the Federal Advisory Committee Act (FACA).

Consistent with these provisions, the proposed rule gave extensive consideration to public participation in rangeland management. It proposed the creation of RACs in most BLM administrative districts which would be involved in the development of standards and guidelines for grazing. The RACs would have had the option of establishing rangeland resource teams and technical review teams for the purpose of providing input to be used by the RACs in developing recommendations. The RACs could request that the Secretary respond directly to their concerns if the council believed its advice was being arbitrarily disregarded. RAC members would be required to avoid conflicts of interest and to disclose direct or indirect interests in Federal grazing permits or leases, and to have experience or knowledge of the geographic area under the purview of the council.

Many comments were received on the concept of public participation. Almost all commenters supported the central principle—that public participation in decisionmaking on rangeland management should be enhanced. Comments on specific details of the proposal varied widely. Many commenters stressed their belief that the proposal was too complex and the resulting structure would create major administrative and resource needs without significant benefits. Other major comment themes addressed representation of various interests on all levels, requirements that members have local expertise, residency requirements, ability of the committees to participate in the development of standards and guidelines, the opportunity for the councils to request the Secretary to review issues, and the applicability of the FACA to the rangeland resource teams and technical review teams, among others. These comments are discussed in more detail in the section-by-section analysis of this preamble.

The proposed rule also included a detailed discussion of a model for enhanced community-based involvement in rangeland management prepared by the Colorado Working Group on rangeland improvement. This Working Group was convened by Governor Roy Romer, and met between November 1993 and January 1994. Although the Working Group considered this an experimental approach that might not be applicable to other western States, the Working Group's model contained a number of excellent ideas, which, in the Department's judgement, other States might find useful in developing their own structures for public participation. During the comment period, the Department also received a number of suggestions concerning public participation from Governor Mike Sullivan of Wyoming who had convened a Steering Committee on the Management of Federal Lands. While the Committee noted that it did not reach unanimity on all issues, the model for public participation proposed by the group also contained many excellent ideas. The Wyoming and Colorado documents were extremely helpful to BLM in formulating this final rule, and the Department appreciates the work of the individuals who participated in these efforts. Two models of public participation included in the final rule were based heavily on the Wyoming and Colorado proposals. The Wyoming and Colorado proposals suggested that increased flexibility was needed in the development of final requirements for public participation in rangeland management. In response to these and other comments the Department has attempted to develop a final rule that provides maximum flexibility for structuring the public participation process.

FLPMA directs the Secretary to establish advisory councils of not less than 10 and not more than 15 members. Members must be appointed from among representatives of the various major citizens' interests concerned with problems relating to land use planning, or with the management of the public lands located within the area for which an advisory council is established. At least one member must be a publicly elected official. The Department envisions that the RACs formed in each State under the final rule will fulfill these statutory requirements. The RACs would also be subject to FACA (5 U.S.C. Appendix).

The rules as finalized today are designed to implement certain basic requirements that are essential to fulfilling the requirements of FACA, FLPMA, and the needs of the

Department's program to improve management of the public rangelands:

—A RAC of 10–15 members, as required by § 309 of FLPMA;
—Openness and balance as required by FACA, assuring participation of commodity, environmental, and other interests;
—Consensus decisionmaking, with a majority of each group required to send recommendations forward;
—A RAC that is strictly advisory, as required by FACA and other statutes.

Consistent with many comments received, the rule provides a high degree of flexibility so that decisions can be made locally about how to structure the councils. Section 1784.6–1 of this final rule sets forth basic requirements that must be met by all councils. Three general interest groups will be represented, from which 10 to 15 members must be chosen in a balanced fashion. The first group includes various commodity industries, such as grazing and mineral interests, and other interests that benefit from use of public lands, such as outfitters. The second group includes nationally or regionally recognized environmental or resource conservation groups, wild horse and burro interest groups, archeological and historical interests, and representatives of dispersed recreational activities, such as birders or hikers. The third group includes persons who hold State, county, or local elected office, the public-at-large, Indian tribes within or adjacent to the area covered by the advisory council, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands.

RAC members will be appointed by the Secretary. This is a requirement of both FLPMA and FACA. Governors of States in which the councils will be organized will be requested to provide a list of nominees for the Secretary's consideration. The Secretary encourages Governors to formulate nominations through a process open to the public. In addition, a public call for nominations will be made through a notice in the **Federal Register** and other appropriate publications. Persons can nominate themselves for membership. Membership of each RAC will reflect a balance of views to ensure that the council represents the full array of issues and interests within the area covered by the council associated with public land use, management, protection and an understanding of the Federal laws and regulations governing public lands. Individuals can qualify to serve on a RAC if they possess relevant experience or expertise and have a commitment to collaborative effort, successful resolution of resource management issues and application of the relevant law. Members must have experience or knowledge of the geographic area under the purview of the council, must be residents of a State in which the area covered by a RAC is located, and must be supported by letters of recommendation from the groups or interests they will represent. An individual may serve on only one RAC. All members must receive training on issues related to rangeland management.

All RACs will be required to have specified quorum and voting rules, including the requirement that a majority of members from each category support a proposal before a recommendation can be forwarded to the authorized officer. Travel and per diem will be paid, and BLM will provide administrative support for the councils. A BLM employee will be named ''designated Federal officer'' as required by FACA.

All members of the council will be subject to conflict of interest provisions. To facilitate implementation of Federal conflict of interest requirements, council members will have to disclose their direct or indirect interest in BLM leases, licenses, permits or contracts. This does not mean that individuals with such interests cannot serve on councils; however, no member can participate in specific issues in which he or she has an interest.

The role of the RAC is to provide advice to BLM. Each RAC will focus on the full array of multiple use issues associated with public lands within its area of jurisdiction. They will consult on the preparation of standards and guidelines for grazing administration. The RACs will advise the Secretary and BLM—and other agencies as appropriate—on matters relating to multiple use issues associated with public lands and resources. They will also provide advice on preparation, amendment, and implementation of land use management plans and activity plans and consult in planning for range development and improvement programs. RACs will not provide advice on internal BLM management concerns such as personnel or budget expenditures.

Final § 1784.6–2 provides three models that supply additional detail on the structuring of public participation. Decisions about which model will be used in particular areas will be made by the State Directors of BLM, in consultation with affected Governors and other interested parties. Model A is based heavily on the suggestions made by the Colorado Working Group. It includes three levels of groups—the RAC itself, local five member rangeland resource teams appointed by the RAC based either on its own initiative or as a result of local requests, and technical review teams established directly by BLM to solve specific, short-term technical issues. The RACs would have 15 members and would be established on BLM District boundaries, ecoregions, or resource areas. A 60% vote of the RAC membership (including a majority of each category of users) would be required to send suggestions to BLM.

Model B is based heavily on the suggestions made by the Wyoming Steering Committee. It includes 3 levels of groups—the 15 member RAC, formed on either a Statewide or ecoregion basis, a more local 10 member rangeland resource team formed by the RAC, and technical review teams established directly by BLM to solve specific, short-term technical issues. In addition to requiring membership to be balanced among the commodity, environmental and local interest groups specified in § 1784.6–1(c), the RAC would include individuals representing wildlife, grazing, minerals and energy, and established environmental interests. An 80% vote of the RAC membership (including a majority of each interest group) would be required to send suggestions to BLM.

Model C was developed by BLM in response to additional issues raised by the commenters. In addition to the requirements specified in § 1784.6–1, this model accommodates formation of the RACs, and any type and number of subgroups as needed. The RAC can be formed along State, BLM district, or ecoregion boundaries. A majority of each of the three categories of users must vote affirmatively to send suggestions to BLM. General function subgroups at the local level can be formed on the initiative of the RAC or by local initiative. Special function groups formed to solve special technical problems would be constituted by BLM on its own initiative or in response to requests from RACs or any of the subgroups under the RACs.

The Department expects that most, if not all, public land managed by BLM will fall under the purview of one of these councils. Exceptions will be made where BLM State Director determines that there is insufficient interest to form a council or that it would be impossible for such a council to have effective participation due to the location of the public lands with respect to the population. Implementation of the principles discussed above will result in

enhanced public involvement in rangeland management, as envisioned throughout FLPMA.

The Department intends to start using the RACs for advice shortly after the rule becomes effective on August 21, 1995. This will require the selection of the advisory council model for each State and the nomination of advisory council members within the six-month period before this rule becomes effective. The decision regarding which advisory council model will be implemented in each State will be based on recommendations from BLM State Directors following consultation with the respective Governors and input from the public. Once the preferred model is identified, the internal process of developing the council charters can begin. The Department will also seek nominations for membership on the advisory councils from Governors and through a public call for nominations, pursuant to 43 CFR 1784.4–1. Finally, charters for the advisory councils will be drafted and reviewed by the Department, the Office of Management and Budget, and the General Services Administration. The timely establishment of the advisory councils will help ensure that there is adequate time for the councils to participate in developing State or regional standards and guidelines.

Range Improvements and Water Rights

The final rule conforms with common law concepts regarding retention of the title of permanent improvements in the name of the party that holds title to the land. Accordingly, after August 21, 1995, the title to all new grazing-related improvements constructed on public lands, or improvements related to the vegetation resource of public lands, except temporary or removable improvements, will be in the name of the party that holds title to the land, i.e. the United States. This provides consistent direction within BLM and makes BLM practice consistent with that of the Forest Service. Permanent range improvements will be approved through a cooperative range improvement agreement. A permittee's, lessee's, or cooperator's interest for contributed funds, labor, and materials will be documented. This documentation is necessary to ensure proper credit for purposes of reimbursement pursuant to section 402(g) of FLPMA, which requires compensation for the permittee's or lessee's authorized permanent improvements whenever a permit or lease is cancelled, in whole or in part, in order to devote the lands to another public purpose. Title to improvements existing before the effective date of this rule is not affected.

The final rule adopts without change the language of the proposed rule relating to water rights. The final rule provides consistent direction for BLM regarding water rights on public lands for livestock watering purposes. It is intended to make BLM's policy consistent with Forest Service practice, and with BLM policy on asserting water rights for livestock grazing prior to changes in the early 1980's. This section provides that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. Some States, such as Wyoming, grant public land livestock grazing water rights in the name of the landowner but also, in situations where the grazing lessee or permittee of State or Federal public land applies for a water right on that land, automatically include the State or Federal landowner as co-applicant. After consideration of public comment and further analysis, we have determined that co-application or joint ownership will be allowed where state policy permits it; for example, the Wyoming policy is consistent with the rule. Development of new water sources on public lands associated with a grazing permit or lease will be subject to cooperative range improvement agreements as provided in section § 4120.3–2.

The rule adopted today will be prospective. The final rule does not create any new Federal reserved water rights, nor will it affect valid existing water rights. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States will remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the final rule does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Administrative Practices

With this final rule, BLM has made a number of changes to improve the administration of grazing on lands managed by BLM. These changes principally affect public participation in range decisions, administrative appeals and implementation of decisions, disqualification of applicants for grazing permits and leases based on a prior record of noncompliance, acts prohibited by the regulations, and the definition and implementation of conservation use.

Interested public. An important element of rangeland improvement involves facilitating effective public participation in the management of public lands. To implement this goal, the term ''affected interests'' is removed throughout the rule and replaced with the term ''interested public.'' The rule also removes the authorized officer's discretion to determine whether an individual meets the standards for ''affected interest'' status. The final rule adopts the definition of ''interested public'' as set forth in the proposed rule.

This change provides a consistent standard for participation by the public in decisions relating to grazing. Any party who writes to the authorized officer to express concern regarding the management of livestock grazing on specific grazing allotments will be recognized as a member of the ''interested public.''

Requirements for consultation with the interested public have been added in various sections of the rule, including those that deal with permit issuance, renewal and modification, increasing and decreasing permitted use, and development of activity plans and range improvement programs.

Appeals. Comments on the appeals procedures contained in the proposed rule suggested that the provisions were not clear. A number of changes have been made in the final rule to clarify the provisions. Most importantly, the final rule now references existing procedures in 43 CFR part 4, rather than repeating language from that part.

Under the final rule, persons choosing to appeal a decision of the authorized officer will normally be provided a 30-day period in which to file an appeal. Appellants may also petition the Director of the Office of Hearings and Appeals (OHA), or the Interior Board of Land Appeals (IBLA) to stay the decision until the appeal is decided. Where a petition for stay has been filed with an appeal, the Department's OHA has 45 days from the expiration of the 30-day appeal period either to grant or deny the petition for stay, in whole or in part. Thus, in cases where a person has filed a petition for stay of the decision of the authorized officer along with an appeal, and where the request for stay is denied, implementation of the decision would be delayed up to 75 days. In the event a stay of the decision is granted in whole or in part, the decision will be stayed until such time as a determination on the appeal is made.

This rule clarifies that the authorized officer can issue final decisions and

place them in effect immediately when it is necessary to protect rangeland resources from damage in situations described under § 4110.3–3(b). The rule also adds a provision that decisions to close areas to specified kinds of livestock use when it is necessary to abate unauthorized use, as provided in § 4150.2(d), may be issued as final decisions. In these cases, the permittee or lessee will still have 30 days to appeal the decision and petition for a stay, and the OHA will have 45 days to evaluate the petition; however, the decision will be in effect on the date specified in the decision and will remain in effect unless a stay is granted.

The objective of placing decisions in immediate effect under the circumstances specified in the rule is to provide for timely action to benefit rangelands and to reduce administrative delays. The rule does not take away the ability of affected parties to file an appeal, as provided by Section 9 of TGA, or to request a stay of the decision until such time as the appeal is decided. The Department believes making decisions under §§ 4110.3–3(b) and 4150.2(d) effective immediately under the standards provided for in this final rule is critical to meeting the goals of sound rangeland management.

Qualifications. The final rule makes no substantive change from the proposed rule. It includes a provision to disqualify applicants for new or additional grazing permits and leases if: (1) The applicant or affiliate has had any Federal grazing permit or lease, or any State grazing permit or lease within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or (2) the applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

These requirements do not apply to applicants for renewal of grazing permits or leases. The final rule gives the authorized officer the authority to consider whether an applicant for renewal is in substantial compliance with the terms and conditions of the permit or lease for which renewal is sought.

Prohibited acts. The final rule adopts provisions of the proposed rule, except that provisions from § 4170.1–3, as proposed, have been moved to a new paragraph in § 4140.1. Minor clarifying changes are also made. As in the proposed rule, Subpart 4140, ''Prohibited Acts,'' is revised to modify the list of actions that are defined as prohibited acts. Penalties applicable to prohibited acts are set forth in § 4170.

The proposed rule amended the list of prohibited acts to include violations of Federal and State laws and regulations concerning water pollution, certain predator control activities; application or storage of pesticides, herbicides or other hazardous materials; alteration or destruction of natural stream courses; wildlife destruction; and removal or destruction of archeological resources. It also added violations of State laws regarding the stray of livestock to the list.

The final rule adopts these provisions. It does not attempt to list in the text of the regulations all of the specific Federal and State laws which, if violated, could constitute prohibited acts. A list of such laws was included in the preamble to the proposed rule at 59 FR 14323–4. It is not the intent of this rule for the authorized officer to take direct enforcement action under the provisions of these laws; or to take enforcement steps involving the grazing permit or lease for any and all violations, no matter how *de minimis* or technical; or for violations of laws that, while they do deal with violations of State and Federal laws dealing with water pollution and other matters, do not reflect meaningfully upon the ability of the permittee or lessee to be a good steward of the public lands. The final rule clarifies that violations of these State and Federal laws would constitute prohibited acts only where three conditions are met: (1) The violations involve or affect BLM lands; (2) the violation is related to grazing use authorized by a permit or lease, and (3) the permittee or lessee has been convicted or otherwise found to be in violation of the State or Federal laws by final court or agency action. The final rule also moves similar provisions regarding the Bald Eagle Protection Act, the Endangered Species Act (ESA), and the Wild Free-roaming Horse and Burro Act from § 4170 to § 4140 to increase clarity and readability.

Conservation use. The final rule adopts the proposed definition with one clarifying change. Conservation use benefits the range by facilitating improvement in forage conditions, watersheds, riparian areas, and so on. It provides flexibility that is needed to enable permittees or lessees to undertake activities on a portion or all of an allotment to promote resource protection or enhancement, which includes making progress toward resource condition objectives.

The Department believes that this provision will provide permittees and lessees with an additional tool to manage grazing operations properly, provided that the conservation use is consistent with land use plans. Allotments in conservation use will not be subject to grazing fees since no forage will be consumed by livestock. However, permittees and lessees requesting conservation use will be required to maintain existing improvements so that when the allotment is returned to actual use such improvements will be in good working order. A service charge can be charged for conservation use, as it is for actual use. Conservation use will be initiated by request of the permittee or lessee. The BLM will *not* impose conservation use on an unwilling permittee or lessee.

The advantage of conservation use to the operator is that it allows increased flexibility. The operator will be able to enjoy the benefits of a long-term rest of the allotment from grazing while preserving the ability to resume grazing in the future. During the conservation use, BLM will not consider allowing another operator to use any resulting forage.

Resource Management Requirements, Including Standards and Guidelines. The final rule adopts the substance of the provisions proposed in subpart 4180. The Department has reorganized and rewritten the subpart to improve clarity and incorporate more fully a watershed management approach.

The Fundamentals of Rangeland Health. The final rule establishes the fundamentals of rangeland health for grazing administration (formerly referred to as the national requirements). These fundamentals address the necessary physical components of functional watersheds, ecological processes required for healthy biotic communities, water quality standards and objectives, and habitat for threatened or endangered species or other species of special interest. The Department believes that these provisions are critical to ensuring that BLM's administration of grazing helps preserve currently healthy rangelands and restore healthy conditions to those areas that currently are not functioning properly, especially riparian areas.

Where it is determined that existing grazing management needs to be modified to ensure that the conditions of healthy rangelands set forth in § 4180.1. Fundamentals of rangeland health, are met or significant progress is being made to meet these conditions, the authorized officer must take appropriate action as soon as practical, but not later than the start of the next grazing season. This may include actions such as reducing livestock

stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

State or Regional Standards and Guidelines. Standards and guidelines are to be developed for an entire State or for an area encompassing portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands will not be ensured by using standards and guidelines developed for a larger geographical area. The geographical area covered will be determined by BLM State Directors in consultation with affected RACs.

State or regional standards and guidelines will be developed, under the umbrella of the fundamentals and consistent with the guiding principles of this final rule, to provide specific measures of rangeland health and to identify acceptable or best management practices in keeping with the characteristics of a State or region such as climate and landform. The preparation of standards and guidelines will involve public participation and consultation with RACs, Indian tribes, and Federal agencies responsible for the management of lands within the affected area.

The guiding principles for the development of standards presented in this final rule pertain to the factors needed to help achieve rangeland health. More specifically, the factors relate to watershed function, threatened or endangered species and candidate species, habitat for native plant and animal populations, water quality and the distribution of nutrients and energy flow. The guiding principles for guidelines direct the identification of acceptable or best grazing management practices that will result in or ensure significant progress towards fulfillment of the standards.

State or regional standards and guidelines will provide the resource measures and guidance needed to develop terms and conditions of permits, leases, and other authorizations, AMPs and other activity plans, cooperative range improvement agreements and to issue range improvement permits in a manner that will result in maintaining or making significant progress toward healthy, functional rangelands.

Once standards and guidelines are in effect, the authorized officer is required to take appropriate action under 43 CFR part 4100 as soon as practical, but not later than the start of the next grazing year, upon determining that existing grazing management practices are significant factors in failing to meet the standards and conform with the guidelines. Appropriate actions may include reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Fallback Standards and Guidelines. The Department recognizes the importance of putting standards and guidelines in place in a timely manner, and has provided a mechanism for doing so in this rule. This final rule includes a provision for fallback standards and guidelines that would become effective 18 months after this rule becomes effective in the event that State or regional standards and guidelines have not been developed and put into effect. They will remain in effect until State or regional standards and guidelines are in effect.

The fallback standards and guidelines address largely the same factors that are provided in the guiding principles for the development of the State or regional standards and guidelines. The fallback standards include more detail regarding the conditions that would exist under each of the factors when rangelands are in a healthy, functional condition than do the guiding principles for State or regional standards discussed above. Similarly, the fallback guidelines include grazing management practices while the guiding principles for State or regional guidelines refer more generally to the types of concerns to be addressed. The BLM State Directors can adjust the fallback standards and guidelines, subject to approval of the Secretary, to fit State or local conditions.

Fallback standards and guidelines will be applied in the same manner as standards and guidelines developed for a particular State or region, which are discussed above.

NEPA and Implementation of Standards and Guidelines. The fundamentals of rangeland health proposed in this rule, and all standards and guidelines whether fallback, State, or regional, will be implemented subject to the National Environmental Policy Act of 1969 (NEPA) and applicable land use planning regulations. The fundamentals of rangeland health, the guiding principles for the development of State and regional standards and guidelines and the fallback standards and guidelines were analyzed in the FEIS for this final rulemaking. Any additional NEPA analysis required during development of State or regional standards and guidelines could tier to the analysis of the fundamentals of rangeland health and standards and guidelines presented in the FEIS.

BLM planning regulations direct that actions be in conformance with BLM land use plans. In some instances, the standards and guidelines may be consistent with existing land use plans and implementation may proceed without further action. In many cases, however, land use plans will require modification to ensure conformance with the land use plan and the standards and guidelines. The Department intends to develop State or regional standards and guidelines, complete plan conformance tests, and undertake necessary plan amendments within 18 months of the effective date of this rule. State or regional standards and guidelines will be implemented as they are finalized and approved by the Secretary.

The Federal Grazing Fee and Subleasing

Grazing fees. The fee portion of the proposed rule generated numerous public comments with diverse and conflicting views about the impact of an increased fee and the calculation of the fee formula. The Department has decided not to promulgate the fee increase provision of the proposed rule in order to give the Congress the opportunity to hold additional hearings on this subject and to enact legislation addressing appropriate fees for grazing on public lands. Other changes not pertaining to fees proposed in section 4130.7–1, redesignated as § 4130.8–1 in the final rule, remain a part of this rulemaking package.

As proposed, this section would have been amended by revising the grazing fee formula, with a provision for phasing in the grazing fee increase over the years 1995 through 1997. The proposed rule provided for a 30% incentive fee reduction. The incentive was to have been implemented after BLM developed separate rules describing the eligibility criteria for this incentive based fee. The proposed rule also provided that the full fee increase would not go into effect in the event that a separate final rule prescribing qualification criteria for the incentive-based fee was not completed. Multiple-year billing would have been allowed in certain circumstances. In addition, the proposed rule provided for a 25 percent cap on changes in the calculated fee from year to year. These proposals are not adopted in the final rule.

As adopted by today's action, Section 4130.8–1 clarifies the definition of billing unit, provides for assessing a surcharge in certain instances for the public landlord's share of authorized pasturing agreements associated with public land grazing, and clarifies that grazing use occurring before a bill is paid is an unauthorized use that may be dealt with under the settlement and penalties sections of this rule and may

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,

county, or local elected office, representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of natural resources, water quality, water rights, and State lands. At least one of the members appointed to each council must hold elected State, county, or local office. An individual may not serve on more than one RAC at any given time. Council members must have demonstrated experience or knowledge of the geographic area for which the council provides advice and a commitment to collaborative decisionmaking.

All members of RACs must attend a course of instruction in the management of rangelands that has been approved by BLM State Director.

Each RAC will have requirements for quorums and for making recommendations to the Department. Councils can request that the Secretary respond directly where the council believes its advice has been arbitrarily disregarded by the BLM manager. If requested, the Secretary will respond directly to a council's concerns within 60 days. Such a request would require agreement by all members of the council. The Secretary's response will not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal and will not preclude an affected party's ability to appeal a decision of the authorized officer.

Administrative support for a council will be provided by the office of the designated Federal officer.

Section 1784.6–2, RACs—Optional features, establishes optional features for RACs. Three different models are provided, and BLM State Director, in consultation with the Governor and other interested parties, will determine which model will best suit the needs of the State. General characteristics of the three models are presented above, in the section on ''Public Participation in Rangeland Management'' under the discussion of ''Major Elements of the Department's Program to Promote Healthy Rangelands.'' The first model is based largely on the model developed by the Colorado Working Group. The second model is based largely on the model developed by the Wyoming Steering Committee. The third model was developed by BLM after consideration of public comment.

Previous sections 1784.6–1, National Public Lands Advisory Council, 1784.6–4, District advisory councils, and 1784.6–5, Grazing advisory boards, are removed.

Part 4100—Grazing Administration—Exclusive of Alaska

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2, Objectives, is amended by revising the statement of objectives to include promoting healthy, sustainable public rangelands; accelerating restoration and improvement of public rangelands to properly functioning conditions; promoting the orderly use, improvement and development of the public lands; establishing efficient and effective administration of grazing of public rangelands; and providing for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands.

Section 4100.0–5, Definitions, is amended by removing the definition of ''Affected interests,'' ''Grazing preference,'' and ''Subleasing''; revising the definitions of ''Active use,'' ''Actual use,'' ''Allotment management plan (AMP),'' ''Consultation, cooperation and coordination,'' ''Grazing lease,'' ''Grazing permit,'' ''Land use plan,'' ''Range improvement,'' ''Suspension,'' and ''Utilization''; and by adding in alphabetical order the definitions of ''Activity plan,'' ''Affiliate,'' ''Annual rangelands,'' ''Conservation use,'' ''Ephemeral rangelands,'' ''Grazing preference or preference,'' ''Interested public,'' ''Permitted use,'' ''Temporary nonuse,'' and ''Unauthorized leasing and subleasing.''

Section 4100.0–7, Cross-references, is amended to guide the public to the applicable sections of 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, to 43 CFR part 1600 regarding the development of land use plans, and to 43 CFR part 1780 regarding advisory committees.

Section 4100.0–9, Information collection, is added to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section discloses to the public the estimated burden hours needed to comply with the information collection requirements in this rule, why the information is being collected, and what the information will be used for by BLM.

Subpart 4110—Qualifications and Preference

Section 4110.1, Mandatory qualifications, is amended to require that applicants for renewal or issuance of new grazing permits or leases, and any affiliates of such applicants, must be determined by the authorized officer to have a satisfactory record of performance. Applicants and any affiliates for renewal must be determined to be in substantial compliance with the terms and conditions of the permit or lease for which renewal is sought, and with applicable regulations. Applicants and any affiliates who have had a Federal grazing permit or lease, or a State grazing permit or lease for lands within the Federal grazing allotment for which application is made, cancelled within 36 months preceding application shall be deemed not to have a satisfactory record of performance. Applicants and their affiliates that are barred from holding a Federal grazing permit or lease by court order are also disqualified from receiving a new permit or lease. The amendments to this section also clarify that mortgage insurers, natural resource conservation organizations, and private parties whose primary source of income is not the livestock business, but who meet the criteria of this section, are qualified for a grazing permit or lease.

Section 4110.1–1, Acquired lands, is amended to clarify that existing grazing permits and leases on lands acquired by BLM are subject to the permit or lease terms and conditions that were in effect at the time of acquisition. Following expiration of the pre-existing permit or lease, applicants for grazing permits or leases will be subject to the provisions of § 4110.1 of this final rule.

Section 4110.2–1, Base property, is amended to clarify that base property must be capable of serving as a base for livestock operations but it need not actually be in use for livestock production at the time the authorized officer finds it to be base property. Further, the final rule makes clear that where authorized water developments on public lands that have been previously recognized as base property require reconstruction or replacement in order to continue to service the same area, and the reconstructed or new development has been authorized through a cooperative range improvement agreement, the permittee's or lessee's interest in the new or reconstructed water development will continue to be recognized as base property.

Section 4110.2–2, Specifying permitted use, is retitled to reflect the redefinition of the term ''grazing preference,'' and amended to replace the term ''grazing preference'' with ''permitted use.'' Also, the section is amended to clarify that levels of grazing use on ephemeral or annual ranges are established on the basis of the amount

of forage that is temporarily available pursuant to vegetation standards prescribed by land use plans or activity plans.

Section 4110.2–3, Transfer of grazing preference, is amended to reflect the new requirements of § 4110.1–1 pertaining to the applicant's history of performance and by adding a new paragraph (f) to require that new permits or leases stemming from transfer of the base property be for a minimum of three years, unless a shorter term is approved by the authorized officer.

Section 4110.2–4, Allotments, is amended to clarify that designation and adjustment of allotment boundaries includes the authority for, and the practice of, combining or dividing allotments when determined by the authorized officer to be necessary to achieve resource condition objectives or to enhance administrative efficiency. The section clarifies that modification of allotments must be done through agreement or decision of the authorized officer, following consultation, cooperation and coordination with involved persons, including the interested public.

Section 4110.3, Changes in permitted use, is amended by replacing the term ''grazing preference'' with ''permitted use,'' and by clarifying that changes in permitted use will be supported by monitoring data, field observations, land use planning decisions, or data collected through other studies.

Section 4110.3–1, Increasing permitted use, is amended by including the requirement that a permittee, lessee, or other applicant must be determined to be qualified under subpart 4110, 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 is added to factors to be considered in allocating available forage.

Section 4110.3–2, Decreasing permitted use, is amended by revising the heading, revising paragraph (b) to expand the list of methods for determining when a reduction in grazing use is necessary, and by deleting paragraph (c), which contained provisions for suspended use. The amendment adds ecological site inventory and other recognized methods for determining forage production as methods of identifying when use exceeds the livestock carrying capacity of the area considered. Monitoring remains as a means of determining forage production. The amendment also adds a reference to the fundamentals of rangeland health and standards and guidelines.

Section 4110.3–3, Implementing reductions in permitted use, is retitled and previous paragraph (a) and other requirements for phased-in reductions in permitted use are removed. Previous paragraph (b) is amended to remove the term ''suspension of preference'' and add in its place the term ''reductions in permitted use.'' The phrase ''when continued grazing use poses a significant risk of resource damage from these factors'' is amended to read ''when continued grazing use poses an imminent likelihood of significant resource damage.'' This clarifies that modifications in grazing use and notices of closure can be implemented where continued grazing use poses an imminent likelihood of significant resource damage. Additionally, paragraph (b) provides, by reference to § 4110.3–2, for the application of the fundamentals of rangeland health and standards and guidelines and the use of other methods, in addition to monitoring, for determining the need for an initial reduction, and clarifies the action of the field manager, requirements for consultation, cooperation and coordination with involved persons, including the interested public. Previous paragraph (c) is redesignated as paragraph (b) and amended to remove the word ''temporary'' to recognize that the influences of natural events such as drought can significantly affect vegetation health and productivity for several months or years after a drought has passed. Redesignated paragraph (b) retains the special provisions for making decisions effective upon issuance or on the date specified in the decision when action is needed to protect rangeland resources.

Paragraph (a) of § 4110.4–2, Decreases in land acreage, is amended by removing reference to suspended use. Reductions in authorized use under preference permits or leases will no longer be recognized as suspended use.

Subpart 4120—Grazing Management

Section 4120.2, Allotment management plans and resource activity plans, is amended by revising the heading and by adding a reference to other activity plans that may prescribe grazing management. The final rule clarifies that draft AMPs or other draft activity plans may be prepared by other agencies or permittees or lessees, but that such plans do not become effective until approved by the authorized officer. AMPs must include standards and guidelines. Paragraph (a) is also amended by replacing the reference to district grazing advisory boards with RACs and including State resource management agencies in the activity planning process.

The final rule also provides that permits and leases must include in their terms and conditions a requirement for conformance with AMPs or other applicable activity plans. Further, it provides that flexibility granted to permittees or lessees under a plan will be determined on the basis of demonstrated stewardship. The rule clarifies the existing provision that the inclusion of lands other than public lands in an AMP or other activity plan is discretionary. Finally, this section references the NEPA analysis and related public participation that is required for the planning and revision of allotment or activity plans, and provides that the decision document that follows the environmental analysis serves as the proposed decision for purposes of subpart 4160.

Section 4120.3–1, Conditions for range improvements, is amended by specifying in paragraphs (b) and (e) that ''cooperative agreements'' refers to cooperative range improvement agreements, and by inserting a new paragraph (f) addressing reviews of decisions associated with range improvement projects. The amendment clarifies the process for administering protests and appeals of decisions and provides that appeals are subject to the administrative remedies process set forth in 43 CFR part 4160.

The heading of § 4120.3–2, Cooperative range improvement agreements, is revised to clarify that this section deals with cooperative range improvement agreements as opposed to ''cooperative agreements'' with other Federal or State agencies. The section is amended to clarify that title will be in the United States for all new permanent grazing-related improvements constructed on public lands.

Title to temporary grazing-related improvements used primarily for livestock handling or water hauling can still be held by the permittee or lessee. The amendment will not affect ownership or rights currently held in a range improvement.

The provisions pertaining to title do not affect the existing practice of retaining a record of permittee or lessee contributions to specific authorized range improvement projects. This record will be used in determining compensation due the permittee or lessee in the event a permit or lease is cancelled in order to devote the public lands to another public purpose, including disposal of the lands. This record may also be considered during

the transfer of grazing preference to ensure that all interests in range improvements have been assigned to the transferee.

The amendment does not change agreements currently in effect. The amendment also clarifies that permanent water improvement projects will be authorized through cooperative range improvement agreements.

Section 4120.3–3, Range improvement permits, is amended to make it clear that a permittee or lessee may hold title to removable livestock handling facilities and to temporary improvements such as troughs for hauled water or loading chutes. The amendment will not affect ownership or rights currently held in a range improvement.

The final rule provides that BLM may mediate disputes when necessary about reasonable compensation for the operation and maintenance of facilities when another operator is authorized temporary use of forage that the preference permit holder cannot use. Finally, the rule removes as unnecessary the provision that permittees or lessees can control their livestock's use of ponds or wells.

A new section § 4120.3–8, Range improvement fund, is added to address the distribution and use of the ''range betterment'' funds appropriated by Congress through section 401(b) of FLPMA for range improvement expenditures by the Secretary. The range betterment fund has been called the range improvement appropriation by Congress, and is known by that title in BLM. The final rule provides for distribution of the funds by the Secretary, with one-half of the range improvement fund to be made available to the State and District from which the funds were derived. The remaining one-half is to be allocated by the Secretary on a priority basis. All range improvement funds will be used for on-the-ground rehabilitation, protection and improvements of public rangelands.

The final rule further clarifies that range improvement includes activities such as planning, design, layout, modification, as well as maintaining, monitoring and evaluating the effectiveness of specific on-the-ground range improvements in achieving resource condition and management objectives.

The final rule also requires consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. RACs will also be consulted during the planning of range development and improvement programs, including the development of budgets for range improvement and the establishment of range improvement priorities.

Section 4120.3–9, Water rights for the purpose of livestock grazing on public lands, is added to provide consistent direction for BLM regarding water rights on public lands for livestock watering purposes. This section provides that the United States will acquire, perfect, maintain, and administer any rights to water obtained on public land for livestock watering on public land in the name of the United States to the extent allowed by State law.

The rule adopted today will be prospective. The final rule does not create any new Federal reserved water rights, nor will it affect valid existing water rights. The provisions of this final rule are not intended to apply to the perfection of water rights on non-Federal lands. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States will remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the final rule does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Section 4120.5 is added to recognize and encourage cooperation with, among others, State, county, Indian tribal, and local government entities and Federal agencies.

Section 4120.5–1, Cooperation with State, county, and Federal agencies, is amended to recognize existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships.

Subpart 4130—Authorizing Grazing Use

This section is reordered to follow a more logical sequence. This discussion will use the new numbers and cross reference the old numbers. A table showing old and new numbers is included in the section-by-section discussion of this subpart.

Section 4130.1, Applications, is added. This action merely adds a title for purposes of the reorganization of the subpart.

Section 4130.1–1, Filing applications, is renamed from the proposed ''Applications'' and amended slightly to accommodate the new category of use, conservation use, which is adopted in this final rule.

Section 4130.1–2, Conflicting applications, is amended to add criteria to be considered in granting a use authorization or permit or lease. The rule incorporates the history of applicants' and affiliates' compliance with the terms and conditions of Federal and State grazing permits and leases and demonstrated stewardship of the public lands as criteria for granting permits or leases where there is more than one qualified applicant.

Section 4130.2, Grazing permits or leases, is amended so that permits and leases will continue to be offered for 10-year terms except in specified circumstances. The final rule also clarifies that all grazing permits and leases issued, including the transfer or renewal of permits and leases, will include terms and conditions addressing the fundamentals of rangeland health and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other factors that will assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands. The final rule also provides that the authorized officer must consult with interested parties prior to the issuance or renewal of grazing permits and leases and prohibits the offering or granting of permits and leases to applicants who refuse to accept the terms and conditions of the offered permit or lease.

The final rule clarifies the process of application for and granting of conservation use and temporary nonuse. Conservation use is established as one of the allowable uses for which a permit or lease may be granted when it is in conformance with the applicable land use and activity plans and the appropriate standards and guidelines.

Forage made available as a result of temporary nonuse may be authorized for temporary use by another operator. Forage used for conservation purposes would not be available to other livestock operators. The procedures guiding approval of nonuse have been developed in response to a recommendation from the March 19, 1986, OIG's review of the grazing management program.

Section 4130.3, Terms and conditions, is amended through a minor addition to reflect the requirement to conform with the fundamentals of rangeland health and standards and guidelines of subpart 4180.

Section 4130.3–1, Mandatory terms and conditions, is amended through minor additions and deletions which

clarify that use must not exceed the livestock carrying capacity of the allotment, and by removing unnecessary references to previous sections. The section is further amended to add a paragraph (c) that requires that the fundamentals of rangeland health and the appropriate standards and guidelines be reflected in the terms and conditions of permits, leases and other authorizations.

Section 4130.3–2, Other terms and conditions, is amended to provide for proper rangeland management and to remove unnecessary language. The final rule allows terms and conditions to provide for improvement of riparian area functions and protection of rangeland resources and values consistent with applicable land use plans. Paragraph (h) affirmatively states that BLM will have reasonable administrative access across the permittee's or lessee's owned or leased private lands for the management and protection of public land.

Section 4130.3–3, Modification, is amended to clarify consultation requirements in the modification of terms and conditions of permits and leases. The rule provides for greater State and public participation when changes are proposed that are not within the scope of the existing permit or lease. The rule also provides for increased State and public participation during the evaluation of monitoring results or other data that provide a basis for decisions regarding grazing use or management.

Section 4130.4, Authorizations within terms and conditions of permits and leases, is amended to allow field managers to make temporary changes in authorized use that are within the scope of existing permits and leases.

Section 4130.5, Free-use grazing permits, is modified to reflect new circumstances under which the authorized officer may grant free-use permits. This new provision was contained in § 4130.7–1 of the proposed rule.

The final rule provides that free use can be permitted where the primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage, to conduct scientific research or administrative studies, or to control noxious weeds.

Section 4130.6–1, Exchange of use grazing agreements, is amended to specify that exchange of use grazing agreements must be consistent with management objectives and compatible with existing livestock operations. The agreements will be required to address the fair sharing of maintenance and operation of range improvements and will be approved for the same term as any leased lands that are offered.

Section 4130.6–2, Nonrenewable grazing permits and leases, is modified to require the authorized officer to consult with the affected permittee or lessee, the State, and the interested public before issuing a nonrenewable permit.

Section 4130.6–3, Crossing permits, is modified to specify that crossing permits are a form of temporary use authorization.

Section 4130.7. Ownership and identification of livestock, is amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee must have an approved use authorization and must have submitted a copy of the documented agreement or contract that includes information required for BLM's administration of permits and leases and management of rangeland resources.

Sons and daughters of permittees or lessees are exempted from the provisions of this section in specified circumstances. This is necessary to allow sons and daughters, who are grazing livestock on public lands under their parents' permit or lease in specified circumstances, to avoid the pasturing surcharge provided in § 4130.8.

Section 4130.8–1, Payment of fees, is amended to make clear the definition of a billing unit, to provide for the assessment of a surcharge for authorized pasturing of another owner's livestock and to clarify that grazing use that occurs before a bill is paid is an unauthorized use, may be dealt with under the settlement and penalties sections of these regulations. Also, the section is amended to clarify that delays in payment of actual use billings and noncompliance with the terms and conditions of permits or leases may result in the loss of after-the-grazing-season billing privileges authorized under an AMP. For administrative convenience, the assessment of pasturing surcharges will not begin until the start of the next grazing year, March 1, 1996.

The final rule recognizes two types of authorized subleasing. The first is the sublease of public land grazing privileges along with the base property associated with the permit or lease. Such a sublease of the public land grazing privileges must be accompanied by a lease or sublease of the associated base property and the BLM authorized officer must approve the transfer of the grazing permit or lease. Such transfers shall be for a minimum of three years unless it is determined by the authorized officer that a shorter period is consistent with management and resource condition objectives. The second is a pasturing agreement under which livestock not owned by the permittee or lessee, but under the control of the permittee or lessee, is allowed to graze on the public lands that are subject to a permit or lease. The BLM authorized officer must approve such pasturing agreements. Other types of subleasing arrangements will be considered unauthorized. A surcharge for the lease or sublease of public land grazing privileges associated with base property is not adopted in the final rule.

The final rule provides for the collection of a surcharge for authorized pasturing activities associated with a Federal permit or lease. The final rule provides for a surcharge of 35 percent of the difference between the grazing fee per AUM rate and the prior year's private lease rate for the appropriate State as determined by the NASS for forage used by livestock owned by another party other than the permittee or lessee.

The final rule excludes from the pasturing surcharge sons and daughters of permittees or lessees grazing livestock on public lands as part of an educational or youth program pertaining to livestock rangeland management, or when establishing a livestock herd in anticipation of assuming part or all of the family ranch operation.

Section 4130.8–3, Service charge, is amended to include temporary nonuse and conservation use in the list of items for which BLM may assess a service charge. The service fee will offset the costs of processing such applications.

Subpart 4140—Prohibited Acts

Section 4140.1, Prohibited acts on public lands, is amended to clarify that failure to make substantial use as authorized is a prohibited act, but that approved temporary nonuse, conservation use, and use temporarily suspended are not prohibited acts.

This section also clarifies that it is prohibited to use public lands for grazing without a permit or lease and an annual grazing authorization. Furthermore, mere receipt of a grazing fee bill does not authorize grazing use of the range; the bill must actually be paid. (However, § 4140.1(c) specifically provides for civil penalties only where violations, including unauthorized use resulting from payment by a check that is not honored, are repeated and willful.) The final rule also makes it clear that the permittee is responsible for controlling livestock so cattle do not

stray onto ''closed to range'' areas where grazing is prohibited by local laws, such as formally designated agriculture districts or municipalities. The final rule specifies that permittees or lessees are subject to penalties if they violate Federal or State laws pertaining to protection of bald eagles, endangered or threatened species, and wild horses and burros; the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides or other hazardous materials; alteration of stream courses without authorization; pollution of water sources; illegal take; destruction or harassment of fish and wildlife; and illegal removal or destruction of archeological or cultural resources when public lands are involved or affected.

Other changes in the section clarify that it is unlawful to harm livestock authorized to graze on public land, and to interfere with other lawful uses of the land. These provisions include a prohibition on obstructing free transit across public land.

Finally, provisions which specify that violations subject to penalty under § 4170.1–1 are limited to those where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by permit or lease, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, are moved from proposed § 4170–1–3 and incorporated into this final section.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1, Violations, is reorganized for clarity and amended to add the requirement that the authorized officer must determine whether a violation is nonwillful, willful, or repeated willful. This clarifies subsequent sections of the rule.

Section 4150.2, Notice and order to remove, is amended to provide authority for the authorized officer to exercise discretion in determining how nonwillful violations will be settled, close areas temporarily for a period of up to 12 months to specified classes and kinds of livestock in order to abate unauthorized use, and allow notices of closure to be issued as final decisions.

Section 4150.3, Settlement, is amended to provide the authorized officer with the authority to consider nonmonetary settlement for unintentional incidental trespasses, in cases when the authorized officer determines the livestock operator is not at fault, when an insignificant amount of forage has been consumed, when damage to the public lands has not occurred, and when nonmonetary settlement is in the best interest of the United States. The method for determining settlement amounts is amended. Settlement for nonwillful violations equals the value of forage based on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in the State in which the violation occurred.

Subpart 4160—Administrative Remedies

Subpart 4160, Administrative remedies, is amended to improve organization, clarify administrative processes and requirements, provide for application of the Departmental rule located at § 4.21 of this title regarding effectiveness of a decision pending appeal and procedures for obtaining a stay, and provide for the issuance of decisions that take effect immediately.

Section 4160.1, Proposed decisions, is amended to clarify that a final decision may be issued without first issuing a proposed decision when action under paragraph 4110.3–3(b) of this part is necessary to protect rangeland resources, or when action is taken under paragraph 4150.2(d) to close an area to unauthorized grazing use. Other provisions clarify the information that must be contained in a proposed decision, and specify that decisions will be served by certified mail or personal delivery.

Sections 4160.1–1 and 4160.1–2 are removed.

Section 4160.3, Final decisions, is amended to clarify the process for filing an appeal and a petition for a stay of a final decision. It provides that decisions will be implemented at the end of the 30-day appeal period except where a petition for stay has been filed with OHA, in which case OHA will have up to 45 days to act on the petition. If the petition is granted, the decision will be stayed until resolution of the appeal.

The final rule also clarifies the amount of grazing use that is authorized when a decision has been stayed by OHA. Where an appellant has had no authorized grazing use during the preceding year, the authorized grazing use must be consistent with the decision, pending a final determination on appeal. Where a decision proposes a change in the amount of authorized grazing use, the authorized grazing use during the time an appeal is pending will not exceed the appellant's previously authorized use.

Finally, this section provides authority to the authorized officer for making decisions effective immediately, unless a stay is granted, when it is necessary to protect rangeland resources under the standards imposed by § 4110.3–3(b), or to facilitate abatement of unauthorized use by closing an area temporarily to grazing use under § 4150.2 of this part.

Section 4160.4, Appeals, provides instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, any person whose interest has been adversely affected may file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, OHA is allowed 45 days from the end of the appeal period to review a petition for stay.

Subpart 4170—Penalties

Section 4170.1–1, Penalty for violations, is amended to provide for a penalty for unauthorized leasing and subleasing in the amount of two times the private grazing land lease rate for the state in which the violation occurred as supplied annually by the NASS, as well as reasonable expenses incurred by the United States in detecting, investigating, and resolving the violation.

Section 4170.1–2, Failure to use, is amended to provide that if a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation with the permittee or lessee, may cancel whatever amount of permitted use the permittee or lessee has failed to use.

Section 4170.1–3, Federal or State animal control and environmental protection or resource conservation regulations or laws, is removed. The substance of this section is incorporated in § 4140.1(c) of this final rule.

Section 4170.2–1, Penal provisions under TGA, is revised slightly to specify that any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations, is punishable by a fine of not more than $500.

Section 4170.2–2, Penal provisions under FLPMA, is amended to adopt the alternative fines provisions of Title 18 U.S.C. section 3571.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Section 4180.1, The fundamentals of rangeland health (titled National Requirements for Grazing Administration in the proposed rule) for grazing administration, are added to establish fundamental requirements for achieving functional, healthy public rangelands. These fundamentals address the necessary physical components of functional watersheds, ecological processes required for healthy biotic communities, water quality standards, and habitat for threatened or endangered species or other species of special interest.

Where it is determined that existing grazing management needs to be modified to ensure that the conditions of healthy rangelands set forth in § 4180.1, Fundamentals of rangeland health, are met or significant progress is being made to meet the fundamentals, the authorized officer must take appropriate action as soon as practical, but not later than the start of the next grazing season. This may include actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements.

Section 4180.2, Standards and guidelines for grazing administration, is added to direct that standards and guidelines will be developed for an entire State or for an area encompassing portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands will not be ensured by using standards and guidelines developed for a larger geographical area. The geographical area covered will be determined by BLM State Directors in consultation with affected RACs. Once standards and guidelines are in effect, the authorized officer shall take appropriate action as soon as practical, but not later than the start of the next grazing year upon determining that existing grazing management practices are significant factors in failing to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines. The preparation of standards and guidelines will involve public participation and consultation with RACs, Indian tribes, and Federal agencies responsible for the management of lands within the affected area.

Section 4180.2(d) lists factors that, at a minimum, must be addressed in the development of State or regional standards. The guiding principles for the development of standards pertain to the factors needed to help achieve rangeland health. More specifically, the factors relate to watershed function, threatened or endangered species and candidate species, habitat for native plant and animal populations, water quality and the distribution of nutrients and energy flow. Section 4180.2(e) lists guiding principles to be addressed in the development of guidelines.

The rule provides that where State or regional standards and guidelines are not completed and in effect by February 12, 1997, the fallback standards and guidelines included in the text of the rule will be implemented. The fallback standards and guidelines address largely the same factors that are provided in the guiding principles for the development of the State or regional standards and guidelines. The fallback standards include more detail regarding the conditions that would exist under each of the factors when rangelands are in a healthy, functional condition than do the guiding principles presented in § 4180.2(d). Similarly, the fallback guidelines include grazing management practices while the guiding principles of § 4180.2(e) refer more generally to the types of concerns to be addressed in the development of State or regional guidelines.

Standards and guidelines will be applied through terms and conditions of grazing permits, leases and other authorizations, through AMPs and other activity plans, and through the conditions of cooperative range improvement agreements and range improvement permits. The Department recognizes that rangelands within a given area may be in functional, healthy conditions even though individual isolated sites do not meet the standards or guidelines. However, the Department believes that general failure to meet the benchmarks across a broader area, such as a typical BLM grazing pasture or BLM allotment, would be reliable evidence that the area is not in healthy, functional condition.

IV. General Comments

Numerous comments addressed the overall rulemaking. These comments asserted several central themes which crosscut different sections of the rulemaking. Accordingly, BLM has decided to address these central issues in this portion of the preamble. Within the context of such discussion, particular sections of the proposed and final rules will be referred to as necessary. Nevertheless, in these responses, BLM focuses upon central issues that were of concern to commenters throughout the proposal. Comments that were more specific to a particular section are discussed in the following section entitled Section-by-Section Analysis and Responses to Public Comments.

Rangeland Reform Is Not Needed

Some commenters took the position that general rangeland improvement is unnecessary. Their view was that current legislation, regulations, and procedures provide enough latitude and capability for the government to administer the public rangelands properly, therefore there is no justification for designing and implementing the rangeland improvement program. They stated that the initiative should be dropped or abandoned immediately. They asserted that the government has not shown that the proposal will benefit the western range and many of the elements of the rule are more appropriately dealt with in manuals, instruction memos, and policy guidance.

In addition, the comment was often made that the National Research Council study commissioned by the National Academy of Sciences reports that the conditions of rangeland health in the West are largely unknown. If the conditions are unknown, stated the commenters, it is impossible to demonstrate a need for the proposed rule. Some commenters stated that the entire proposal and EIS were politically driven and did not relate to the resource protection issues of public land administration.

The Department believes that there is a need for changes in public rangeland grazing administration. The Department has been collecting data on the condition of the rangelands for over 60 years. The Department does have considerable information on all BLM lands, based on these years of data collection, although the same level of detailed knowledge may not be available on every allotment. The information available is sufficient to identify trends in rangeland health across the western rangelands.

The status and trends of the western rangelands upon passage of the Public Rangelands Improvement Act (PRIA) in 1978 indicated that western rangelands were producing below their potential and that rangelands would remain in unsatisfactory condition or decline further unless the unsatisfactory conditions could be addressed and corrected by intensive public rangelands maintenance, management and improvement. Congress articulated its view in PRIA that such unsatisfactory conditions on public rangeland present a risk for soil loss, siltation,

desertification, water loss, loss of wildlife and fish habitat, loss of forage for livestock and other grazing animals, degradation of water quality, flood danger, and threats to local economies. In addition, BLM National Public Lands Advisory Council recommended in 1992 that ''* * * foremost consideration needs to be given to protecting the basic components of soil, water and vegetation. Without assurances for the future well-being of these basic natural resources, there is little to squabble about.''

BLM's research has concluded that in the long term under current management practices 22 million acres of BLM uplands would be functioning but susceptible to degradation, and about 20 million acres would be nonfunctioning. The vegetation in some areas would change from potential natural communities to mid seral or late seral stages because of overgrazing, fire, or drought. Conditions would be worse in riparian and wetland areas. The overall trends would be a slow, steady, long-term decline in conditions. Approximately 466,000 acres of riparian areas (43 percent of the total) on BLM land would be functioning but susceptible to degradation, and 219,000 acres (21 percent) would be nonfunctioning. The results of these studies are reported in detail in the FEIS on this rulemaking. These studies show that without some changes in the current program conditions in critical riparian areas would continue to decline.

The program of rangeland improvement responds to the needs of BLM to ensure the efficient administration and management of public rangelands, as well as to the findings expressed by Congress most recently in PRIA, the National Public Lands Advisory Council, and the Western Governors' Association. The program has included and will continue to include significant public involvement. The FEIS associated with the rulemaking examined several alternatives, including continuing grazing administration under current rules and procedures. The impact analysis in Chapter 4 of the EIS demonstrates there would be substantial improvement in riparian areas, uplands, and only slightly reduced forage availability under the alternative adopted today when compared to a continuation of current management.

Some commenters asserted that rangeland improvement is unnecessary because it will not improve the condition of the public rangelands. The Department disagrees. Commenters argued that few permittees or lessees are poor stewards of the public rangelands. They stated that the program will alienate many conscientious ranchers. The commenters asserted that the agencies and public may lose the service and support of these users in maintaining and improving the conditions of the public rangelands, and that rangeland conditions are likely to degrade. Therefore, they claimed, the initiative should be abandoned. However, the Department believes that improving administration of public rangelands will improve their condition, which will benefit all uses, including livestock grazing. This is discussed more fully in the FEIS on this rulemaking.

The standards and guidelines in the final rule are aimed at improving the ecological health of the rangelands. The analysis in the FEIS indicates there will be significant improvements.

The Department recognizes that the majority of public land grazing permittees and lessees are conscientious stewards. However, it also notes that line managers need clear authority and guidance to help correct problems in grazing use and to improve the degraded condition of some areas expeditiously. This program is intended to facilitate cooperation between BLM employees and public land users in making those improvements. Also, by making BLM and Forest Service management more similar, it will be easier for permittees and lessees to comply with land use requirements. Good stewards will not be adversely affected by this initiative and will have an opportunity to work with the Department to sustain the economic vigor of their industry while maintaining or improving the ecological health of the public lands. The Department recognizes that it is in the best interests of the users, the public, and BLM to cooperate in meeting these objectives.

Commenters also stated that the Department has gone through the formalities of public input but has failed to make public the findings and statistics of the letters and meetings. During development of the final rule, the Department considered all comments, and as a result has modified the language of the proposed rule. All comments received are available for review in BLM's administrative record. The section-by-section portion of this preamble explains the changes made to the proposed rule in this final rule.

Rangeland Improvement Is Inconsistent With Current Laws

Conflicts with TGA, FLPMA, and other laws. A number of comments questioned whether the proposed amendments to the grazing rule conflict directly with TGA, FLPMA, PRIA and other related Federal laws. The BLM's main statutory authorities for regulating grazing on the public lands are TGA, FLPMA and PRIA. In TGA Congress directed the Secretary to bring order to the management of the public rangelands and improve range conditions.

Specifically, Section 2 of TGA provides:

> The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts * * * and he shall make such rules and regulations * * * and do any and all things necessary to accomplish the purposes of this Act * * * namely to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range * * *.

The TGA authorizes the Secretary to, among other things, establish fees, issue permits and leases and prescribe terms and conditions for them, issue range improvement permits, and provide for local hearings on appeals. The emphasis on disposal of Federal lands changed with the Classification and Multiple Use Act in 1964 and FLPMA in 1976. In FLPMA Congress articulated the national policy that ''the public lands be retained in Federal ownership.'' 43 U.S.C. 1701. FLPMA also directs that land management be on the basis of multiple use and sustained yield, thus clarifying that other uses of public lands are equally appropriate. FLPMA did not repeal TGA, but did provide additional management direction. For example, section 402 of FLPMA provides that grazing permits and leases shall be:

> [S]ubject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

In 1978 Congress again focused on the public rangelands when it passed PRIA. In Section 2 of that Act Congress found that ''vast segments'' of the public rangelands were ''producing less than their potential for livestock, wildlife habitat, recreation, forage and water and soil conservation benefits,'' and so were considered to be in an unsatisfactory condition.'' Congress went on in Section 2 to reaffirm a national commitment to ''manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values.'' The

Department has concluded that the amendments to the grazing rule are within the statutory authority granted by Congress to the Secretary to administer the public lands under TGA, FLPMA, PRIA, and related acts.

NEPA issues. A number of commenters asserted that the draft EIS was inadequate. The commenters asserted that more local EISs were required. The FEIS prepared for the rangeland improvement program describes the environmental impacts that would result from several proposed alternatives for managing BLM administered rangeland and for changing the fees charged to permittees and lessees. Any subsequent narrower decisions, such as the state or regional standards and guidelines or, if necessary, more local determinations, will tier to the broader national FEIS. Tiering is appropriate when a subsequent EIS or environmental assessment is prepared on an action included in the overall EIS, in this case, the FEIS prepared for the overall program. Additional NEPA analysis will be conducted as appropriate as local or regional decisions are made.

FACA Issues. A number of commenters stated that some of the proposals relating to RACs, especially the provisions regarding task forces of those councils, were violations of FACA. The Department disagrees. The final rules adopted today provide that any subcommittee will report directly to the chartered advisory council. The advisory council will then independently review the input from the subcommittee prior to presenting any consensus advice to the agency. As long as subcommittees report to the agency through the chartered advisory committee, and do not provide advice directly to the agency, their operation is consistent with the requirements of FACA.

Takings. Some commenters asserted that various sections of the proposed rule raise the possibility of a ''taking'' of private property rights without ''just compensation.'' The United States Constitution gives Congress the ''Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.'' Article IV, § 3, cl. 2. The power includes authority to control the use and occupancy of Federal lands, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them. *Utah Power & Light Co.* v. *United States,* 243 U.S. 389, 405 (1917).

In a series of laws, Congress has delegated primary responsibility and authority to manage livestock grazing on public lands to the Secretary, acting through BLM. The basic laws are TGA, FLPMA and PRIA. In authorizing the issuance of grazing permits in TGA, Congress expressly provided that the ''issuance of a permit * * * shall not create any right, title, interest, or estate in or to the [public] lands.'' 43 U.S.C. 315b. In FLPMA, Congress authorized the Secretary to ''cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions'' of the permit or lease. 43 U.S.C. § 1752(a). The same section also authorizes the Secretary to ''cancel or suspend a grazing permit or lease for any violation of a grazing rule or of any term or condition of such permit or lease.'' These statutes are implemented by BLM's regulations at 43 CFR Part 4100 *et seq.*, including the amendments adopted here.

The Fifth Amendment to the United States Constitution provides in relevant part that no person shall be denied property without due process of law, and no private property shall be taken for public use, without just compensation. This Amendment protects private property. Because Congress made clear in TGA that grazing permits create no private property interest in public lands, the Fifth Amendment's protection is not implicated. The Courts have long held that no taking of private property occurs in the course of lawful administration and regulation of Federal grazing lands because the grazing permit represents a benefit or privilege bestowed by the Federal government upon a private individual and not a compensable property interest under the Fifth Amendment.

Thus, an authorized officer's decision to change permitted use (§ 4110.3), decrease permitted use (§ 4110.3–2), implement a reduction in permitted use (§ 4110.3–3), decrease land acreage (§ 4110.4–2), approve an AMP (§ 4120.2), or approve a cooperative range improvement agreement (§ 4120.3–2) does not give rise to a takings claim.

Some commenters asserted that permittees and lessees should be compensated for any indirect adverse impact that cancellation, nonrenewal, suspension or modification of grazing permits might have on the permittee's base property. While base property is private property protected by the Fifth Amendment, the United States Supreme Court, in an opinion by Chief Justice Rehnquist, specifically considered and rejected the argument that the increment of value added to a private ranch by a public land grazing permit is a compensable property interest, *United States* v. *Fuller,* 409 U.S. 488 (1973).

Even if, in other words, cancellation, nonrenewal, suspension, or changes in the terms and conditions of a grazing permit might have some negative effect on the value of the base property, the Supreme Court has made clear this is not a ''taking.''

Some commenters asserted that the proposal to clarify title to future permanent range improvements on the public lands in the name of the United States constitutes a ''taking'' of private property. The BLM has concluded that proper management of the public lands requires title to permanent improvements on the public lands to remain with the land and be held in the name of the United States. This clarification brings BLM in line with Forest Service policy. This provision is prospective in application; that is, it will not affect ownership or rights that may currently be held in a range improvement. In FLPMA, Congress provided for limited compensation for permanent improvements when a permit or lease is cancelled in whole or in part, in order to devote the public lands to another public purpose, including disposal. 43 U.S.C. 1752(g). To be faithful to this Congressional directive, the amendment requires the authorized officer to retain a record of permittee or lessee contributions to specific authorized range improvement projects. This record will be available for use in determining any compensation owed the permittee or lessee in the event a permit or lease is cancelled in order to devote the public lands to another public purpose.

Comments were also received on a proposed amendment to require permittees or lessees, as a term or condition of a grazing permit or lease, to allow BLM reasonable administrative access across non-Federal lands under its control for the orderly management and protection of the public lands. Sometimes, because of the location and configuration of public and non-Federal lands, BLM personnel need reasonable access across non-Federal lands under the control of permittee or lessee to access Federal land in order to carry out its management responsibilities on public land. Providing for such access is a reasonable condition to attach to the permit or lease authorizing livestock grazing on public lands.

Administrative appeals procedures. Many commenters raised questions of fairness and appeals; many of these commenters referred to these as ''due process'' issues. The existing administrative and applicable judicial protections afforded permittees and

lessees pertaining to the issuance, modification, suspension, cancellation, renewal and general administration of grazing permits and leases will continue. For example, some commenters read the proposal to amend § 4.477 to require a permittee to choose between the evidentiary hearing provided by TGA and a stay of a final decision. A permittee will not have to choose between an appeal and requesting a stay. Both will be available.

The provisions adopted today make the procedures for appealing a final decision consistent with standard Departmental procedures for other types of appeals. Any person whose interest is adversely affected by a decision of the authorized officer has full appeal rights. Standing to maintain an appeal will continue to be determined by OHA. Except in situations where immediate action is needed for resource protection in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d), BLM will issue proposed decisions, which may be protested. Except in situations where immediate action is needed for resource protection in accordance with the standards set for in §§ 4110.3–3(b) and 4150.2(d), no decisions will be effective until after the 30-day appeal period. The applicant can also file a petition for a stay of the decision while final determinations on appeal are being considered. If a petition for a stay is filed along with the appeal, the decision may be temporarily stayed for up to 45 days after the end of the 30-day period for filing an appeal while the petition is being considered. If a stay is granted, it will suspend the effect of the decision until final disposition of the appeal. Finally, parties have the option to seek administrative or judicial review of a decision that is put into immediate effect.

V. Section-by-Section Analysis and Responses to Public Comments

Part 4 of Title 43—Department Hearings and Appeals Procedures

Section 4.477 Effect of Decision Suspended During Appeal

The proposed rule would have revised the heading of this section to reflect that grazing decisions would no longer automatically be suspended when an appeal is filed as provided in the proposed revision of 43 CFR subpart 4160, and would also have removed other references to suspension of the decision of the authorized officer upon appeal.

Comments on this section addressed several major issues. Some commenters asserted that the proposal did not provide adequate opportunity for administrative appeals and violated various statutory provisions. Some read the proposal to require a permittee to choose between the evidentiary hearing provided by TGA and a stay of a final decision. Other commenters were concerned about possible fiscal impacts of the provision. Other commenters stated that the proposed provision would speed implementation of needed grazing decisions.

The provisions adopted today make the procedures for appealing a final decision consistent with standard Department procedures for other types of appeals. These procedures are detailed in regulations of the Department's OHA, Title 43 of the Code of Federal Regulations, Part 4, Subpart B. Any person whose interest is adversely affected by a decision of the authorized officer still has full appeal rights. Except in situations where immediate action is needed for resource protection in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d), decisions will not be in effect until after the 30-day appeal period. An appellant can also file a petition for a stay of the decision while final determinations on appeal are being considered. If a petition for a stay is filed along with the appeal, the decision will be temporarily stayed for up to 45 days after the end of the period for filing an appeal (for a total of up to 75 days) while the petition is being considered. If a stay is granted, it will suspend the effect of the decision until final disposition of the appeal.

The provision will not require an appellant to choose between this process and the hearing on the evidence granted by TGA. The hearings referenced in this provision do include a review of the evidence on the case. A permittee will not have to choose between having such a hearing and requesting an appeal. Both will be available.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed. The phrase ''pertaining to the period during which a final decision will not be in effect'' is added to clarify that the reference to § 4.21(a) relates to those specific provisions.

Part 1780—Cooperative Relations

Section 1784.0–5 Definitions

The proposed section would have replaced the term ''authorized representative'' with ''designated Federal Officer'' to make the terminology of the rule more consistent with the terminology of FACA and 41 CFR 101–6.1019.

The Department received very few comments on this initial section of the discussion of cooperative relations. The most common issue raised was the abolition of grazing advisory boards (GABs). This issue is covered below under the discussion of § 1784.6–5.

Some comments suggested that the change from ''authorized representative'' to ''designated Federal officer'' was designed to give greater authority and stature to Federal personnel.

Each RAC or other advisory committee will have a ''designated officer of the Federal Government,'' as required by section 10(d) of FACA, who will chair or attend each meeting. The regulations implementing FACA, 41 CFR subpart 101, use the term ''designated Federal officer'' and prescribe the authority and responsibility of that position. As required by FACA, this officer will call the meetings of the committees and will develop the agendas of the meetings.

In accordance with the above discussion, the Department has concluded that the final rule will include these changes as proposed, because it intends that cooperative relations be conducted in conjunction with FACA and the language and requirements of this final rule should be consistent with FACA.

Section 1784.2–1 Composition

Under the proposed rule, this section would have been amended by eliminating paragraph (b), and amending existing paragraph (c), which is redesignated new paragraph (b). Previously, paragraph (b) established an eligibility requirement for grazing advisory board members. This requirement would no longer have been necessary with the discontinuance of the grazing advisory boards.

New paragraph (b) would have added to existing education requirements for committee membership new requirements that individuals can qualify to serve on advisory committees if they have experience or knowledge of the geographic area covered by the committee, and they have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

Many commenters expressed confusion about the Department's use of the terms ''board,'' ''council'' and ''committee.'' In this final rule, ''council'' is used to refer exclusively to the RACs. ''Committee'' is used in §§ 1784.0–5, 1784.2–1, 1784.2–2, 1784.3, 1784.5–1, and 1784.5–2. These

sections have application to all types of advisory committees, not just RACs. A RAC is a type of advisory committee. Sections 1784.6–1 and 1784.6–2 concern RACs. ''Board'' is not used in this final rule.

Many commenters on this section supported the concept of broadening membership on the councils. Commenters noted that because useful knowledge and expertise is widely distributed in society, membership of advisory committees should be broadened to take advantage of this.

Some commenters specifically objected to changing this section. There were a number of comments about the specific composition of the councils. Most of these comments were also addressed to subsequent sections, especially § 1784.6–1. Since these comments related to the Department's proposals concerning the makeup of the RACs, they are discussed under that section, below.

Some commenters made an identical suggestion to change the last clause of § 1784.2–1(b) by striking the requirement that council members have ''demonstrated a commitment to collaborate in seeking solutions to resource management issues.'' One comment stated that commitment without necessary concurrent expertise is useless, and that accommodation for regional differences in a broad range of specific information on each area should be a necessity. A number of commenters questioned who or what should determine adequate experience, and others suggested a better definition was needed.

A commitment to collaborative decisionmaking is critical to the success of these committees. The Department has concluded that the final rule will adopt the proposed language requiring both appropriate expertise and a commitment to collaborative decisionmaking, because such a balance is the best way to assure the success of any advisory committee.

FACA requires that the head of an agency appoint members to any committee providing consensus advice to the agency. In the case of RACs, the Secretary must appoint members. In making final selections of RAC members, the Department will make determinations as to what is adequate experience. Since geographic areas covered by individual RACs will be highly variable it would be difficult to define this term too narrowly without unduly limiting the flexibility which will be needed to ensure that each council includes members who will represent a broad range of interests and make a substantive contribution to the committee's deliberations.

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

Section 1784.2–2 Avoidance of Conflict of Interest

In the proposal, paragraph (a)(1) of this section would have been amended to allow permittees and lessees to serve on any advisory committees, including RACs and their subgroups. This change would have been made to ensure that permittees and lessees, as important stakeholders in the management of public lands, could provide input to advisory committees so that the committees would have been able to develop recommendations based on direct community and user input. Paragraph (b) would have clarified that no advisory committee member could have participated in any matter in which the member had a direct interest. The proposal included a new paragraph (c), which would have provided that members of RACs have to disclose their direct or indirect interest in Federal grazing permits or leases administered by BLM.

The Department received many comments on this section. Many commenters believed the conflict of interest provisions applied only to ranchers, and stated that such provisions were unfair and should apply to all members of the councils. Many commenters spoke to the membership of environmentalists on the councils. Commenters asserted that environmental groups have a direct conflict of interest. Some asserted that all users of specific areas have an interest in that area, and should be excluded from serving on a council studying the situation in that area. Commenters stated that allowing members of national or regional environmental groups to serve violated the local concept of the RACs.

A number of commenters asserted that permittees or lessees who were involved in an issue should be involved in the process, so they would have ownership of or support the solution developed in a RAC. Others suggested that since permittees and lessees are bound by the terms and conditions of their permits or leases, and by the provisions of AMPs, it would seem only proper to allow permittees or lessees on a council to provide input into the management decisions which will affect that grazing allotment. One comment suggested that individuals with an interest in an issue should be allowed to participate in the discussions of the issue, but should be excluded from any voting required.

Another commenter provided a suggested definition of indirect interest that includes any situation in which outside interests, of whatever nature, might lead to substantial interference with or disregard for a duty of serving on a grazing council or committee.

Commenters challenged the legal basis for a conflict of interest provision. They asserted that if it is based on the Ethics in Government Act, that the law is limited to Federal employees or paid advisors, and that ethical standards under Federal law are not limited to financial gain but include the use of one's official position to promote a personal viewpoint.

''Conflict of interest'' is an accepted legal concept that generally refers to ''a clash between public interest and the private pecuniary interest of the individual concerned.'' (Black's Law Dictionary, 5th Edition, 1979, p. 271). The concept applies to situations where a committee member, who is serving a public interest, has private financial interests that might conflict with his or her public role. This would include holding a permit that might be impacted by the deliberations of a RAC.

The provision does not apply only to permittees or lessees. It applies to all advisory committee members. The provision does not apply to situations in which an individual's interest in the deliberations of a committee is not financial. The provision does not refer to cases where an individual has a membership in an organization that is in litigation with the government, unless the individual has a pecuniary interest in the outcome of the litigation. Furthermore, it does not refer to cases where an individual might develop reports for another organization that in turn might influence agency decisions.

Permittees and lessees were specifically mentioned in this provision to draw attention to the fact that the proposed rule *broadened* the opportunities for participation by such persons. Under the previous regulations at § 1784.2–2, permittees and lessees normally would have been prohibited from serving on any committees advising BLM except for grazing advisory boards. Under the provision adopted today, permittees and lessees can participate on the broader based RACs or on any other advisory committee.

The concepts of ''direct'' and ''indirect'' interest refer back to the basic principle of conflict of interest, and refer to financial matters. Both terms are defined in common usage. ''Direct'' interest refers to an interest

which is certain, not in doubt or contingent on some other factor. ''Indirect'' interest refers to an interest contingent on another factor, or through a third party. In the case of permittees, an indirect interest will generally be an interest in a permit or lease that is through a third party, such as a child, spouse, business partner, or other affiliate.

The rule as finalized allows permittees and lessees with financial interests to serve on committees, thus broadening the base of advice available to the Department. This provision simply requires *disclosure* of interests by advisory committee members, and prohibits them from participating in *specific matters* in which they have such interests. It does not prevent persons with a legal interest from serving on committees.

Comments concerning application of conflict of interest provisions caused the Department to reexamine the types of interests that would have to be disclosed by committee members. In the final rule, as detailed below, the Department has expanded the list of interests that might be held by persons who might serve on RACs and which must be disclosed.

In the final rule, the Department has sought to correct any confusion between the terms ''council,'' ''committee,'' and ''board,'' as discussed at § 1784.2–1. Conflict of interest provisions apply to *all* advisory committees that advise the Department as well as to the RACs.

In accordance with the above discussion, the Department has concluded that the final rule should adopt a modified version of the proposed rule. Modifications have been made to ensure consistency in the use of the terms ''council'' and ''committee,'' and for consistency with other changes to the proposal regarding the structure of RACs, discussed below under §§ 1784.6–1 and 6–2. Additionally, the word ''multiple'' is eliminated in this section, and in all subsequent sections. The Department has made this decision to simplify the name of the councils.

In final paragraph (c), the phrase ''leases, licenses, permits, contracts, or claims which involve lands or resources, or in any litigation which involve lands or resources administered by the Bureau of Land Management,'' is substituted for the phrase ''Federal grazing permits or leases.'' This last change is made for consistency with the principle that this provision applies to *all* types of financial interests. The phrase adopted is consistent with that in existing paragraph (a) of this section. While persons who hold such interests will still not normally be allowed to serve on advisory committees, except for the general exception introduced by this rule for grazing permittees or lessees, under special circumstances such a person may serve on a committee. In such case, the person would be required to disclose his or her interests.

Section 1784.3 Member Service

The proposed rule would have established that appointments to advisory committees would have been for two-year terms unless otherwise specified in the charter. Specific references to grazing advisory board, district advisory council and National Public Lands Advisory Council appointments, terms and election procedures, would have been removed.

Also, the provisions for reimbursement of committee members' travel and per diem expenses would have been modified to make clear that individuals selected by committees to provide input, but who themselves are not appointed committee members, would not have been eligible for reimbursement. This provision was necessary to limit costs.

Several comments were received on the charters and chartering process for advisory committees. Some comments indicated that as proposed, the changes would create the need for a new charter for each committee which would result in a lack of continuity in committee functioning.

Today's action amends the general advisory committee regulations found at 43 CFR Subpart 1784. These general regulations contain standards and procedures for the creation, operation and termination of advisory committees to advise the Secretary and BLM on matters relating to public lands and resources under the administrative jurisdiction of BLM. The proposed amendments must comply with the requirements of FACA. Thus the Department's discretion is limited by the terms of FACA.

FACA directs that advisory committees shall terminate within two years of establishment, unless renewed. At the time of renewal a new charter must be filed. The Department expects that charters will look substantially the same each time they are renewed, although changes may be made if experience suggests revisions are needed. The charter will meet the requirements of FACA, but will be relatively general in nature. Charters will include provisions such as council purpose and responsibilities, membership requirements, and terms of appointments. Bylaws may be prepared by individual councils if needed to provide additional procedural guidance.

Many comments were received on membership service and tenure. Comments included the following: a public official's term on a committee should coincide with the term of office, vacancies should be filled in the same manner as positions were originally filled, members should be selected on the basis of merit, and membership should be staggered to achieve continuity. Several comments suggested that members should serve for longer than two years so they would become familiar with issues. Some comments indicated that two-year limits should be established. Other comments supported the view that charters should allow lifetime membership. Some comments suggested that members should be elected. Some of these comments suggested that members should be elected by grazing permittees and lessees.

Under FACA, the Department has some discretion regarding the terms of service for members. Generally, member terms are coterminous with the term of the charter. The Department intends to follow this general practice with RACs, except where special circumstances require otherwise. For example, the Department intends to appoint initial members to staggered terms, so members' terms will not all terminate in the same year. This ensures that there will always be experienced members on a council. The Department expects that some members will be reappointed, providing additional continuity to the councils. These practices have been used successfully in the past.

As explained in the discussion of § 1784.2–1, appointments to the advisory councils will be by the Secretary, as required by FACA. Secretarial appointment is also required by FLPMA. The Department will seek nominations from Governors, interested groups and private citizens. Members will qualify to serve on advisory committees because their education, training, or experience enables them to give informed and objective advice on matters of interest to the committee. Decisions about replacing members appointed to fill the position of the local elected official when the member's elective term expires will be made on a case-by-case basis. Existing paragraph (b)(2), which by today's action is redesignated (a)(2), provides for filling vacancies occurring by reason of removal, resignation, death, or departure from elective office. Such vacancies are to be filled using the same method by which the original appointment was made. Under existing

paragraph (b)(1), which by today's action is redesignated (a)(1), BLM must replace members of committees who are serving in the elected official position, and who leave office. It may be possible in some cases for the member to continue to serve on the council in another appointed position.

Comments were received both for and against BLM payment of travel and per diem for council members. Some comments suggested that members should volunteer their time and expenses and some comments suggested that non-resident members should pay for their own travel. Other comments questioned whether advisory committee costs would escalate over time and whether councils would be in session all of the time. One comment questioned why members of resource area councils should be reimbursed, but not rangeland resource teams or technical review teams, and suggested that BLM establish technical teams and reimburse the technical team members.

FLPMA (43 U.S.C. § 1739), as amended by PRIA (43 U.S.C. 1908), requires establishment of advisory committees representative of major citizen interests concerned with resource management planning or the management of public lands. The RACs will fulfill this requirement. Section 309 of FLPMA provides that ''members of advisory councils shall serve without pay, except travel and per diem will be paid each member * * *'' Regulations at 43 CFR subpart 101, Federal Advisory Committee Management, also allow payment of travel expenses and per diem.

The objective of RACs established under these regulations is to make available to the Department and BLM the advice of knowledgeable citizens and public officials regarding both the formulation of operating standards and guidelines and the preparation and execution of plans and programs for the use and management of public lands, their natural and cultural resources, and the environment. The Department has concluded that to ensure broad and regular participation by members, it will continue to compensate advisory committee members for travel and per diem expenses. The Department does not anticipate that operating these committees will generate a need for substantial increases in Federal funds in the future. In any event, funding is subject to future review in the budget and appropriations process. Moreover, advisory committees are required under FLPMA and the Department has concluded the committee structure adopted in the rule will reap tangible rewards in improved land management and increased cooperation among stakeholders.

The Department anticipates that the localized teams will be in existence for limited time periods and will focus on fairly narrow issues. As a result, the Department has concluded that members of these teams who are not also members of the parent advisory council will not be reimbursed for travel and per diem. The Department is also making the decision not to reimburse expenses of these localized teams in order to limit the expenses incurred by BLM and the Department. However, the final rule allows BLM to constitute a special function subgroup such as a technical review team and reimburse RAC members for travel expenses. In addition, the Department has the authority to purchase services in support of an advisory council, and on occasion may do so.

In accordance with the above discussion, the Department has decided to adopt a version of the proposed rule. Several minor changes are made in paragraph (d). All of these changes are intended to clarify that this section applies to all advisory committees, not just RACs. References to resource review teams and technical review teams are omitted from the final version of the rule for that reason, and for consistency with the models of RACs finalized today in §§ 1784.6–1 and 6–2. Those terms are replaced with a more general reference to ''subgroups.''

Section 1784.5–1 Functions and Section 1784.5–2 Meetings

These sections would have been amended by replacing the term ''authorized representative'' with the term ''designated Federal officer.'' These changes would have provided consistency with the terminology of FACA.

No comments were received that pertained solely to these sections. The Department has decided to adopt this provision as proposed.

Section 1784.6–1 National Public Lands Advisory Council, Reserved Sections 1784.6–2 and 1784.6–3, Section 1784.6–4 District Advisory Councils, and Section 1784.6–5 Grazing Advisory Boards

References to the National Public Lands Advisory Council, district advisory councils and grazing advisory boards would have been removed in their entirety and replaced with three new sections that would have established multiple resource advisory councils and associated input teams. Sections 1784.6–4 and 1784.6–5 would have been removed. Reserved sections 1784.6–2 and 1784.6–3 would have been replaced by new sections.

No comments were received on the proposals relating to §§ 1784.6–2 and 6–3. A number of comments were received concerning §§ 1784.6–4 and 6–5. Comments directed to § 1784.6–1 have been addressed below in the discussion of the new provisions in that section.

Many commenters stated that the grazing advisory boards' members had both knowledge of and an interest in the land. Some commenters who supported establishment of the RACs stated that the grazing advisory boards should also be retained; others stated that the grazing advisory boards should be abolished.

Grazing advisory boards have served a useful purpose in providing the Department with valuable input from permittees regarding grazing issues. However, the statutory provision in FLPMA, section 403, establishing grazing advisory boards expired by its own terms on December 31, 1985. Since then, the boards have been authorized only by Secretarial order. For several reasons, the Department has concluded that it will proceed with its proposal to abolish the boards and to rely on one general form of advisory committee, the RACs. While grazing advisory boards have been useful, the Department believes that more collaborative public rangeland management requires a broader scope of interests advising BLM. The function of grazing advisory boards, as defined by FLPMA, was limited to making recommendations to management concerning the development of AMPs and the utilization of range betterment funds. While grazing advisory boards may have included some individuals not involved in grazing, this was not uniformly the case. RACs will address a full range of resource management issues, including AMPs and planning for the expenditure of range betterment funds and will broaden public involvement in the process.

All groups that provide advice to the Federal government are subject to the requirements of FACA, unless specifically excluded by statute. FACA specifies a series of requirements for committees and other bodies advising the Federal government, including that they be balanced in terms of representation, have notices of meetings published in the **Federal Register** and be open to the public, keep various types of records, and implement other procedural safeguards that will assure public involvement in resource management issues. The Department believes it is important that management of the public rangelands

involve a wide range of public involvement. To achieve this, and to comply with FACA, the Department has concluded that grazing advisory boards should be abolished and RACs created.

In accordance with the above discussion, the Department has concluded that the final rule should adopt provisions as proposed because these provide the best alternative for promoting cooperative relationships in resource management.

Section 1784.6 Membership and Functions of Resource Advisory Councils and Council Subgroups

In the proposal, the title of this section would have been changed for consistency with subsequent changes in §§ 1784.6–1 through 6–3. It would have referenced multiple resource advisory councils (MRACs), as well as rangeland resource teams and technical review teams.

A few comments were addressed to this section, but covered issues relating to the substance of the following sections. They will be discussed under the pertinent sections below.

Because the Department has concluded that the final rule should adopt a more flexible model for public participation than was envisioned in the proposal, it has changed this title to reflect the three model version of RACs adopted in final rule §§ 1784.6–1 and 6–2. References to rangeland resource teams and technical review teams are changed to ''subgroups'' for that reason, and ''multiple'' is omitted from the name of the RACs, as discussed at § 1784.6–1.

Section 1784.6–1 Resource Advisory Councils—Requirements

Under the proposed rule, this section would have provided for the establishment of MRACs. One MRAC has been established for each BLM administrative district except when prohibited by factors such as limited interest in participation, geographic isolation in terms of proximity to users and public lands, or where the configuration and character of the lands is such that organization of councils along BLM district boundaries is not the most effective means for obtaining advice on the management of all the resources across an entire area. The exceptions would have been intended to provide for situations such as those encountered in Alaska where it is difficult for interested persons to participate because of extreme travel distances, or situations where management of neighboring BLM districts or portions of districts involving similar lands can best be served by organizing an MRAC along boundaries other than BLM district administrative boundaries. The determination of the area for which an MRAC would have been organized would have been the responsibility of the affected BLM State Director. Organization by ecoregion boundaries would have been encouraged where appropriate. The Governors of the affected States and established MRACs could have petitioned the Secretary to establish an MRAC for a specific BLM resource area.

MRACs would have provided advice to BLM officials to whom they report regarding the preparation, amendment and implementation of land use plans. The councils would also have assisted in establishing other long-range plans and resource management priorities in an advisory capacity. The Department intended that this would have included providing advice on the development of plans for range improvement or development programs and included in the proposed amendments to 43 CFR subpart 4120 a requirement for consultation with MRACs in the planning of range improvement or development programs. MRACs would not have provided advice on personnel management, nor would they have provided advice on the allocation and expenditure of funds subsequent to budget planning.

Appointments to MRACs would have been made by the Secretary. In making appointments, the Secretary would have considered nominations from the Governor of the affected State and nominations received in response to a public call for nominations. The Secretary would have encouraged Governors to develop their nominations through an open public process. In reviewing nominations submitted by the Governors, the Secretary would have considered whether an open public process was used. All nominations would have been required to be accompanied by letters of recommendation from interests or organizations to be represented that are located within the area for which a council is organized.

The Secretary would have appointed 15 members to each MRAC. Five members would have been selected from persons representing commodity industries, developed recreational activities, or the use of public lands by off-highway vehicles; five would have been selected from representatives of nationally or regionally recognized environmental or resource conservation groups and wild horse and burro interest groups, from representatives of archeological and historical interests, and from representatives of dispersed recreational activities; and five would have been selected from persons who hold State, county, or local elected office, and representatives of the public-at-large, Indian tribes within or adjacent to the area, natural resource or natural science academia, and State agencies responsible for the management of fish and wildlife, water quality, water rights, and State lands. The proposed rule would have required that at least one of the members appointed to each council must hold elected State, county, or local office. An individual would not have been allowed to serve on more than one MRAC at any given time.

The proposed rule would have required council members to have demonstrated experience or knowledge of the geographic area for which the council provides advice. It would have required that all members of MRACs attend a course of instruction in the management of rangeland ecosystems that had been approved by BLM State Director. This requirement was intended to ensure a common general understanding of the resources management principles and concerns involved in management of the public lands.

The proposed rule would have provided that an official meeting of an MRAC required at least three members from each of the three broad categories of interests from which appointments were made. Formal recommendations of the council would have required agreement by at least three members of each of the three broad categories of interests that attend an official meeting.

MRACs would have had the option of requesting a Secretarial response where the MRAC believed its advice had been arbitrarily disregarded by the BLM manager. If requested, the Secretary would have responded directly to a council's concerns within 60 days. Such a request would have required agreement by all 15 members. The Secretary's response would not have constituted a decision on the merits of any issue that is or might become the subject of an administrative appeal and would not have precluded an affected party's ability to appeal a decision of the authorized officer.

The Department received many comments on this section of the proposal. Many commenters were opposed to the abolition of the grazing advisory boards. Comments on the grazing advisory boards have been covered above in the discussion of § 1784.6–5. Many were opposed to the formation of the MRACs. Others said that the proposed system was in direct conflict with the requirements for BLM

to coordinate with State and local government in the decisionmaking process because the new system would be unwieldy and expensive. Some commenters stated that the councils would not bring about significant changes in the health of our public lands, but would perpetuate local control of public lands.

Other commenters were opposed to the MRACs because they said that the Federal agencies were being paid to manage the public land for public benefit, and they should do so. Some commenters charged that the Department was trying to subordinate or eliminate its legal obligations under sections of PRIA. Others stated that the public is involved in range decisions through the NEPA process and so MRACs were unnecessary.

Many commenters supported establishment of the MRACs. A typical comment stated they were an improvement over the grazing advisory board system. Several of the commenters who supported establishment of the councils suggested they be tried on an experimental basis.

Many commenters spoke to the make-up of the MRACs. Most of these commenters stated that ranchers would be under-represented. Some pointed out that the practical, ecological and managerial knowledge of permittees is essential, and that therefore they should be a required component. Some suggested that council membership should reflect the major users of the land in each specific area.

Some commented that it was discrimination to require environmentalists to be members of national organizations. Others said it was unfair to exempt the staffs of environmental organizations from the residency requirements which they believed were imposed on all other council members.

Many commenters spoke to participation of government employees on the councils. Some supported such participation especially by representatives of State wildlife agencies. Others were opposed to participation by government employees because they believed BLM would coordinate with such agencies anyway, and the councils should be for the government to get public input.

Some stated that prospective members should be supported by letters of recommendation from individuals and local associations of the area they would represent. Others specifically were opposed to the requirement for letters of recommendation. Commenters said that to require letters of recommendation from ''local interests'' would prevent the councils from being balanced and violates FACA. One comment stated that because salmonids were so important in many areas, someone on the council should be knowledgeable of salmonids.

Other comments regarding membership addressed lending institutions, academicians, Indian tribes, and other specific groups.

Many commenters said that it was important for the MRACs to be made up of people who had local interests and knowledge, and stated that all members should be local. Other related comments addressed the need for local expertise, a financial stake in the land, and other factors. Some asserted that council members must share a primary commitment to improving grazing as a land use. Some of these same commenters asserted that all members should be required to demonstrate their knowledge of rangeland, vegetation, and livestock management, or related areas.

Many commenters were concerned with the process of selecting members. Suggestions included that members be elected by the permittees, or appointed by the county commissioners or the Governor. Others objected to their being appointed by the Governor or by the Secretary. Many commenters objected to self-nomination of individuals to the MRACs.

A number of commenters spoke on operation of the MRACs. Some stated that no expenses should be paid. Some suggested that strict standards on conduct and meetings should be developed to prevent one interest from dominating. Others suggested that recommendations from the local council should have some jurisdiction over the actions of the Federal land management agency. Some commenters stated that the provision prohibiting councils from providing advice on funding and personnel matters was too restrictive. Some objected to the Secretarial appeal provision. Several asked whether the MRACs would give recommendations or advice, or suggested that the advisory council serve as a reviewer of proposed decisions of the authorized officer. Some commenters raised a concern about the development and content of the charter, and about evaluation of the councils. Others were concerned about the requirement for consensus because they thought it would result in a serious delay in decisionmaking.

Some commenters spoke to the jurisdiction of the MRACs and how that would be determined. A number stated they should be based on BLM districts or on ecoregions. Some objected to the State Director being authorized to determine the area covered by a council.

A number of commenters spoke to council size. Some stated they were too large, a few thought they were too small. Some stated that the basic principle should be balanced and broad representation of public concerns, not a specific number. A number of specific recommendations for MRAC membership and size were made.

Numerous substantive suggestions were made for the course of study. Other comments included a statement that the proposal differed in several material respects from the products of the Colorado Working Group. Some commenters suggested that various terms be defined including ecosystem, biodiversity, environmentalist, rangeland ecosystem, historical and archeological interests, direct interest, dispersed recreational activities, insufficient interest, unbalanced viewpoint, nationally or regionally recognized, and ecosystem boundaries. Some commenters suggested that the MRAC should take no actions to which the permittees or lessees involved did not agree.

The Department's decisions to form the RACs and to abolish grazing advisory boards have been discussed at § 1784.6–5, as is the need for greater public involvement than that provided by the grazing advisory boards. General requirements of FACA, which have dictated a number of the provisions adopted today, are discussed at § 1784.2–1, Composition. Under the requirements of FACA, members of committees advising the Federal government must be appointed by the head of the agency, in this case the Secretary. State and local government will be included in the process through representation on the RACs, as well as being consulted on numerous specific types of decisions, such as on designation or adjustment of allotment boundaries (§ 4110.2–4), increasing permitted use (§ 4110.3–1), implementing reductions in permitted use (§ 4110.3–3), development of AMPs (§ 4120.2), and other BLM decisions. *See* the discussions below on those sections for additional information.

The Department has concluded that the new system will be workable and neither unwieldy nor excessively expensive. Obtaining input from all interested parties on BLM decisions early in the process will in the long run reduce objections and appeals. The Department anticipates that this will not only expedite implementation of agency actions, but concurrently will reduce overall rangeland management expenses by making the program more efficient. For example, the Department does not expect travel expenses to be

significantly greater than they were for the grazing advisory boards, particularly with the addition of a residency requirement. The issue of costs of advisory committees is discussed further at § 1784.3, Member service.

The system will not necessarily be a multilevel structure. Under the provisions adopted today, only the RACs themselves will be required. The other subgroups will be discretionary. While the groups will be local, in a broad sense, the Department believes that providing for diverse participation through implementation of the provisions adopted in this section of the final rule will ensure that all interests are fairly represented. Furthermore, the requirement for consensus, which is retained in the final rule, will ensure that the three groups represented will have an equal say in making decisions, and no one interest will be isolated by majority vote.

The Department acknowledges that it is the responsibility of BLM to manage the public grazing lands. However, several different statutes, including FLPMA, PRIA, and NEPA, call for public participation in decisionmaking processes regarding such programs. A purpose of these RACs is to facilitate such participation, and their formation and structure is fully consistent with those legal requirements. While there may be some initial complications in establishing the RACs, the Department believes that they are critical to long-term improvements in the management of our public grazing lands. For that reason, the Department has decided not to try them on only an experimental basis. The Department has carefully considered the structure and functions of the MRACs. In response to the concerns about under representation of grazing interests, the Department agrees that, to the extent possible, the make-up of the commodity group on the council should reflect the distribution of commodity interests in the area represented by the specific council. For example, if approximately 3/5ths of the commodity interests in an area are grazing operators, 1/5th are timber harvesters, and 1/5th are miners, the commodity group on the council should include 3 permittees or lessees, 1 timber harvester, and 1 miner. Such a distribution will ensure that the necessary expertise is present to deal with technical issues which might come before a council representing that specific geographic area. While the Department does not agree that it is necessary or desirable to specify this in the text of the rule, since in some cases it may be impossible to achieve these optimal numbers, the Department will strive to arrive at this outcome during the appointment of council members.

Under the rule adopted today, environmental members will not have to be members of national groups. All nominees to the RACs will be required to have letters of recommendation, but because the final rule requires residency in one of the States within which the area to be covered by the council is located, the letter need not come from a local source. These requirements apply equally to all council members, environmentalists as well as commodity interests. Additionally, all members will be required to have some expertise or knowledge that will be useful to a council's deliberations.

The Department agrees that representatives of other Federal agencies should not be members of the RACs. Other Federal agencies are normally consulted about issues that affect them through other formal processes and do not need to be provided access through the RAC structure. However, under FACA, each council must have one ''designated Federal official'' present at each meeting. State agencies are a different matter. While it is true that BLM will coordinate on many issues with State agencies, nevertheless the Department believes it will be useful, in some cases and depending on local circumstances, to include State employees on the RACs. However, in the final rule, the Department has revised the discussion of the third group to limit participation of State employees to representatives of State agencies responsible for managing land, natural resources, or water.

The Department believes that the requirement to have broad representation from the three groups specified in this section of the final rule is a reasonably specific provision. It is not feasible to specify in more detail exactly what types of persons should be selected to ensure such representation. That is a decision that will have to be made on a case-by-case basis, depending on the nature of the population in an area covered by a RAC, and on the specific types of interest groups present in that area. The Secretary, based in part on nominations from the Governors, will strive to ensure that each RAC is fairly representative of those groups. Certainly, in many cases, tribal representatives should—and will—be included on the councils. The provisions of this section of the final rule allow inclusion of mining, timber, and other interests. However, this section deals specifically with the RACs that will be formed to provide advice on the public lands grazing program, and it is not appropriate to specify requirements related to the mining or timber industries here.

The Department does not agree that lending institutions should be specified as a group to be represented on all RACs. Of course, persons from such institutions could serve on the councils as representatives of the local public, local elected officials, or other interests listed in this section of the final rule. Similarly, academicians are listed as possible members because of their ability to contribute to technical discussion of rangeland issues. Therefore, the Department believes it is appropriate to limit membership of academicians, per se, to those involved in the natural sciences. However, an academician with some other specialty could participate as a member of the local public, as a representative of one of the other specified groups. Academicians who are not in the natural sciences are not prevented from serving on the councils.

The Department agrees that local expertise is essential to effective councils. The rule adopted today requires that members of RACs, rangeland resource teams and other local general purpose subgroups must reside in the State, or one of the States, within the jurisdiction of the council or subgroup. Additionally, the rule requires demonstrated knowledge of the geographic area. The Department does not agree that national environmental groups should be excluded, but again, representatives of such groups should have local knowledge and meet residency and other membership criteria.

Furthermore, the Department does not agree that all members should have a financial stake in the land or pay user fees. Anyone with a genuine interest in the management of the public lands, and with expertise to make a contribution, should be eligible to be considered for council membership, so long as the person meets other membership criteria.

Similarly, the Department does not agree that council members must share a primary commitment to improving grazing as a land use. While clearly the councils should provide advice on improving the grazing uses of the land, and grazing expertise will be an important component on the councils, many other issues are legitimate concerns, including non-grazing uses of the public rangelands. This is consistent with BLM's responsibility to multiple resources and uses.

Issues regarding selection of members have been discussed at § 1784.2–1, Composition. The Department believes that self-nomination is an appropriate

method of identifying individuals with an interest in the management of the public lands. All nominations must be accompanied by letters of reference from interests or organizations to be represented. The Secretary will not be able to appoint to the councils all individuals who are nominated, either by themselves or by other groups. During the selection and appointment process, the Department will strive to establish council membership that represents the three groups in a balanced fashion, and that includes only members who meet the requirements to be informed, objective, knowledgeable about the local area, and committed to collaborative decisionmaking.

Issues concerning payment of per diem to council members have been discussed at § 1784.3, Member service.

The Department believes that the requirements for consensus decisionmaking and balanced membership will prevent one group from dominating the councils. Issues such as rules of operation can be handled by the individual councils after they are constituted, as long as they fulfill the requirements of FACA and this rule. The councils cannot legally be given jurisdiction over the actions of the Federal land manager. While the Department expects that the recommendations of the councils will be carefully considered by local Federal managers, ultimately the Federal agency remains responsible for all decisions made.

BLM is constrained legally in many matters regarding personnel or funding. The BLM could not be bound by advice from the RACs on such matters. However, some funding matters clearly can be considered by the councils. For example, expenditure of range improvement funds will be considered. By advising the agency on priorities, the RACs may impact the expenditure of other funds as well.

The councils cannot appeal to the Secretary, but they can request Secretarial response, under the provisions of § 1784.6–1(i) of the final rule. The Secretary's response will not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal and will not preclude an affected party's ability to appeal a decision of the authorized officer.

While any interested person can provide input to the charters, the Department will be responsible for establishing a charter for the advisory councils. These charters must be consistent with the requirements of FACA, and must be reviewed by the General Services Administration and approved by the Office of Management and Budget. Definition of the groups to be represented on each council in the charters must be consistent with the requirements of § 1784.6–1(c). Specific operating procedures for each council can be developed by that council and incorporated into a set of bylaws or other operational instrument. Development of the charter and issues of the councils giving advice or recommendations are also discussed above in § 1784.2–1, Composition. The Department rejects the suggestion that permittees not be bound by the recommendations of the councils unless they agree in writing. The councils will provide recommendations to BLM, not directly to the permittees. Furthermore, the councils provide only advice. They do not make decisions. It is the statutory responsibility of BLM, through the authorized officer, to make final decisions regarding the management of the public rangelands. Permittees and lessees will be bound to follow those decisions, subject to the administrative remedies provisions in subpart 4160.

The Department understands that it may in some cases be difficult to achieve consensus, and that the development of consensus may be a time-consuming process. However, consensus decisionmaking is at the heart of improving the grazing management program. The Department is committed to the concept that all groups should work together to develop recommendations regarding the management of the public rangelands. Decisions reached in this way will be owned by all parties involved, and there will be significantly less likelihood of appeals and disputes, and greater likelihood that effective actions will be identified and implemented. In the long run, the Department believes that consensus-based decisionmaking will actually shorten the time required to reach a decision and implement it on the ground.

In response to the comments on jurisdiction, the Department has decided to allow considerable flexibility in the area covered by any one RAC. To that end, and to provide flexibility in other aspects of the RACs so they can be constituted to suit local needs, the Department has incorporated into this final rule provisions allowing adoption of any one of three models. Those models allow RACs to be formed on the basis of State boundaries, BLM districts, or ecoregions. The boundary of the RACs will be determined by the State Director, in consultation with the Governor and other interested parties.

Size and composition of the councils are discussed at § 1784.2–1, Composition. Additionally, the Department notes that one of the purposes of the RACs is to fulfill the requirements of section 309(a) of FLPMA, which requires the Department to form councils of 10 to 15 members. Furthermore, FACA requires that councils advising the Federal government have a balanced membership made up of all groups having an interest in the issue on which the council provides advice. The provisions for membership included in the rule adopted today at this section will ensure implementation of those statutory requirements.

The Department agrees that input from the Governor is critical to the success of the councils. However, under the provisions of FACA, the Secretary must appoint the members of the councils. The Secretary will carefully consider nominees sent forward by the Governors. Furthermore, discussions between the State Director and the Governor will be important in determining whether councils will be set up on a State, District, or ecoregion basis. The Department will develop a course of study to ensure that council members are fully qualified to make recommendations to BLM concerning grazing management issues.

The RAC provisions as proposed differed in some ways from the Colorado model. While they were based to a considerable extent on that model, certain statutory requirements, including the provision in FACA that council members be appointed by the agency head, in this case the Secretary, dictated that some provisions of the Colorado model be revised. This final rule adopts three RAC models, one of which, Model A, is based largely on the Colorado model. Again, however, certain changes had to be made to accommodate legal requirements and the goals of this public rangelands management program.

Many of the terms for which commenters requested definitions have been discussed in the FEIS. Direct interest is discussed at § 1784.2–2, Avoidance of conflict of interest. ''Dispersed recreational activities'' is a term used by BLM to refer to recreation that takes place outside of developed recreational areas. Birding, hiking and hunting are dispersed recreational activities. Definition of the term is outside the scope of these grazing regulations.

The Department has corrected any confusion resulting from the proposed rule's use of the terms council, board, and committee. This is discussed at § 1784.2–1.

Many of the commenters' concerns and suggestions could not be reconciled within the framework of the specific proposal made on March 25, 1994. In order to be more responsive to those concerns, the Department has made a number of changes from the proposal in this final rule.

The section is retitled, to indicate that it now specifies those elements of advisory councils which will be required to implement provisions of FACA, FLPMA, or the goals of improving the rangeland management program. Optional features are provided at final § 1784.6–2. The word ''multiple'' is eliminated throughout the section.

Most significantly, the Department has dropped much of the detail regarding RAC requirements from this section of the final rule, and has substituted language that allows a more flexible structure. Coupled with the provisions adopted in final § 1784.6–2 this will allow a model for public participation to be selected for each State that best suits the State's own needs.

Many of the wording changes in the final rule are consistent with the goal of introducing flexibility. References to rangeland resource teams and technical review teams have been replaced with ''subgroups.'' Provisions in paragraph (a) that would have been specific to District based councils have been eliminated, since this final rule allows councils to be formed along State, District, or ecoregion boundaries.

Provisions in paragraph (c) regarding membership have been changed to eliminate specific numbers of members, since these can vary under the provisions of final § 1784.6–2. The language regarding the membership of a local official is adjusted to conform to FLPMA. A provision is added requiring that council members must reside within one of the States within the geographic jurisdiction of the council. This wording was selected to accommodate those cases where ecoregion-based councils may cover an area in more than one State. Provisions regarding membership of State employees have been consolidated for clarity. Other minor revisions have been made in this section for clarity.

Final paragraph (e) is modified from the proposal to specify that the letters of recommendation required of nominees to the councils do not have to be from a locally based group. Since the Department has decided to introduce a residency requirement, as discussed above, there is no need to require that letters of nomination also be local.

Provisions in proposed paragraph (h) regarding quorums and voting requirements have been revised consistent with the flexible models of public participation adopted today. Rather than numbers of members being specified, the final provision requires that council charters all contain rules defining a quorum and establishing procedures for sending recommendations forward to BLM, and that such recommendations require agreement of at least a majority of the members of the three groups defined in paragraph (c). This establishes a minimum requirement. Each council's charter could require higher levels of agreement.

Taken together, the Department believes the provisions adopted today fulfill the goal of broadening the base of public participation in rangeland management decisions, while ensuring that advice provided to the Department represents the views of a council which is balanced in its membership, knowledgeable about the land and issues, and committed to consensus decisionmaking.

Section 1784.6–2 Resource Advisory Councils—Optional Features

The proposed section would have provided for the formation of rangeland resource teams by an MRAC on its own motion or in response to a petition by local citizens. Rangeland resource teams would have been formed for the purpose of providing local level input and serving as fact-finding teams for issues pertaining to grazing administration issues within the area for which the rangeland resource team is formed. They would not have provided advice directly to the Federal land manager.

Rangeland resource teams would have consisted of five members selected by the MRAC, including two permittees or lessees, one person representing the public-at-large, one person representing a nationally or regionally recognized environmental organization, and one person representing national, regional, or local wildlife or recreation interests. Members representing grazing permittees or lessees and the local public-at-large would have been required to have resided within the area for which the team would have provided advice for at least two years prior to their selection. The proposed rule would have required that at least one member of the rangeland resource team be selected from the membership of the parent MRAC.

Rangeland resource team members would have had to be qualified by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations for membership would have required letters of recommendation from the local interests to be represented. The membership provisions were intended to ensure that rangeland resource teams were able to represent key stakeholders and interests in providing input to the more broadly organized MRACs.

The proposed rule would have required that all members of rangeland resource teams attend a course of instruction in the management of rangeland ecosystems that had been approved by BLM State Director. The Colorado Working Group developed a proposal for a ''Range Ecosystem Awareness Program'' that would have established a basic curriculum including basic rangeland ecology, human resource development, the relationship of public land resources to private lands and communities, and the pertinent laws and regulations affecting rangeland management.

Rangeland resource teams would have had opportunities to raise any matter of concern with the MRAC and to request that the MRAC form a technical review team, as described below, to provide information and options to the council for their consideration.

Although no specific provision was made in the proposed rule, rangeland resource teams could have petitioned the Secretary for chartered advisory committee status. Chartered rangeland resource teams would have been subject to the general provisions of 43 CFR part 1780 and the provisions of the charter prepared pursuant to FACA.

Many of the commenters on this section opposed the formation of rangeland resource teams. Many reasons were given for this opposition.

Some asserted that both rangeland resource teams and the technical review teams would be subject to FACA, unless they could be sequestered from BLM. A commenter suggested requiring that the subgroups be fairly balanced. Others opposed any requirement for members to be local residents.

Some other commenters stated that the teams violate the requirement of Section 8 of PRIA to consult, coordinate, and cooperate. Many of the same commenters asserted that the Department cannot change the groups targeted by Section 8. Some commenters stated that the teams were not needed, would not be effective, would be costly, or would slow the planning and implementation process.

Some were concerned about how the teams would be formed. Some stated that they should be created by and report to BLM; others suggested that the

interested public should be able to request BLM to form a team; still others said they should be formed by the RACs. Others suggested that the regulations should be flexible enough to let these teams consider issues other than grazing.

A number of commenters spoke to the make-up of the rangeland resource teams. Many supported a local residency requirement for all members, others opposed the emphasis on local residency. Many stated that all members should have a high level of expertise in rangeland issues.

Many different specific suggestions about team make-up were received. Others were concerned that these teams be formed for a limited time, so that they would not be too expensive or perpetuate themselves. A number of specific comments were made on the content of courses to be offered to team members. Another asked how rangeland resource teams would bring on-going consensus efforts like the Trout Creek Work Group ''closer to the process.''

Many of the above concerns about rangeland resource teams have been addressed in the foregoing discussion of § 1784.6–1. As noted there, the Department has decided to make significant changes from the proposal in this final rule.

The Department has not adopted the suggestions on the makeup and structure of the teams, and has decided to retain the original proposal. However, as discussed below, the final rule will accommodate other models of public participation. If the rangeland resource team structure does not suit local conditions, a different model can be chosen. Similarly, groups such as the Trout Creek Work Group can be incorporated into the process through the use of another model which allows the inclusion of groups of different sizes.

Rangeland resource teams or other subgroups serving similar functions will now be optional features under the required RACs. The final rule does not provide for chartering of any subgroups under FACA, and such subgroups will not advise BLM directly, but will provide assistance to the chartered council to improve its ability to function effectively. All special purpose, short term groups will be formed exclusively by BLM and will be made up of Federal employees, whether regular staff or contract employees. Regarding residency requirements, the Department in the final rule at § 1784.6–1 has decided to require that all RAC members and members of general purpose local subgroups must be residents of one of the States in which the area covered by the specific council is located. The Department believes this structure both assures compliance with FACA and encourages local level participation in the decision-making process.

The development of the training course is discussed at § 1784.6–1.

This section, which in the proposal was exclusively about rangeland resource teams, now presents three alternate models for public participation, any of which can be chosen by a State Director, in consultation with a Governor and other interested persons. Each model provides specific details about four attributes of the councils: council jurisdiction, membership, quorum and voting requirements, and subgroups.

Model A is based on the work of the Colorado Working Group on rangeland improvement. It has the following characteristics:

(i) *Council jurisdiction.* The geographic jurisdiction of a council will coincide with BLM District or ecoregion boundaries. The Governor of the affected State(s) or existing RACs may petition the Secretary to establish a RAC for a specified BLM resource area.

(ii) *Membership.* Each council will have 15 members, distributed equally among the three groups specified in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* At least three council members from each of the three groups from which appointments are made pursuant to § 1784.6–1(c) must be present to constitute an official meeting of the council.

(iv) *Subgroups.* Local rangeland resource teams may be formed within the geographical area for which a RAC provides advice, down to the level of a single allotment. These local teams will provide local level input to the advisory council. These teams may be formed under the auspices of a RAC on its own motion or in response to a petition by local citizens. Rangeland resource teams will be formed for the purpose of providing local level input to the RAC on issues pertaining to grazing administration within the area for which the rangeland resource team is formed. Rangeland resource teams will consist of five members selected by the RAC. Membership will include two persons holding Federal grazing permits or leases, one person representing the public-at-large, one person representing a nationally or regionally recognized environmental organization, and one person representing national, regional, or local wildlife or recreation interests. Persons selected by the council to represent the public-at-large, environmental, and wildlife or recreation interests may not hold Federal grazing permits or leases. At least one member must be selected from the membership of the RAC. Members of the rangeland resource teams must be residents of the State in which the area covered by the team's jurisdiction is located.

The RAC will be required to select rangeland resource team members from nominees who qualify by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations must be accompanied by letters of recommendation from the groups or interests to be represented.

All members of rangeland resource teams will attend a course of instruction in the management of rangeland ecosystems that has been approved by BLM State Director. Rangeland resource teams will have opportunities to raise any matter of concern with the RAC and to request that BLM form a technical review team, as described below, to provide information and options to the council for their consideration.

Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the RAC or a rangeland resource team to gather and analyze data and develop recommendations to aid the decisionmaking process. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

Model B is based on the work of the Wyoming Steering Committee on the Management of Federal Lands. It has the following characteristics:

(i) *Council jurisdiction.* The jurisdiction of the council shall be Statewide, or on an ecoregion basis. The council will promote Federal, State, and local cooperation in the management of natural resources on public lands, and coordinate the development of sound resource management plans and activities with other States. It will provide an opportunity for meaningful public participation in land management decisions at the State level and will foster conflict resolution through open dialogue and collaboration.

(ii) *Membership.* The council will have 15 members, distributed equally among the three groups specified in § 1784.6–1(c) above, and will include at

least one representative from wildlife interest groups, grazing interests, minerals and energy interests, and established environmental/conservation interests. The Governor will chair the council.

(iii) *Quorum and voting requirements.* The charter of the council will specify that 80% or 12 members must be present to constitute a quorum and conduct official business, and that 80% or 12 members of the council must vote affirmatively to refer an issue to BLM. Formal recommendations require agreement of at least three council members from each of the three groups.

(iv) *Subgroups.* Local rangeland resource teams can be formed under the auspices of the Statewide council, down to the level of a 4th order watershed. These local teams will provide local level input to the advisory council. They will meet at least quarterly and will promote a decentralized administrative approach, encourage good stewardship, emphasize coordination and cooperation among agencies, permittees and the interested public, develop proposed solutions and management plans for local resources on public lands, promote renewable rangeland resource values, develop proposed standards to address sustainable resource uses and rangeland health, address renewable rangeland resource values, propose and participate in the development of area-specific National Environmental Policy Act documents, and develop range and wildlife education and training programs. As with the RAC, an 80% affirmative vote will be required to send a recommendation to BLM.

Rangeland resource teams will not exceed 10 members and will include at least two persons from environmental or wildlife groups, two grazing permittees, one elected official, one game and fish district representative, two members of the public or other interest groups, and a Federal officer from BLM. Members will be appointed for two-year terms by the RAC and may be reappointed. No member may serve on more than one rangeland resource team.

In addition, technical review teams can be established on an as-needed basis by the BLM authorized officer in response to a request by a RAC or rangeland resource team, in response to a petition of local citizens, or on BLM's own motion. These teams will address specific unresolved technical issues. When the team is requested by the RAC or a rangeland resource team, its charge will be established jointly by BLM and the council; membership will be determined by BLM and will be limited to Federal employees and paid consultants. Technical review teams will be limited to tasks relating to fact-finding within the geographic area and scope of management actions for which the rangeland resource team or RAC provides advice. Technical review teams will terminate upon completion of the assigned task.

Model C was developed by BLM to accommodate other structures of public participation, consistent with the requirements of FACA, FLPMA, and the goals of this rangeland management program. It has the following characteristics:

(i) *Council jurisdiction.* The jurisdiction of the council shall be on the basis of ecoregion, State, or BLM district boundaries.

(ii) *Membership.* Membership of the council will be 10 to 15 members, distributed in a balanced fashion among the three groups defined in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* The charter of each council shall specify that a majority of each group must be present to constitute a quorum and conduct official business, and that a majority of each group must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* RACs may form local rangeland resource teams to obtain general local level input necessary to the successful functioning of the RAC. Such subgroups can be formed in response to a petition from local citizens or on the motion of the RAC. Membership in any subgroup formed for the purpose of providing general advice to the RAC on grazing administration should be constituted in accordance with provisions for membership in § 1784.6–1(c). Additionally, BLM may form technical review teams as needed to gather and analyze data and develop recommendations to aid the council. These teams may be formed at BLM's own option or in response to a request from the advisory council.

The Department believes that the above three models for public participation can be adapted to satisfy the concerns and needs of all areas which include public lands or other lands administered by BLM.

Section 1784.6–3 Technical Review Teams

Under the proposed rule an MRAC could have established technical review teams, as needed, in response to a petition of an involved rangeland resource team or on its own motion. Rangeland resource teams chartered under FACA could also have established technical review teams. Technical review teams would have conducted fact finding and provided input to the parent advisory council or chartered rangeland resource team. Their function would have been limited to specific assignments made by the parent council, and been limited to the geographical management scope of the MRAC or chartered rangeland resource team. Technical review teams would have terminated upon completion of the assigned task.

Members of technical review teams would have been selected by the MRAC or chartered rangeland resource team on the basis of their knowledge of resource management or their familiarity with the issues involved in the assigned task. At least one member of each technical review team would have been required to be selected from the membership of the parent advisory council or chartered rangeland resource team.

Some of the commenters on this section specifically opposed the concept of technical review teams, saying they would not streamline administrative functions, were not needed, would be obstacles to change, and would be expensive. Other commenters asserted that any such teams should be formed by BLM under the provisions of FACA. A number of commenters wrote to the make-up and operation of the teams, and asserted that members must be technical experts and should be local residents.

Most of the commenters' concerns about technical review teams have been addressed in the discussions of §§ 1784.6–1 and 6–2. In response to commenters' concerns, the Department has decided to require that any such technical team be formed exclusively by BLM. Because of the requirements of FACA, they will be made up exclusively of Federal employees, either regular staff or contract employees. Such technical teams could be formed under any of the three models presented in § 1784.6–2, either at the request of a chartered committee or on BLM's own motion. The Department believes this is the best way to ensure that the requirements of FACA are fulfilled, but that the RACs have available to them special expertise to address technical issues when needed.

Consistent with the above discussion, and the discussions of final §§ 1784.6–1 and 6–2, the Department is not adopting this provision in the final rule. Provisions allowing the formation of technical teams by BLM, as needed, are found in final § 1784.6–2.

Part 4100—Grazing Administration—Exclusive of Alaska

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2 Objectives

The proposed rule would have amended the objectives statement for part 4100 by including as objectives the preservation of public land and resources from destruction and unnecessary injury, the enhancement of productivity for multiple use purposes, the maintenance of open spaces and integral ecosystems, and stabilization of the western livestock industry and dependent communities.

The Department received many comments on this section. Many commenters said that the proposed objectives statement was vague, subjective, not achievable, and unmeasurable. Others said that it was antagonistic, and assumed that ranching operations are destructive. Some asserted the statement ignored the valuable contribution made by livestock grazing as well as the improvements ranchers had made on the Federal lands. Some pointed out that proper grazing does not harm the resources.

Many commenters suggested additions to the list of objectives of the rules. Many of these commenters supported using the objectives identified by the Colorado Working Group. It was suggested that the objectives should have a greater emphasis on ecosystem management, and should include standards and guidelines pertinent to the economic and social factors which affect the human environment.

Many commenters objected to the terms ''destruction and unnecessary injury.'' This objective had been included to highlight the Department's responsibility under Section 315a of TGA which requires the Department to ''preserve the land and its resources from destruction or unnecessary injury.'' Others asserted that the view that ecosystems are static and can be ''preserved'' was out of date. Many commenters spoke to the objective of maintaining the public values associated with open spaces and integral ecosystems, asserting that this was not an appropriate objective for grazing regulations.

A number of commenters spoke on the objective concerning stabilization of the livestock industry and dependent communities. A typical comment asserted that small ranches are often dependent on second jobs in town, and that actually the ranches are dependent on the communities, not vice versa. Some suggested deleting ''dependent communities.'' Some commenters took strong exception to this particular objective. They asserted that the Department was, with this objective, singling out the livestock industry for favored treatment.

Regarding the objective on enhancing productivity for multiple use purposes, commenters offered suggestions that enhancement for multiple uses should not be allowed to conflict with grazing and that enhancing for multiple use purposes must be subject to maintaining a healthy ecosystem.

Many commenters were concerned with the references to ''ecosystems'' and asked for a definition of the term. Some asked for a definition of ''integral ecosystem'' while others were concerned that the term would be used to regulate private lands.

This final section is substantially revised from the objectives presented in the proposed rule. The provision as adopted today includes the following objectives: to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote orderly use, improvement and development of the public rangelands, to establish efficient and effective administration of grazing of public rangelands; and to provide for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands.

The new statements are based largely on commenters' concerns. While all those concerns could not be accommodated, the Department believes that the final rule represents the best summary of the objectives of this rangeland management program.

The first objective, to promote healthy sustainable rangelands, is the key component of the Department's program. The statement is based on the work of the Colorado Working Group and responds to the Department's and some commenters' concerns that the objectives should clearly state the objective of achieving healthy, functional rangelands. It reflects the Department's intent to make decisions regarding grazing on the public lands that will promote healthy conditions across all the grazing lands. This embodies the concept that such decisions must be made on a coordinated basis and must consider other resource values that contribute to the health of the land.

The second objective, to accelerate restoration and improvement of public rangelands to properly functioning conditions, embodies the concept that BLM, in order to fulfill its statutory responsibilities to the public rangelands, must renew its efforts to restore those areas that are not functioning properly. It emphasizes that attainment of healthy conditions is a process that requires constant effort; West-wide healthy conditions cannot be attained overnight.

The third objective, to promote orderly use, improvement and development of the public rangelands, is unchanged from the proposal. It is drawn directly from TGA (43 U.S.C. 315(a)). It emphasizes that the rangelands are to be used and developed, but also that such use and development must be done in an orderly way, and that an integral part of the process should be improvement of the rangelands.

The fourth objective, to establish efficient and effective administration of grazing of public rangelands, is based on the work of the Colorado Working Group. The statement emphasizes that BLM's administration of its program must be both efficient and effective. The rules adopted by today's action are an important part of the Department's efforts to ensure that objective can be achieved.

The final objective, to provide for a sustainable western livestock industry and communities that are dependent upon productive, healthy public rangelands, is a modified version of an objective included in the proposal. It asserts that BLM has a responsibility to recognize the effects its actions may have on the western livestock industry. However, the Department has reworded this objective from the proposal because it agrees with commenters' concerns that BLM's program, in and of itself, cannot ''stabilize the western livestock industry.''

Largely as a result of public comment, the Department has decided not to adopt the proposed objectives concerning preservation of rangeland resources from destruction and unnecessary injury; maintenance of the public values provided by open spaces and integral ecosystems; and enhancement of the productivity of public lands for multiple use purposes by prevention overgrazing and soil deterioration. These themes of the proposed amendments are sufficiently covered in the more general objectives adopted in this final rule. The objective of the previous regulations pertaining to providing for the inventory and categorization, trends and monitoring of public lands on the basis of range conditions, is omitted as an unnecessary

statement of BLM's internal working procedures.

In accordance with the above discussion, the Department has adopted the objectives statement as amended.

Section 4100.0–5 Definitions

The proposal would have removed definitions of ''Affected interests,'' ''Grazing preference,'' and ''Subleasing.'' It would have amended definitions of ''Active use,'' ''Actual use,'' ''AMP,'' ''Consultation, cooperation and coordination,'' ''Grazing lease,'' ''Grazing permit,'' ''Land use plan,'' ''Range improvement,'' ''Suspension,'' and ''Utilization''; and would have added in alphabetical order definitions of ''Activity plan,'' ''Affiliate,'' ''Conservation use,'' ''Grazing preference or preference,'' ''Interested public,'' ''Permitted use,'' ''Temporary nonuse,'' and ''Unauthorized leasing and subleasing.'' This final rule adds definitions ''Annual rangelands,'' and ''Ephemeral rangelands.''

The final rule makes changes to the proposed definitions of ''affiliate'' and ''consultation, cooperation and coordination.'' It makes minor technical and clarifying changes to the proposed definitions of ''conservation use,'' ''grazing lease,'' ''grazing permit,'' ''land use plan,'' ''range improvement,'' ''unauthorized leasing and subleasing,'' and ''utilization.'' It adds definitions of ''annual rangelands'' and ''ephemeral rangeland.'' Otherwise, the definitions are adopted as proposed.

The following specific actions are taken by this final rule.

Active use is redefined to include conservation use and exclude temporary nonuse or suspended use.

A definition of *Activity plan* is added to mean a plan for managing a use, or resource value or use. An AMP is one form of an activity plan.

Actual use is redefined to clarify that the term may refer to all or just a portion (e.g., a pasture) of a grazing allotment.

A new definition of *Affiliate* is added for use in determining whether applicants have satisfactory records of performance for receiving permits or leases or in receiving additional forage that becomes available for allocation to livestock grazing.

Allotment Management Plan is redefined to describe more clearly the focus and purpose of the plan, and to make clear that an AMP is a form of activity plan.

A definition of *Annual rangelands* is added to mean those areas which are occupied primarily by annual plants and which are available for livestock grazing during some years.

A definition of *Conservation use* is added to mean an activity on all or a portion of an allotment for the purpose of protecting the land and its resources from destruction or unnecessary injury. The term includes improving rangeland conditions and the enhancement of resource values or functions.

Consultation, cooperation and coordination is redefined to mean a process for communication between representatives of BLM and the parties involved for the purpose of sharing information, obtaining advice, and exchanging opinions.

A definition of *Ephemeral rangeland* is added to mean areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing. Typically, these rangelands receive less than eight inches of rainfall each year and lie below 3,200 feet elevation.

Grazing lease and *Grazing permit* are redefined to clarify what forms of use are authorized in leases and permits and to clarify that the documents specify a total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference is redefined to mean the priority to have a Federal permit or lease for a public land grazing allotment that is attached to base property owned or controlled by a permittee, lessee, or applicant. The definition omits reference to a specified quantity of forage, a practice that was adopted by the former Grazing Service during the adjudication of grazing privileges. Like the Forest Service, BLM will identify the amount of grazing use (AUMs), consistent with land use plans, in grazing use authorizations to be issued under a lease or permit.

A definition of *Interested public* is added to mean an individual, group or organization that has submitted written comments to the authorized officer regarding the management of livestock grazing on specific grazing allotments.

Land use plan is redefined to remove the implication that all management framework plans will be replaced by resource management plans.

A definition of *Permitted use* is added to define the amount of forage in an allotment that is allocated for livestock grazing and authorized for use, or included as suspended nonuse, under a grazing permit or lease. The term replaces the AUMs of forage use previously associated with grazing preference.

Range improvement is redefined to include protection and improvement of rangeland ecosystems as a purpose of range improvements.

Suspension is redefined to reflect the revision of the definition of the term ''preference.'' Within this definition the term ''preference'' is replaced with ''permitted use.''

A definition of *Temporary nonuse* is added to refer to permitted use that may be temporarily made unavailable for livestock use in response to a request by the permittee or lessee.

A definition of *Unauthorized leasing and subleasing* is added to mean the lease or sublease of a Federal grazing permit, associated with the lease or sublease of base property, to another party, without approval of the authorized officer, the assignment of public land grazing privileges to another party without the assignment of the associated base property, or allowing another party to graze livestock that are not owned or controlled by the permittee or lessee on the permittee's or lessee's public land grazing allotment. This changes the existing definition which could be read to imply that no forms of third party lease arrangements could be authorized.

Utilization is redefined to mean the consumption of forage by all animals consistent with the definitions in BLM Technical Reference 4400–3 and the Bureau Manual System for Inventory and Monitoring.

The Department received many comments on this section. Some commenters wanted original definitions left unchanged; others suggested further revisions, still others asked that additional new definitions be added.

Many comments were received on the definitions of *active use, actual use, conservation use, grazing preference or preference, permitted use, suspension,* and *temporary nonuse.* A number of commenters expressed uncertainty regarding the concept of conservation use, some objecting to the inclusion of conservation use as an active use. Others indicated that the concept of conservation use may be inconsistent with the policy objectives articulated in various statutes.

Other concerns with the concept were that it implied that grazing is harmful to the range, and that permittees applying for conservation use should pay the grazing fee and be required to maintain improvements. These and other comments on conservation use are more appropriately addressed in the discussion of § 4130.2.

The Department intends that *conservation use* be an active use rather than merely a non-use. Conservation use is intended to protect the land and its resources from destruction, improve rangeland conditions, or enhance resource values. All of these goals are

fully consistent with the requirements of governing statutes. In fact, conservation use includes a variety of activities to improve rangeland conditions. Because the land and the forage involved are actively being devoted to accomplishing specific conservation-oriented objectives, they are deemed actively used. The concept of conservation use, and its application to this program, are discussed more fully at § 4130.2.

In general, commenters expressed some confusion regarding application of the concepts of suspension and temporary non-use under the proposed definitions of these terms. In particular, some commenters were concerned that the definitions might be used by BLM to restrict active use.

Temporary nonuse and *suspension* remain options under the rule finalized today. Temporary nonuse is for the convenience of a permittee's or lessee's livestock operation and must be included as a part of his or her application each year. Therefore, BLM does not believe temporary nonuse should be considered active use. The BLM will authorize changes in temporary nonuse from year to year, but temporary nonuse may only be approved by the authorized officer for up to three consecutive years. With regard to changes in use initiated by the permittee or lessee, the concept of temporary nonuse is expected to continue as the common practice used to respond to fluctuations in the weather, the livestock market or other factors beyond the control of the operator.

Suspension of grazing use is initiated by the authorized officer, and may be agreed to by the permittee or be the result of a decision by the authorized officer. It results, for example, from situations requiring a reduction of use of the rangeland to protect the resource or where there has been noncompliance. *See* also the discussions of subparts 4110 and 4130.

Regarding *active use,* BLM intends to continue allowing changes in active use from year to year, depending on conditions. The authorized officer can adjust active use and other factors under a permit or lease *as long as the changes are within the terms and conditions of the permit or lease.* If the authorized officer determines that changes in use must be made outside the terms and conditions, it will be done in consultation with the permittee or lessee, the State and other interested parties.

Numerous comments were received on proposed changes to the definition of ''grazing preference,'' including the addition of the term ''preference.'' Many commenters interpreted the proposed changes to mean that preference was being abolished. Others were concerned that unless preference refers to a specified quantity of forage, ranching operations would be negatively impacted. They stated that preference, tied to a specific amount of AUMs, adds value and stability to ranching operations, for example, by enhancing the operator's ability to borrow money. They also maintained that a preference is a property right and that the proposed rule could result in a ''taking.'' And some commenters expressed the view that the proposed definition excluded owners of water or water rights and that such owners deserve priority consideration.

The Department has changed ''grazing preference'' to *preference or grazing preference* because the terms are used interchangeably and to clarify that the term refers only to a person's priority to receive a permit or lease, and not to a specific number of AUMs. The term ''preference'' was used during the process of adjudication of available forage following the passage of TGA to establish an applicant's relative standing for the award of a grazing privilege. At one time in the evolution of grazing administration preference was the amount of use expressed in AUMs that any particular permittee may have made during the ''priority period''—the four years following passage of TGA. Preference is still defined as the relative standing of an applicant as reflected in historic records. Through time, common usage of the term evolved to mean the number of AUMs attached to particular base properties. But this usage dilutes the original statutory intent of the term as an indication of relative standing. The term ''permitted use'' captures the concept of total AUMs attached to particular base properties, and use of this term does not cancel preference. The change is merely a clarification of terminology. Issues of valuation of permits are discussed in more detail in the FEIS, and takings are discussed under ''Takings'' in the General Comments section of this preamble.

With regard to owners of water or water rights, the evolution of the term preference was similar. The status of waters and water rights that have been recognized as base property would not be affected by the rules adopted today. Waters recognized as base property would continue to qualify as such. The preference for receiving a grazing permit or lease that is attached to base property would not be affected. The Department believes that permitted use is the more appropriate term to describe and quantify the number of AUMs of forage being allocated.

The comments on the proposed definition of *permitted use* were similar to those relating to preference. Some commenters asked what would happen to existing suspended AUMs under the new concept of permitted use. Some suggested that the proposed rule would limit grazing to what is stated in the land use plan, and that this would effectively cancel the grazing preference. These commenters suggested that the result would be significant reductions in grazing, and that the regulation would thus ''take'' the rights of the permittee.

As they did with respect to preference, some commenters stated that the definition of permitted use would result in reduced economic stability and would eliminate the collateral value of grazing permits. They expressed concern that the new definition would negatively affect property values and would adversely affect the ability of the permittee to obtain financing.

Commenters further opposed the use of the Land Use Plan to determine the permitted grazing use. They argued that these plans are not site specific documents, and that it is arbitrary for the Department to use them to make site specific decisions. They advocated that BLM use actual range condition and trend data on individual allotments to make these decisions. Some commenters took the position that the proposed definition of permitted use was contrary to statute.

Permitted use is an end product of the process of renewal or issuance of permits or leases. The land use plan provides guidance for allocation of land or forage to various uses on a regional scale. In the context of grazing, the land use plan sets the basic parameters by which permits and leases are issued or renewed. The objectives set in the plan are refined in the permit or lease, and permitted use is then expressed in AUMs of active use, including both livestock use and conservation use, as well as suspended use and temporary nonuse during a particular time period. This process and terminology are fully consistent with TGA, FLPMA and PRIA. The land use plan allows adjustment of the AUM amounts and seasons based on monitoring, other studies, or where changes in permitted use or terms and conditions are necessary to meet land use plan objectives. Where changes in the situation are major, it may be necessary to amend the land use plan, thus re-initiating the process. In the absence of a major change in the overall

situation and where these objectives are being met, changes in permitted use through BLM initiative are unlikely. This provides a high level of security, stability and predictability from year to year.

Few comments were received on the proposed definitions of *actual use or utilization*. One comment stated that the proposed definition had changed the concept from a record of livestock use to a plan for actual use, and that the permittee should be able to make good faith changes to protect rangeland by changing grazing schedules to respond to weather forces. Others suggested that the Department was exceeding its authority in applying actual use to the ''number, kind or class of livestock.'' Still others suggested that actual use must include all animals which consume forage, not just domestic animals. Many commenters on the proposed definition of *utilization* recommended that BLM link utilization to actual use and include use of forage by horses, burros and wildlife.

The Department has the authority to apply the concept of *actual use* to ''number, kind or class of livestock.'' Under section 315 of TGA, the Secretary has the authority to specify ''numbers of stock and seasons of use.'' Additionally, under FLPMA, the Secretary has the authority to establish terms and conditions for grazing leases and permits. The reporting of actual use is necessary to evaluate the effect of grazing practices, and is a fundamental tenet of the science of range management. AUMs are a unit of measure of forage consumption and allocation. Knowing the number of animals involved and the duration of grazing in a specific situation is essential to quantifying the AUMs consumed and in setting future numbers and seasons. Actual use and *utilization* or use patterns, when considered either with the current year's weather or over time, provides a very complete picture of the impact of grazing use on rangeland resources. The same information also provides significant insight into opportunities to alter management, to improve livestock distribution, plan range improvements or to accurately predict the future consequences of continuing the current grazing practices.

Actual use, in the context of this final rule, refers strictly to domestic livestock grazing. However, the Department concurs that when it is used to evaluate the effect of a particular grazing practice, BLM must consider the use made by all grazing animals including wildlife and wild horses and burros where they are present. Actual use data can be used both for billing purposes and to analyze the impact of grazing. Where its intended use is strictly for billing, the data may be aggregated for the entire allotment area and entire billing period. Where the data are to be used for analytical purposes, it must be broken out by the treatment area (frequently a pasture).

Some commenters submitted comments on the definition of *activity plan. Most questioned the relationship between the concept and the AMP specified in FLPMA. Some asserted that since FLPMA uses the term AMP, there is no authority for an activity plan, or that activity plans could not relate to grazing and therefore have no place in grazing regulations. Others suggested narrowing the concept by applying it specifically to grazing areas and for the purpose of achieving grazing objectives in order to maintain desirable range conditions.*

Activity plans have been included in the definitions and the text of this final rule because there are efficiencies to be gained by considering a variety of uses simultaneously in one planning document. The Department disagrees that just because FLPMA uses the term AMP, the Department has no authority for an activity plan. The Secretary has ample authorities under FLPMA, TGA, and PRIA to undertake any planning activities necessary to implement the grazing program.

Many comments were received on the concept of *affiliate.* Many commenters stated that the proposal was vague, discriminatory against ranch operators and that it will lead to capricious and arbitrary enforcement by BLM. Other commenters stated that ''control'' was poorly defined and that the concept should be applied to other parties such as the RAC members.

Some commenters expressed concern about the liability provisions. They stated that because of potential liability resulting from this provision, banks and other businesses will be less likely to do business with ranchers who have grazing permits or leases. Moreover, some asserted that ranchers will be less responsible if they know that they are not solely liable for their actions. Other commenters asked if permittees must have control of affiliates and if affiliates' records of performance would be considered when issuing a permit.

The purpose behind the use of the term *affiliate* is to promote accountability among all parties involved in the control of a grazing operation. The term is commonly used in business to identify persons having legal ties to each other where accountability is in some manner shared. Some permits or leases are issued in the name of one person when in actuality there may be other persons closely involved in the management of the operation. In the final rule, the Department has not adopted proposed provisions referencing percentage of ownership and specific relationships such as officers and directors. The term ''entity'' includes partnerships, corporations, associations, and other such organizations. The Department believes that the definition adopted better addresses the affiliate relationships typically associated with livestock grazing operations.

The Department does not intend the term ''affiliate'' to be applied in an over broad or burdensome manner but rather in a manner that recognizes ordinary business relationships. Normally, affiliates will be partners, agents and their principals, family members, and trusts or corporations involving such individuals. It is unlikely that ''affiliate'' would include financial institutions.

Numerous comments were received on the definition of *Allotment Management Plan* and *consultation, cooperation and coordination.* The commenters stated that the proposed definition of the latter term is contrary to FLPMA, particularly because they believed it eliminates consultation, cooperation and coordination with the lessee or permittee. Other commenters stated that the definition did not meet standards for local involvement under Section 8 of PRIA, and did away with a special and contractual relationship between permittees and BLM.

The Department intended the change proposed in this definition to simplify references to consultative activities and to make usage consistent throughout the regulations. Throughout these rules, the Department has specifically increased—not decreased—opportunities for interaction with the permittee, lessee, States, and the interested public. However, because of the confusion generated by the language in the proposal, the Department has decided to use the term ''consultation, cooperation, and coordination'' as it is used in existing rules.

A number of comments were received on the definition of *interested public.* Comments addressed the effects of broadening the public role in land use decisions, including the need for BLM to make timely decisions. Some comments offered more restrictive definitions of ''interested public.'' Other comments supported the change in definition and requested that the Department clarify in the rule that members of the public are not any less

affected by livestock decisions than are permittees.

The Department does not agree that the regulations include excessive public involvement by expanding opportunities for input into grazing management to the *interested public.* Anyone with a high level of interest in shaping objectives, planning courses of action, and evaluating results associated with management of the public lands should have an opportunity for involvement. Congress has acknowledged this interest and makes provisions for it in FLPMA, NEPA, FACA and the Administrative Procedure Act (APA). Experience has shown that the greater and more meaningful the participation during the formulation of decisions and strategies for management, the higher the level of acceptance and thus the lower the likelihood of a protest, an appeal or some other form of contest. Nevertheless, it will remain the responsibility of BLM to make timely decisions. These rules do not change existing time frames for public comment or for protests or appeals.

Some comments were received on the definition of *grazing permit* or *grazing lease.* Commenters asserted that the definition failed to make adequate distinction between Section 3 and Section 15 allotments. The distinction between Section 3 and Section 15 lands is made at § 4110.2–1(a).

The Department received a few comments on the definition of *land use plan.* Some commenters wanted the definition to require BLM planning documents to conform to State or local land use plans. Other commenters wanted BLM land use plans to give guidance to the designation of lands for grazing. *Land use plans* provide guidance on a regional scale and allocate resource uses and objectives. FLPMA and the subsequent planning regulations provide sufficient authority to prevent grazing in areas where grazing would conflict with other objectives. Local and State governments will be considered members of the interested public and invited to participate in the development of land use plans. It is not necessary for Federal plans to conform to local or State plans in all cases. FLPMA requires the Department's planning process to be as consistent as possible with local or State plans, but not to be in conformance with them.

A few comments were received on the definition of *range improvement.* Some commenters supported the use of the range improvement fund to benefit livestock; others sought to expand use of the fund to support projects intended to improve rangeland. FLPMA directs that ''* * * such rehabilitation, protection, and improvements shall include all forms of range land betterment including but not limited to, seeding, and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement * * *'' All uses authorized by FLPMA, including improvements to the health of the rangeland, will remain valid under this rule.

The Department received a few comments on the definition of *unauthorized leasing and subleasing.* Commenters stated that the proposed subleasing definition limited subleasing, which is necessary to rural economic health. The Department believes the final provisions relating to *unauthorized leasing and subleasing* do not discourage subleasing that may be necessary to sustain rural economic health. Indeed, the current definition of subleasing implies that no subleasing is allowed. This new definition, by addition of the word ''unauthorized,'' clarifies that the Department *will* approve subleasing under certain conditions. The Department believes that it is simply good land management for it to know to whom permittees or lessees have subleased their grazing privileges, and under what circumstances.

In response to concerns raised by the commenters, the Department has decided to delete provisions requiring the payment of a surcharge on subleasing grazing privileges in conjunction with the lease or sublease of base property. This is discussed in detail in the section of this preamble relating to final § 4130.8 (§ 4130.7–1 in the proposed rule).

The Department also received requests that it define *de minimus,* biological diversity, ecosystem, environmentalists, ecosystem management, ecosystem management framework and viable population. Some commenters suggested that a definition of grazing association be added. A number of commenters requested a definition of ''substantial compliance.'' The Department believes that these terms are adequately defined by common usage.

In accordance with the above discussion, the Department has decided to adopt the proposed definitions, with some changes.

The definition of *affiliate* is revised to eliminate references to percentage of ownership and specific relationships such as being an officer, director, or controlling fiscal or real property resources. The Department believes the definition adopted adequately encompasses such relationships. The language is also amended by adding reference to ''applicant'' as well as ''permittee or lessee.'' Finally, ''is controlled by, or is under common control with,'' is added after ''controls,'' to clarify what types of relationships are covered by the provision.

A new definition of *annual rangelands* is added in response to commenters' requests. The term means those areas which are occupied primarily by annual plants and which are available for livestock grazing during some years. This is a technical term associated with the rangeland management program, and the Department agrees that a definition will provide clarity to the application of these provisions.

The definition of *conservation use* is revised to clarify that it can apply to all or a portion of an allotment.

The definition of *consultation, cooperation, and coordination* is revised to mean a process for communication between BLM and parties involved in particular rangeland management decisions.

A definition of *ephemeral rangeland* is added to mean areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing. Typically, such areas receive less than 8 inches of rainfall each year and lie below 3,200 feet elevation. This is a technical term associated with the rangeland management program and the Department believes that a definition will provide clarity to the application of these provisions.

The definitions of *grazing lease* and *grazing permit* are revised by the addition of the phrase ''the area authorized for grazing use, or both,'' to accommodate situations such as ephemeral or annual rangeland in which the area authorized for grazing is used in place of AUMs to specify permitted use, because of inconsistent production of forage. The definition of *land use plan* is revised to clarify that the term refers to plans developed under 43 CFR Part 1600.

The definition of *range improvement* is revised to remove the phrase ''or provide habitat for'' to ''to benefit'' livestock. This change was made to avoid confusion with the concept of wildlife habitat.

The definition of *utilization* is revised to clarify that it refers to a ''portion'' of forage consumed, which reflects actual practices. The proposal used the term ''percentage.''

Section 4100.0–7 Cross-References

This section would have been amended to guide the public to the applicable sections of the 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, and to 43 CFR part 1780 regarding advisory committees.

No comments were received on this section and it is adopted as proposed.

Section 4100.0–9 Information Collection

The proposed rule would have added this section to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section would have disclosed to the public the estimated burden hours needed to comply with the information collection requirements in this proposed rule, why the information is being collected, and how the information will be used by BLM. Several comments were received on this section addressing information resources and questions of timeliness relating to compliance.

The intent of this section is to comply with a statutory requirement to disclose how much time will be required for regulated persons to comply with the information collection requirements of these regulations. Which sources of information the Department will use to obtain local input is not a germane issue, nor is the time required by commenters to comment on these regulations.

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

Section 4110.1 Mandatory Qualifications

In the proposed rule, this section would have provided that applicants for new or renewed permits or leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. The section would have discussed what satisfactory record of performance means for both renewals and new permits. For renewals, the proposal would have provided that it means being in substantial compliance with the rules and regulations issued and the terms and conditions of the existing permit or lease for which renewal is sought. In assessing whether an applicant for renewal is in substantial compliance, the authorized officer would consider the number of prior incidents of noncompliance with the requirements of 43 CFR Part 4100. The authorized officer can include in this consideration the nature and seriousness of any noncompliances. For new permits, it would have meant not having had any State grazing permit or lease within the Federal grazing allotment, or any Federal grazing permit or lease, cancelled within the previous 36 months, and not being barred from holding a Federal grazing permit or lease by court order.

The proposal further discussed the determination of affiliation. It would have provided that in determining affiliation, the authorized officer would have considered all appropriate factors including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships. This provision would have ensured that all parties who had the ability to control operations on a permit or lease, not just the immediate permittee or lessee, had a record of good stewardship of the land.

Additionally, the proposal would have clarified that mortgage insurers, natural resource conservation organizations, and private parties whose primary source of income is not the livestock business, could meet the criteria for qualifications for a grazing permit or lease.

Finally, the proposal would have required applicants to submit applications and any other information requested by the authorized officer to determine that all qualifications have been met. This provision would have clarified that applicants cannot refuse to provide BLM with information needed to evaluate applications for permits or leases.

The Department received a substantial number of comments on this section. Major themes expressed in the comments pertained to the Department's rationale and legal authority for the provisions, opposition to finding applicants to be qualified in cases where the applicant was not actively involved in the livestock business, concerns about how various terms would be defined and applied in determining qualification, the perceived potential of the provision to adversely affect permit tenure, property values, and financing, and BLM's ability to implement the provisions as worded.

Many comments opposed allowing persons not engaged in the livestock business to qualify for grazing permits and leases. Some commenters asserted that this provision, in combination with provisions for conservation use, would result in non-grazing interests acquiring and retiring grazing permits, would cause deterioration of the land, and would be inconsistent with TGA. Similar comments were also received on § 4100.0–5 Definitions and § 4130.2 Permits or leases.

There was also considerable concern about the requirement that permit applicants have a satisfactory record of compliance. In particular, commenters asked how terms such as ''permit violations'' and ''satisfactory record of performance'' would be defined, who would make the determination of satisfactory performance, and whether the provisions would be applied consistently across BLM administrative boundaries. One comment suggested that BLM and permittees or lessees should agree to how terms will be defined and applied prior to the issuance of a new permit, to enable both parties to understand their status. Others asserted there was no statutory basis for this provision. Some had a concern that evaluating compliance was unduly burdensome on the agency.

One comment stated that the basic principle of having a satisfactory record was reasonable because it was ''little different than a private landowner refusing to lease to a troublesome individual.'' The same commenter was concerned, however, that the provision gave authorized officers broad investigative powers that could result in an invasion of privacy. Commenters also expressed the opinion that only serious violations of permits or leases should be considered in applying the qualification provisions to prevent arbitrary adverse action.

Some commenters questioned the validity of considering the historical record of compliance, asserting that current performance is what is relevant. Still others stated that the provision did not go far enough in conditioning qualification on past performance. For instance, one commenter stated that any revoked State or Federal lease or permit should be the basis for denying new or renewed permits, asserting this indicated the permittee is unable or unwilling to be a responsible steward of public lands. Some commenters stated that 36 months was too short a time, and advocated a five or six year review period. Additionally, it was suggested that willful, repeat violators, reflected by multiple revocations of Federal or state permits, should be permanently barred from grazing Federal lands. It was also suggested that the burden of proof should be on the permittee or lessee.

Some commenters expressed opposition to considering performance connected with State leases in determining qualifications, questioning the Department's authority and the constitutionality of the provision. One comment said that it would discourage

permittees from leasing State lands, and in turn would hurt State income.

Several comments specific to qualifications for renewals stated that the concept of denial for noncompliance would decrease a permittee's security of tenure, in turn leading to less investment in permits and a decreased ability to achieve rangeland objectives. Some commenters were concerned that nonrenewal of a permit would decrease the value of the permittee's or lessee's private property and improvements, affected their ability to secure financing, and not renewing the lease constituted a ''taking,'' and the provision was contrary to TGA. Some asserted that disqualification on the basis of cancellations of other permits and leases should extend to renewals, not just new permits. Others suggested that applicants be disqualified when other permits or leases are suspended (in addition to cancelled permits and leases) or when not in compliance with other permits and leases at the time of application.

There was also some concern about the ability of BLM personnel to determine affiliation. One commenter asked whether he would be responsible for the actions of someone he sold his ranch to. An Indian tribe that holds permits and subsequently leases the permits to individual tribal members expressed concern that the tribe would be judged by the behavior of the individual permittees under the concept of affiliation.

The statutory basis for these regulations is found in FLPMA and TGA. FLPMA (43 U.S.C. 1740) authorizes the Secretary to promulgate rules and regulations necessary to implement the requirements of the Act. Regarding requirements for first priority for renewal, 43 U.S.C. 1752 requires among other things that applicants must be found to be in compliance with the terms and conditions of the permit and pertinent rules and regulations. The amendments pertaining to the disqualification of applicants are intended to reflect the requirements of TGA and FLPMA that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement, and development of resources. The Department believes that the provisions of this section of the rule are critical to BLM's ability to ensure that permittees and lessees are good stewards of the land. The provisions will benefit good stewards by ensuring tenure in the renewal of permits and leases and by giving them an advantage in the issuance of new permits and leases. Comments on ''takings'' are discussed in the General Comments discussion above.

Neither conservation use nor elimination of the requirement that applicants must be engaged in the livestock business is inconsistent with TGA. The TGA gives preference to landowners engaged in the livestock business but does not require it. This change is made necessary by the increasing number of part time ranchers, permits held by financial institutions and other non-ranching organizations, and permits where the livestock operator is in an initial developmental stage and is not yet ready to run cattle on the range.

The concepts of ''permit violations,'' ''satisfactory record of performance'' and ''substantial compliance'' are defined in general terms by the text of this final rule. Application on a case-by-case basis will be done by the authorized officer, within the framework established by this final rule, based upon review of the record. For renewals, it will extend only to review of the permittee's record on the permit or lease for which renewal is sought. On new permits, it will include a review of State and Federal leases within the prior 36 months, and of any existing judicial bar on holding a permit. References to permits cancelled for violations are used to distinguish such cancellations from administrative cancellations such as those that might occur when the land is to be devoted to another public purpose. Basing qualifications on whether past permits and leases have been cancelled for violation is intended to focus attention on those types of violations that justified decisive and substantial corrective action. As with all decisions under 43 CFR part 4100, denial of permit and lease applications under these provisions is subject to appeal under subpart 4160.

Consistency in application of the qualification requirements is of concern to the Department. These regulations will assist in achieving standardization, as will periodic information bulletins, instruction memoranda, technical guides, handbooks and training. The comment suggesting that permittees and BLM seek a mutual understanding of these provisions at the time of permit issuance is the type of guidance that may be provided. An appeal process is available under subpart 4160 when the permittee or lessee believes the regulations have been inappropriately interpreted in a specific circumstance.

Determining compliance with the terms and conditions and rules and regulations at the time of permit renewal stems from a statutory provision (43 U.S.C. 1752(c)). The Department expects that a finding of noncompliance will be an exception rather than a common occurrence. It is not feasible to require the authorized officer to investigate applicants to identify unrecorded instances of noncompliance, as suggested by several commenters. The resources required to conduct such a check would not be worth the results.

The Department disagrees that looking back at an applicant's history of performance on Federal or State grazing leases will violate privacy protections. The information used to evaluate historical performance will be established records that are available to the public. As stated above, the Department will use records of performance to confirm the ability of the applicant to be a steward of the public land. Although current performance may indicate stewardship, it does not provide as complete information as does the applicant's longer-term record of performance. However, consideration of the record is not without limitation. The Department chose the 36-month cut off of consideration of applicant and affiliate performance as a fair yet sufficiently rigorous measure of potential stewardship. The 36-month look-back applies only to applications for new permits or leases.

In regards to the comment that willful and repeated violations should result in a permanent debarment, the Department has chosen to reject the recommendation as excessively harsh. Due to the severity of such a penalty it is best left to the judicial system.

In essence, where there is a record of prior noncompliance, the burden of proof is on the permittee. The record of compliance will be determined based upon a review of the public record. If there are any extenuating circumstances to be considered, it will be the responsibility of the permittee to support them.

An applicant's record on State permits is relevant to consideration of the applicant's compliance record for purposes of obtaining new permits. If an applicant has violated the terms and conditions of a State lease to such an extent that the lease was cancelled, it is reasonable to assume that person is more likely to violate the terms or conditions of a Federal lease than is a person with a good record of compliance on State leases or permits. This is particularly true since consideration of State leases is limited to the allotment for which a new Federal permit or lease is sought. The Department disagrees that these provisions will discourage leasing of State lands. Only those few persons who

commit violations that result in the cancellation of their State permits will be affected.

The requirement of applicants for renewal to be found to be in compliance with terms and conditions and the pertinent rules and regulations on the permit or lease for which renewal is sought is not new; it stems directly from FLPMA (43 U.S.C. 1752(c)). While disqualification from obtaining a new permit or lease or a renewal of a permit or lease under this provision may in some instances affect financing or other aspects of ranch economics, the principal objective of these provisions—encouraging and recognizing stewardship—is consistent with the long-term stability and economic viability of a ranch operation.

The Department does not agree that suspensions, in addition to cancellations, should serve as a basis for disqualifications. Suspensions may be imposed for a wide range of problems. While some may be serious enough to warrant denial of additional permits, others may not be. If a person continues to perform so poorly that BLM suspends one or more permits, the authorized officer has the discretion to take the next step, cancellation. In that case, the person would become ineligible for a new permit for the next 36 months.

In regards to difficulties in determining affiliation, the Department does not intend that such a determination will require an in-depth investigation. Rather, the authorized officer will rely on readily available information and material provided by the permittee or lessee through the normal permit or lease application process.

Once an individual has sold his ranch and a permit has been transferred, the original owner will not be considered responsible for it. The concept of affiliate is intended to take into account those persons who actually have the ability to control the manner by which a grazing operation is conducted. The Department does not believe this extends to buyer-seller relationships unless as a result of the transaction the seller retains some interest in the operation, such that it meets the definition of ''affiliate.''

The concern of the tribal government is well founded. If the tribe receives permits and in turn leases them to individual tribal members, the Department assumes that the tribe's relationship to the tribal members meets the definition of control. Through the terms of the leases, if by no other means, the tribe can exercise control over its members.

In accordance with the above discussion, the Department has decided to adopt the rule as proposed, with the text subdivided and redesignated and headings added for clarity. Additionally, the word ''relevant'' is added to paragraph (d) to modify ''information'' to clarify that the authorized officer is authorized to request information from the applicant that is relevant to the application process, not just any type of information.

Section 4110.1–1 Acquired Lands

The proposed rule would have revised this section to clarify that BLM will apply the terms and conditions of existing grazing permits on leases on newly acquired lands in effect at the time of acquisition of the lands. This change was proposed to make clear that terms and conditions of permits and leases in effect at the time land is acquired will be honored subject to the provisions of the transfer of ownership (statute, title, etc.). Mandatory qualifications will not apply to such permits or leases until the expiration of their current term.

The Department received very few comments on this section. Some expressed concern that this provision would mean that lands grazed at the time of acquisition might later be turned to conservation use.

It is true that, under this provision, lands which were grazed at the time of acquisition could, with the expiration of the permit, be turned to conservation use. However, the commenters should keep in mind that conservation use will be issued only at the request of the permittee, and will be required to be consistent with applicable land use plans. Additional information on conservation use can be found in this preamble in the discussion of § 4130.2.

The Department has decided to adopt this provision as proposed.

Section 4110.2–1 Base Property

Under the proposed rule, this section would have been amended by clarifying that base property is required to be capable of serving as a base for livestock operations but it need not be used for livestock production at the time the authorized officer finds it to be base property.

A provision would have been added to clarify that the permittee's or lessee's interest in a base water previously recognized as base property would still qualify as base property following authorized reconstruction or replacement required to continue to service the same area.

The Department received comments on this section ranging from those who questioned the justification for implementing the concept that base property be capable of supporting livestock use to those who questioned how the Department would determine what was capable of supporting livestock and what was not. Others questioned whether base property must be contiguous.

The Department has introduced the concept of ''capability'' of base property to support livestock in order to a) recognize that not all private land holdings are of sufficient size and character to support a livestock operation, and b) provide for situations where persons or organizations other than traditional livestock operators, such as insurers, financial organizations, or conservation organizations, acquire a ranch but may not at the moment be in the livestock business at that location. The Department believes this is in the public interest. As long as the base property is capable of supporting a livestock operation, the property should be eligible to be considered a base of livestock operations. The provision is not intended to remove the requirement for permit applicants to have base property, nor is the provision intended to circumvent BLM's authority to decide whether public lands should or should not be grazed.

The Department does not believe it is necessary for the base property to be supporting a livestock operation at present to be eligible to be considered base property. The proposal would allow for the acquisition or retention of a grazing permit or lease during periods when cattle are not actually being grazed, as long as it were possible to conduct grazing operations. For example, an operation could be in a start-up phase, planned to last for several years, prior to actually placing cattle on the land. While some permittees may not intend to initiate a grazing operation, under the proposal any extended conservation use would be allowed by BLM only if in conformance with approved land use plans or other activity plans and standards and guidelines.

The Department disagrees that contiguous property should automatically be considered capable, or that only contiguous properties should be considered capable of serving as a base. In some cases, there is more than one contiguous property, and a decision must be made as to which would serve best as base property. Also, some contiguous properties may not actually be capable of supporting grazing

operations, due to their size or character. For example, some may have been so sub-divided that they could no longer support such operations. Finally, statutory provisions in TGA clearly allow non-contiguous property to be considered base.

Under the final rule adopted today, property merely has to be capable of supporting an operation. Property currently serving as base property would in all likelihood be found to be capable of serving as a base of livestock operations.

The Department intends the provision regarding water to recognize that in some cases base waters need to be redeveloped, and the holders of those base waters should not lose base property status just because they had to redevelop the water.

For the reasons discussed above, the Department has decided to finalize the provision as proposed, with one minor change. The words ''would utilize'' is substituted for ''utilizes'' for consistency with the concept that base property need only be capable of supporting a grazing operation; no operation need be in existence at the time the property is determined to be suitable as base property.

Section 4110.2–2 Specifying Permitted Use

In the proposed rule, this section would have been renamed ''Specifying permitted use'' replacing the existing title ''Specifying grazing preference.'' It would also have been amended by replacing the term ''grazing preference'' with ''permitted use'' because the latter is more appropriate terminology to describe and quantify the number of AUMs of forage being allocated in a permit or lease. Also, the section would have been amended to clarify that levels of grazing use on ephemeral or annual ranges are established on the basis of the amount of forage that is temporarily available pursuant to vegetation standards prescribed by land use plans or activity plans.

The Department received a number of comments concerning the proposal to substitute ''permitted use'' for ''grazing preference'' and the corresponding change in policy in the concept of preference being limited to a priority position for the purpose of obtaining a grazing permit or lease. Comments ranged from those who felt the amendment was a good idea to those who believed the change would lead to financial insecurity for grazing operations. Others asked for definitions of the terms ''annual rangelands'' and ''ephemeral rangelands.''

The Department has decided to adopt the proposed provision, with several clarifying changes to reflect the initial intent of the proposed rule. Reference to authorizing use ''where livestock use is authorized based upon forage availability'' is moved to modify ''ephemeral rangeland.'' This clarifies that it is ephemeral rangelands where use must be determined based on actual forage availability. The word ''authorized'' is replaced by ''permitted'' in the third sentence for consistency with other provisions in this final rule, including the first sentence of this paragraph. The phrase ''activity plan, or decision of the authorized officer'' is added after ''land use plan'' to clarify that such plans or decisions may be the basis for determining permitted use. Finally, the word ''occasional'' is deleted in two places. While ephemeral rangelands are used only occasionally, due to lack of forage availability under normal conditions, annual rangelands are generally available for grazing. Since this provision refers to both types of rangelands it is inaccurate to use the term ''occasional'' to refer to forage availability.

The Department has considered the suggested wording changes and has determined that the proposed language best represents the intent of this section, with the exceptions noted. The new definition of the term ''preference'' is considered at § 4100.0–5.

The final rule does eliminate the concept of ''preference AUMs'' and replaces this term with the term ''permitted use.'' Permitted use is not subject to yearly change. Permitted use will be established through the land use planning process, a process which requires data collection and detailed analysis, the completion of appropriate NEPA documentation, and multiple opportunities for public input. Establishing permitted use through this planning process will increase, not decrease, the stability of grazing operations. The rule clearly defines preference to be a superior or priority position for the purpose of receiving a grazing permit or lease. Therefore, the Department does not anticipate there will be a decrease of financial stability for grazing operations.

There is no need to eliminate the concept of ''grazing preference'' totally. The concept of assigning first priority to certain persons is well-established in TGA and is an appropriate way to contribute to the stability of dependent livestock operations and the western livestock industry. The redefinition of preference is intended to resolve the confusion and misinterpretation of the concept that has developed over the years. In particular, the redefinition eliminates the shorthand jargon of ''preference AUMs'' that has developed to refer to the number of AUMs included in a permit or lease offered to a holder of grazing preference.

In response to commenters' suggestions, definitions of annual and ephemeral rangelands are added to this final rule. They can be found in § 4100.0–5. Regarding permitted use for annual rangelands, the Department has made some minor wording changes in this final rule for clarity.

The provisions pertaining to ephemeral ranges address designated ephemeral ranges—specific areas that have been recognized through BLM's provisions for ephemeral grazing. There are some smaller areas scattered throughout the desert southwest and Great Basin that produce amounts of forage sufficient for livestock grazing only occasionally and that are included in perennially-grazed allotments. These generally isolated areas can be recognized at the time livestock carrying capacity is determined and can receive further protection through the standards and guidelines that will be developed as a result of this final rule.

Section 4110.2–3 Transfer of Grazing Preference

In the proposal, this section would have been amended to reflect the new requirements of § 4110.1 that applicants for new or renewed permits or leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance. It would also have been amended by the addition of a new paragraph (f) requiring that new permits or leases stemming from the transfer of base property be for a minimum period of three years. The Department proposed this provision to enhance the protection and improvement of rangelands and to reduce the administrative work of processing transfers. The section would also have been amended by the substitution of the term ''permitted use'' for the term ''grazing preference'' where the reference pertains to an amount of livestock forage. This change is discussed at § 4110.2–2.

Most of the comments submitted on this proposed section addressed the 3-year limitation on transfers, which some viewed as arbitrary and without rational basis. Others read the proposal to mean that three years was an *upper* limit on transfers, and suggested that a 10-year term was needed to provide stability to the ranching operation, and to assist in obtaining operating capital from lenders. Others questioned the accuracy

of the cross-reference in the proposed language.

The Department disagrees that the 3-year minimum for transfers stemming from base property leases is arbitrary and without rational basis. This minimum is intended to reduce administrative burden and to promote good stewardship of the land. The TGA requires the Department to ensure ''orderly use, improvement, and development of the range.'' Rapid turnover of permit and lease holders is not consistent with this requirement. Persons who hold preference on an allotment but who sublease their public land grazing privileges to short term occupants rather than using the allotment for grazing cattle are not making productive use of the land nor promoting the stability of the livestock industry.

The Department does not envision that the 3-year minimum for transfers will impact the normal transactions in the livestock business. It will not interfere with the sale of private lands or with the subsequent transfer of the permit or lease to the new owner. The provision does not encumber private lands—it only affects the privileges associated with a grazing permit or lease. The effects of the 3-year limit on transfers on a public lands rancher's equity has been addressed in detail in the FEIS. The final rule provides for transfers of less than three years in specified circumstances, for example where base property changes ownership. Transfers are allowed for *up to* 10 years. Three years is a lower limit.

Regarding qualifications for a permit, transferees should be expected to meet the same qualification criteria as other public land permittees or lessees. Upon the completion of a transfer the transferee will become the permit or lease holder. Given that some short-term transferees may be less motivated to manage for the long-term health of the rangelands, ensuring that transferees have a history of compliance is of great importance.

The cross reference is intended to ensure that transferees meet the mandatory qualifications and own or control base property. While the language in the proposal, referring to general § 4110.2 is not incorrect, more specific references to the provisions which the transferee must meet, those in §§ 4110.2–1 and 2–2, may be more useful. The final language is modified accordingly.

The Department has decided to adopt a final version of the proposed rule with only one minor change, which reflects the new cross reference.

Section 4110.2–4 Allotments

In the proposed rule, this section would have been expanded to clarify that the authorized officer's existing authority to designate and adjust allotment boundaries included the authority to combine or divide allotments when necessary for efficient management of public rangelands. The proposal also would have specified that modification of allotments must be done through agreement or decision of the authorized officer. These two changes were intended to provide administrative clarity to the process. The proposal also would have added a requirement expanding consultation to the State having lands or responsible for managing resources in the area, and the interested public, as well as the affected grazing permittees or lessees. Finally, consistent with the change in definition of consultation, cooperation, and coordination discussed in § 4100.0–5, the proposal would have eliminated the words ''cooperation and coordination.''

The final rule adopts the language of the proposed rule except that the terminology ''consultation, cooperation, and coordination'' is included in the final rule.

Most of the comments on this proposed section addressed two issues: deletion of the terms ''coordination and cooperation'' and inclusion of States and, particularly, the interested public in the consultation process. Deletion of the terms ''coordination and cooperation'' was viewed by some commenters as a violation of the intent of Section 8 of PRIA which would prevent affected interests from exercising their right to consult, cooperate, and coordinate.

Some commenters objected to the inclusion of the interested public in the consultation process on changing allotment boundaries because they believed that it would interfere with currently established boundaries, create uncertainty for operators, and decrease the incentive to maintain improvements. Other comments suggested that consultation on allotment boundary changes should be with the RAC, not the interested public.

Few comments were addressed specifically to the provision allowing the authorized officer to combine or divide allotments. Commenters asked how deeded lands within allotment boundaries would be handled, and stated that adjusting allotment boundaries was a taking of private property. Others asked who would bear any expenses associated with boundary changes. Still others raised takings issues, and asked who would bear the expense associated with boundary changes.

As noted above in the discussion of § 4100.0–5, because of the confusion caused by the proposed deletion of ''cooperation and coordination'' the Department has decided to use the full phrase ''consultation, cooperation and coordination'' in cases where broad based input in agency deliberations are encouraged.

The Department believes that inclusion of the interested public is important because the public is a stakeholder in the administration of the public lands. Additionally, decisions regarding designation and adjustment of allotment boundaries are subject to NEPA, and the public must be involved in decisions subject to the NEPA process, because of the requirements of that statute. Currently, BLM notifies all affected interests of actions such as allotment boundary changes. The Department does not expect there will be significant changes in current BLM procedures to accommodate the requirements for consultation with the interested public, beyond including any interested persons in such routine notifications. Thus, the Department does not anticipate any increased uncertainty or decreased incentive to maintain improvements. While RACs might be consulted in certain cases, such as a controversial adjustment or where significant funding is required, the Department does not believe it is feasible to involve RACs in every routine action.

The Department envisions that most adjustments in allotment boundaries would have little effect on ranch units. Typically, such adjustments are to realign boundaries to be consistent with actual use of the allotment. For instance, an allotment boundary may be adjusted to allow an adjacent ranch to make use of public lands that because of natural physical barriers are not readily available to the current permittee. Adjustments in allotment boundaries will in no way affect the ownership of private lands.

The Department does not believe that this provision would involve any ''takings'' issues. Permits and leases to graze public lands within grazing allotments do not constitute property rights. Adjustments in allotment boundaries that result in a transfer of grazing preference will be subject to the provisions of § 4120.3–5 pertaining to the assignment of range improvements and corresponding compensation for such improvements. Takings issues are addressed further in the General Comments discussion in this preamble.

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

final rule makes this change. For further discussion, see § 4110.0–5. Otherwise, the provision is adopted as proposed.

Section 4110.3–2 Decreasing Permitted Use

The proposed rule would have amended this section by revising the heading to change the term ''active use'' to ''permitted use.'' This change would have been consistent with the proposed definitions of these two terms, as discussed at § 4100.0–5. Paragraph (b) also would have been amended to provide that when monitoring and field observations show grazing use or patterns of grazing use are not consistent with the fundamentals of rangeland health (titled ''national requirements'' in the proposed rule) or standards and guidelines or are otherwise causing an unacceptable level or pattern of utilization, the authorized officer must reduce permitted grazing use or otherwise modify management practices. Paragraph (b) would also have added ecological site inventory and other acceptable methodologies to monitoring as ways of estimating rangeland carrying capacity as the basis for making adjustments in grazing use. Subsequent adjustments could be made as additional data were collected and analyzed.

Paragraph (c) would have been deleted to remove the provision requiring the authorized officer to hold those AUMs comprising the decreased permitted use in suspension or in nonuse for conservation purposes. Existing paragraph (a) of this section, which was not proposed to be changed, would continue to provide for the temporary suspension of active use due to drought, fire, or other natural causes, or to installation, maintenance, or modification of a range improvement.

Some commenters stated that the proposed language is inconsistent with legal requirements. Some commenters stated that the term ''corrective action'' is ''vague and subjective.''

Numerous commenters stated that it is necessary for the authorized officer to determine the cause of range problems before decreasing permitted use and questioned whether methods other than monitoring would be suitable for determining carrying capacities. Some of these comments suggested correcting other uses, such as wild horses and wildlife, before permitted use is reduced. Some commenters expressed concerns on the monitoring and inventory methodologies BLM would use. Others stated that reductions should be placed in suspended use rather than eliminated.

This regulation is not inconsistent with statutory requirements. A discussion pertaining to legal authorities and requirements is presented under ''General Comments.''

The BLM authorized officer will make a determination on a case-by-case basis as to what corrective actions are appropriate. In some cases the corrective action may not result in a reduction in permitted AUMs. For instance, a change in use periods or a temporary suspension in use may be determined to be the appropriate action. In other instances, data may show that other uses of the public lands need to be modified. The Department believes that it would be inconsistent with its mandate to manage the public rangelands to allow an allotment to continue to deteriorate while prolonged monitoring studies are conducted in those instances where other reliable measures of rangeland health indicate a need for action.

BLM uses a variety of accepted methodologies and available data to determine carrying capacities of grazing allotments and to identify unacceptable levels or patterns of use. Typically, findings of one form of data collection are corroborated with other data before making reductions in livestock use. The BLM Technical Reference 4400–5 (*Rangeland Inventory and Monitoring Supplemental Studies*) describes acceptable methodologies for estimating forage production. Additionally, BLM intends to develop rapid assessment techniques that can be used to evaluate rangeland health as represented by established standards and the guidelines to be followed in meeting standards and the fundamentals of rangeland health. (*See* subpart 4180.)

Although in some cases reductions made under this section of the rule may be carried in temporary suspension, the Department does not believe that it serves the best interests of either the rangeland or the operator to continue to carry suspended numbers on a permit, unless there is a realistic expectation that the AUMs can be returned to active livestock use in the foreseeable future. Should additional forage become available there are provisions at § 4110.3–1 to address increases in permitted use. Decisions resulting in a decrease in permitted grazing use are subject to the administrative remedies outlined in subpart 4160, including a right of appeal.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with one minor change. The term ''authorized grazing use'' in paragraph (b) is changed to ''permitted grazing use,'' to make this provision more consistent with the definitions included in this final rule.

Section 4110.3–3 Implementing Reductions in Permitted Use

The proposed rule would have renamed the section and removed existing paragraph (a) and other requirements for phased-in reductions in grazing use. This proposal was intended to provide the authorized officer more flexibility to deal with situations in which immediate action was necessary to protect rangeland resources; phase-in periods for reduction in grazing use could still have been available if determined by the authorized officer to be appropriate.

The proposal would also have redesignated existing paragraph (b) as paragraph (a) and amended it by removing the requirements to phase-in reductions in use over a five year period. The proposal also would have removed the terms ''consultation, coordination and cooperation,'' and ''suspension of preference'' and added in their place the terms ''consultation'' and ''reductions in grazing use,'' respectively. These changes would have been consistent with changes in definitions discussed at § 4100.0–5. It would also have provided, by reference to § 4110.3–2, for the application of the fundamentals of rangeland health and standards and guidelines and the use of other methods, in addition to monitoring, for determining the need for an initial reduction.

Existing paragraph (c) would have been redesignated as paragraph (b) and amended to remove the word ''temporary'' because that term implies that protection would be needed for only one season. In actuality, the influences of natural events such as drought could significantly affect vegetation health and productivity for several months or years after a drought has passed. Other minor amendments would have clarified action to be taken by the field manager and made the language concerning provisions for making decisions effective when necessary to protect the resource consistent with language on that provision in proposed subpart 4160. Language would have been added specifying that such decisions would have remained in effect pending any appeal of the decision, unless a stay were granted by the OHA. The overall intent of the changes in this paragraph was to provide the authorized officer with the authority needed to implement decisions to close allotments or portions of allotments or modify authorized grazing use when immediate action was

necessary to protect rangeland resources.

A number of commenters stated that the phase-in of reductions should not be eliminated because it promotes industry stability and gives livestock operators a chance to adjust their operation. Others suggested that the authorized officer should restrict access for a temporary period of time rather than making reductions in ''emergency'' situations. Commenters also objected to removal of the terms ''coordination and cooperation'' in redesignated paragraph (a) as being a violation of PRIA. Others objected to involvement of the interested public.

Numerous commenters raised concerns over the lack of documentation required to implement reductions in grazing use, and stated that prolonged monitoring should be required. Others stated that ''full force and effect'' provisions should not apply to reductions and that the RACs should be consulted prior to reductions and emergency closures.

The Department will implement any increase or decrease as outlined in the final rule by documented agreement or by decision of the authorized officer. These documents may include a provision for a phase-in period. However, in some situations, immediate action is needed to protect rangeland resources, including wildlife and riparian areas, because of conditions such as drought, fire, flood, insect infestation or other conditions that present an imminent likelihood of significant resource damage. The Department has concluded that in these situations immediate corrective action is warranted, without the constraints of a phase-in period. Of course, even where a decision is implemented immediately, an adversely affected party would retain the ability to petition the OHA for a stay of the decision.

The Department disagrees that the provisions of this section are inconsistent with any statutory requirements. These issues are covered more fully above in the General Comments section of the preamble. The words ''cooperation and coordination'' have been added to paragraph (a). As noted at § 4100.0–5, the Department has decided to use the phrase ''consultation, cooperation, and coordination'' in cases where broad based input into agency deliberations is sought. The Department believes that such input is critical to effective management of public rangeland.

The authorized officer will make decisions about implementing reductions in permitted use based on monitoring, field observations, ecological site inventory or other acceptable data. The final rule at 4110.3–2(b) covers adequate monitoring and documentation necessary to implement reductions. The Department believes that the language in the rule expanding the sources of information that the authorized officer can use to implement such changes is desirable to provide flexibility to the process and to ensure that the authorized officer can take immediate action to protect the resource, including making decisions effective immediately or on a specific date, when conditions require it.

While in some specific circumstances a RAC may be involved in a decision to reduce permitted use, the Department does not believe it is feasible to consult the councils for every grazing management decision.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with the following changes. The term ''cooperation and coordination'' is added back into paragraph (a). In paragraph (b), the phrase ''when continued grazing use poses a significant risk of resource damage from these factors'' is amended to read ''when continued grazing use poses an imminent likelihood of significant resource damage.'' This clarifies that modifications in grazing use and notices of closure can be implemented where continued grazing use poses an imminent likelihood of significant resource damage. Such decisions may be placed into effect upon issuance or on a specified date and will remain in effect during any appeal unless a stay is granted.

Section 4110.4–2 Decrease in Land Acreage

The proposed rule would have amended paragraph (a) by removing the words ''suspend'' and ''suspension'' and by changing the term ''grazing preference'' to ''permitted use'' consistent with other changes throughout the proposal. As a result, decreases in public land acreage available for grazing would no longer have associated forage allocations carried on a permit or lease as suspended use.

The major concerns commenters raised with respect to this section involved compensation for lost range improvements and AUMs and the elimination of the terms ''suspend'' and ''suspension.'' The existing regulation provides for compensation to the permittee for his or her contribution in the permanent range improvements developed within areas that are being devoted to a public use that precludes livestock grazing. Compensation is not required for the reduction or loss of available livestock forage due to a change of use, which would include cases of use being reduced to protect the rangelands. This provision is not being changed.

The final rule has removed ''suspend'' and ''suspension'' because it does not serve the best interests of either the rangeland or the operator to continue to carry suspended numbers on a permit unless there is a realistic expectation that the AUMs can be increased due to increased forage availability. If such numbers are carried, the permittee or lessee may have an unrealistic expectation for increases in AUMs in the future. In cases where the acreage is being reduced, it is not likely that such an increase will occur. Therefore, there appears to be no good reason to refer to suspended AUMs in the regulation covering decreases in land acreage. If rangeland conditions improve to the extent that increased usage is possible, the provisions of § 4110.3 can be used to increase permitted use accordingly.

All decisions pertaining to a grazing permit or lease will involve consultation with the affected permittee and affected interests. All final decisions of the authorized officer will be subject to the administrative remedies discussed in subpart 4160, including the right of appeal.

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

Section 4120.2 Allotment Management Plans and Resource Activity Plans

The proposed rule would have amended this section by revising the heading and by adding reference to other activity plans that may prescribe grazing management. This provision was intended to reflect BLM's belief that activity plans that provide direction for the major resources and uses of a particular area are more effective management tools, and are more consistent with an ecosystem approach, than are single source planning documents.

The proposed rule would have clarified that draft AMPs, or other draft activity plans, could be developed by other agencies, permittees or lessees, or interested citizens. This provision was intended to broaden the base of participation in the planning process, and to provide interested parties, including interested citizens, an opportunity to facilitate the planning process through such participation.

Another proposed provision would have clarified that AMPs or other activity plans, including those prepared

by other parties, would not have become effective until approved by the authorized officer. This provision is consistent with authority granted to the Secretary by 43 U.S.C. 1752.

Paragraph (a) would have been amended by replacing the reference to district grazing advisory boards with RACs and including State resource management agencies in the activity planning process. This change would have been made for conformance with the proposals on subpart 1780, and with the Department's intent to broaden the base of participation in the grazing management process.

Another amendment would have changed the existing provision regarding the flexibility granted to permittees or lessees under an AMP to specify that it would be determined on the basis of demonstrated stewardship. The requirement for earning flexibility was intended as an incentive for grazing operators to manage for the improvement of rangeland conditions. Additionally, it was intended to recognize that permits and leases operated by good stewards require less administration.

The proposed rule would have clarified that the inclusion of other than public lands in an AMP or other activity plan is discretionary. The use of ''shall'' in the existing regulation could have been read to require inclusion of such lands.

The amendment would also have specified that a requirement of conformance with AMPs be incorporated into the terms and conditions of the grazing permit or lease. This proposal would have changed a provision in existing paragraph (c) which required that the plan itself, rather than a requirement to conform with the plan, be included in the terms and conditions of the permit or lease. This provision was intended to conform with existing practice regarding how AMP decisions are reflected in permits and leases.

Proposed paragraph (c) would have been a new provision. It would have provided that the authorized officer give an opportunity for public participation in the planning and environmental analysis of proposed AMPs affecting the administration of grazing and give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing them. It would also have provided that the decision document following the environmental analysis would be considered the proposed decision for the purposes of subpart 4160 of this part. This provision was intended to streamline administrative processes by allowing BLM to combine NEPA analysis with the activity plan process. Additionally, the provision assists the grazing permittees and lessees by clarifying that decisions regarding AMPs can be appealed through the standard appeals process specified in subpart 4160.

The Department received a number of comments on this section. Most frequent comments reflected perceptions that the proposed rule would eliminate the requirement that BLM ''consult, coordinate and cooperate'' with the permittee. Many stated that to allow participation by the interested public would severely delay the process. Others said some provisions, such as using resource activity plans to serve as the functional equivalents of AMPs, are outside the Secretary's jurisdiction. Some respondents raised questions such as whether development of the AMP was discretionary, and whether standards and guidelines would be imposed retroactively on existing plans.

A number of other comments were received on various details of the process and scope of AMPs and other activity plans. These comments will prove useful in developing subsequent guidance for BLM's field management staff.

The proposed rule included the term ''consultation, cooperation and coordination'' in the requirements for preparing AMPs and other activity plans under paragraph (a) but used the term ''consultation'' in paragraph (e) pertaining to revising and terminating such plans. In the rule adopted today, the term ''consultation, cooperation and coordination'' is substituted for ''consultation'' in paragraph (e) and remains as proposed in paragraph (a).

The Department disagrees that involvement of the interested public will delay the final outcome of the planning process. While at some stages, involvement of the interested public in AMPs may slow the process, their involvement also will result in fewer drawn-out protests and appeals and more rapid implementation on the ground. The Department intends that interested parties will be involved in all levels of planning, including the development of land use plans and the preparation of site-specific management activity plans such as AMPs. It remains the responsibility of BLM to make timely decisions. These rules do not change existing time frames processes such as protests or appeals.

The provision allowing resource activity plans to serve as the functional equivalent of AMPs is not outside the Secretary's authority, and the final rule retains this provision. The concept of more integrated resource activity plans better meets the statutory requirements of FLPMA and NEPA, provides a more efficient way to plan for the management of a specified area, and allows more complete analysis of public comment and cumulative effects. Activity plans that serve as the functional equivalent of AMPs will meet the FLPMA definition of AMPs (43 U.S.C. 1702(k) and 1752(d)) by addressing the specific conditions of rangelands within the grazing allotments covered by such plans.

The Department does not intend that standards and guidelines will automatically be incorporated into plans upon the effective date of this rule. Rather, standards and guidelines will be incorporated into individual plans as the need for modification of the plans is identified. Subpart 4180 directs the authorized officer to take action no later than the start of the next grazing year to initiate significant progress toward rangeland health in cases where the authorized officer determines that existing management practices are failing to ensure significant progress toward meeting the standards or toward conforming with the guidelines. Under this provision, terms and conditions of existing permits could be revised, under the procedures specified in new § 4130.3–3, to incorporate new terms and conditions to address resource condition issues. Such decisions by the authorized officer will be subject to rights of appeal under subpart 4160, as will decisions to adopt, terminate or modify an AMP or its functional equivalent.

In accordance with the above discussion, § 4120.2 is adopted as proposed with the exception of minor edits, the addition of the explicit reference to other activity plans serving as the functional equivalent of AMPs, and the substitution of the term ''consultation, cooperation and coordination'' for the term ''consultation'' in paragraph (e).

Section 4120.3–1 Conditions for Range Improvements

The proposed rule would have amended this section by inserting a new paragraph (f) specifying that range improvement projects would be reviewed in accordance with NEPA requirements, and that the decision document issued as a result of that review would be considered the proposed decision for purposes of subpart 4160 of this part.

This provision would not have introduced any new requirement. Rather, it would have clarified in these

regulations requirements that already exist under NEPA. The provision would also have ensured that the same document would have been used to satisfy NEPA requirements and to provide a final—and appealable—decision to a permittee or lessee. This would have prevented duplication of effort on the part of the agency or the permittee or lessee.

In effect, the provision that the NEPA decision document would have served as the proposed decision of the authorized officer for purposes of subpart 4160 would have directed appeals of those decisions through the administrative remedies process provided in that subpart. Under the proposal, that subpart would have provided an opportunity for a field hearing on the facts of the case by an administrative law judge, rather than requiring the appeal to go directly to the Interior Board of Land Appeals. This would have streamlined the appeals process.

The Department received few comments on this section. Most expressed concern that following the NEPA process would result in unnecessary delay in approving environmentally sound range improvement projects, or would discourage such improvements from being made.

The Department has decided to adopt this provision as proposed, with one minor change. The term ''range improvement'' is added between the words ''cooperative'' and ''agreement'' in paragraphs (b) and (e). This term was added for consistency with other provisions in the final rule. This change clarifies that the cooperative agreements being referred to are range improvement agreements, not cooperative agreements between BLM and the States, or any other type of cooperative agreement.

The Department does not expect that the NEPA review process will unduly delay implementation of range improvement projects. The rule retains the NEPA requirement. Following the NEPA process is a requirement of law and is current practice; it is not just a requirement of this regulation.

Section 4120.3–2 Cooperative Range Improvement Agreements

In the proposed rule, the heading of this existing section would have been revised to clarify that this section deals with cooperative range improvement agreements as opposed to ''cooperative agreements'' with other Federal or State agencies. The proposed rule would have amended this section to specify that the United States would have title to all new permanent grazing-related improvements constructed on public lands. The proposed section would have provided that title to temporary grazing-related improvements used primarily for livestock handling or water hauling could be retained by the permittee or lessee. This change would have conformed with the common law practice of keeping title of permanent improvements in the name of the party holding title to the land, and with existing Forest Service policies. The amendment would not have changed any agreements currently in effect.

The Department received many comments on this section. Some commenters expressed concern that the provisions would lead to fewer range improvements and declining ranch values, range conditions and wildlife populations. Others questioned if reconstructions were considered new improvements and whether existing improvements would be affected by the requirement that the United States retain title to improvements. Many stated that the provision could afford environmental groups the opportunity to take control of range improvements and felt livestock operators should be consulted if improvements are planned. Others raised takings questions.

The Department has adopted a modified version of the proposal. The title of the final rule is changed to clarify that the section affects cooperative range improvement agreements. Paragraph (b) is revised by adding examples of types of permanent range improvements that will be authorized by cooperative range improvement agreements. The existing language of §§ 4120.3–2 and 4120.3–3 of the current rule has long stated that the title of nonremovable improvements shall be in the name of the United States and the title of removable range improvements shall be in the name of the permittee or lessee, or shared in proportion to the amount of contribution, in the case of situations covered by § 4120.3–2. This final rule clarifies further these provisions regarding temporary and permanent improvements. The United States will have title to new permanent range improvements. The rule conforms BLM policy with the common law practice of keeping title of permanent improvements in the name of the party holding title to the land, and with current Forest Service administrative provisions.

Additionally, the adopted language clarifies that the provision applies to cooperative range improvements agreements after the effective date of the rule. The final rule does not adopt proposed paragraph (c), regarding temporary structural range improvements, as that paragraph duplicates requirements in final § 4120.3–3, Range improvement permits.

Finally, a statement is added to clarify that any contribution made by a permittee or lessee to such a permanent improvement will be documented by BLM to ensure proper credit for the purposes of § 4120.3–5, Assignment of range improvements, and § 4120.3–6(c), Removal and compensation for loss of range improvement.

The Department disagrees that this provision will result in fewer range improvements and declining range values, range conditions, and wildlife populations. The Forest Service's experience does not support this contention. Improvements add to the management effectiveness and the value of the ranch operation. Any contributions the permittee makes to range improvements are recognized and documented. The incentive for a permittee to invest in range improvements is that it is in his or her financial interest to improve use of the grazing allotment.

Reconstruction within the bounds of the original range improvement permit will not require a new agreement. However, work that is outside of the original range improvement permit or authorization will be considered a new improvement. Determinations as to whether a particular instance is a reconstruction or a new construction will be made on a case-by-case basis.

The Department disagrees that this provision will allow other parties to take control of range improvements. New permanent range improvements will be issued by cooperative range improvement agreement with the permit holder, and will be in the name of the United States, regardless of who the permittee is. Responsibilities of each cooperator, the grazing permit holder and the United States will be documented in the cooperative range improvement agreement.

The provision does not limit the Secretary's authority to cooperate with other agencies and organizations to plan, develop, and maintain improvements on the public lands to the benefit of other public land resources. Where such developments may affect livestock operations, permit holders will be consulted. Decisions to determine the need for range improvements will not be affected by this provision. The rule continues the policy that range improvement needs may be identified by the operator, BLM, or interested members of the public. The responsibility for cost to be borne by the

respective cooperators in new range improvement projects will be described in the cooperative range improvement agreement, and will be determined on a case-by-case basis.

For discussion of takings issues, see the General Comments section of this preamble.

Section 4120.3–3 Range Improvement Permits

Paragraph (a) of this section would have been amended to change existing provisions authorizing permittees or lessees to apply for a range improvement permit to install, use, maintain, or modify range improvement projects. Two changes would have been made to this provision. First, the reference to permanent improvements would have been deleted. This change would have been consistent with the proposed revisions to § 4120.3–2 above, which would have consolidated all provisions regarding permanent improvements in that section. Secondly, the phrase ''within his or her designated allotment,'' which referred to improvements needed to achieve management objectives, would have been changed to ''established for the allotment in which the permit or lease is held.'' This change was intended to provide clarity to the provision and to remove the gender references in the existing text.

Existing paragraph (b) would have been amended to add a list of types of improvements the Department considers to be temporary. The amendment would have clarified that permanent water improvement projects would be authorized through cooperative range improvement agreements consistent with existing Department policy. The proposed rule would have clearly established that title to permanent range improvements authorized after the effective date of the rule would be held by the United States. It would also have added a companion provision specifying that a permittee's or lessee's contribution to an improvement would have been documented by the authorized officer, to ensure proper credit for purposes of §§ 4120.3–5 and 4120.3–6(c).

The proposed rule would have removed existing paragraph (c). The proposal would have created a new paragraph (c). This paragraph would have provided that the permittee or lessee must cooperate with other operators that may be temporarily authorized to use forage. Furthermore, this new provision would have specified that a permittee or lessee would be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use; the authorized officer may resolve questions concerning compensation. Where a settlement cannot be reached, the authorized officer would issue a temporary grazing authorization to compensate the preference permittee or lessee. The intent of this proposal was to protect the interest of the permittee or lessee in range improvements in those infrequent cases where a third party makes use of the allotment.

Many commenters questioned whether the proposal was within the authority of TGA. They also stated that the provisions pertaining to title of range improvements would remove incentives for permittees to make improvements, would make it difficult to obtain financing, would adversely affect wildlife and local economies because fewer improvements would be built, and could jeopardize existing ''Section 4'' (TGA) permits.

Other commenters were concerned that the Department would require permittees or lessees to construct range improvements at their expense. Some commenters asked what requirements there would be for maintenance. They also expressed concern about whether there would be a problem of access to improvements to which they did not have title.

Commenters expressed opposition to provisions in proposed paragraph (c) because, in their view, it seemed to be a new provision to allow nonpermittees to graze within another's grazing allotment.

Under the provisions adopted here, livestock operators may hold title to removable and temporary improvements authorized under range improvement permits. Such improvements are largely funded by livestock operators.

The Department disagrees with the assertion that the provisions of this section are outside the Secretary's authority as established in TGA. Section 4120.3–3, as proposed and adopted in this final rule, implements the provisions of TGA found at 43 U.S.C. 315. The Department also disagrees with the contention that the title provisions will significantly affect either the amount of permittee and lessee contributions to range improvement or their ability to secure financing for range improvement. The installation of range improvements will remain in the permittee or lessee's interest as long as the improvement assists in the management of the livestock operation or results in an improvement in the condition and long-term productivity of the range. The Forest Service has long had a policy of retaining title to permanent improvements and has not observed that private contribution has been discouraged. Similarly, financial institutions, in reviewing loan applications, consider the value of the range improvement in terms of how the improvements will affect the profitability of the ranch operation.

This rule affects the title of improvements authorized after the effective date of this rule. Title to currently authorized improvements will not be affected.

The provisions pertaining to the use of range improvements by parties temporarily authorized to use an allotment would not have established new policy toward the *issuance* of nonrenewable permits. Proposed paragraph (c) would merely have made explicit how the renewable permit or lease holder's interests in range improvements would be protected in those instances where another party is authorized to graze within the allotment on a temporary nonrenewable basis.

In accordance with the above discussion, the Department has decided to adopt this section as proposed, with one major change. In the rule as adopted, the Department has removed reference to permanent water developments from this section. The provision dealing with water improvements and their authorization through cooperative range improvement agreements is moved to final § 4120.3–2, thus consolidating all provisions regarding permanent improvements in that section.

The existing language of §§ 4120.3–2 and 4120.3–3 of the current rule has long stated that the title of nonremovable improvements shall be in the name of the United States and the title of removable range improvements shall be in the name of the permittee or lessee. This final rule clarifies further these provisions regarding temporary and permanent improvements. Because the discussion of permanent improvements no longer occurs in this section, the provision regarding documentation of a permittee's or lessee's contributions to such improvements is no longer pertinent to new range improvement permits. However, the provision for documenting contributions is added to § 4120.3–2.

Two other minor changes were made in the final language. The surplus word ''established'' is not included in final paragraph (a). For clarity, the Department has added ''structural'' as a modifier of ''temporary improvements'' in final paragraph (b).

Section 4120.3–8 Range Improvement Fund

The proposed rule would have added a new section to this part that addressed the distribution and use of the range betterment funds appropriated by Congress through Section 401(b) of FLPMA for range improvement expenditure by the Secretary. The proposed amendment would have provided for distribution of the funds by the Secretary or designee; one-half of the range improvement fund would have been made available to the State and District from which the funds were derived, the remaining one-half would have been allocated by the Secretary or designee on a priority basis. All range improvement funds would have been used for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems. Current policy requires the return of all range improvement funds to the District from which they were collected. The BLM has found this prevents use of the funds in areas where they are most needed and results in some offices experiencing difficulty expending available funds efficiently. The proposed amendment would have corrected the imbalance by ensuring that the funds are distributed on a priority basis.

The proposed rule would have clarified that range improvement includes activities such as planning, design, layout, modification, and monitoring/evaluating the effectiveness of specific range improvements in achieving resource condition and management objectives. Maintenance of range improvements and costs associated with the contracting of range improvements was added to the list of activities for which range improvement funds may be used. Maintenance was an allowable use of range improvement funds prior to a policy change made in 1982.

The proposed rule would have required consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. RACs would also have been consulted during the planning of range development and improvement programs, including the development of budgets for range improvement and the establishment of range improvement priorities. The provisions are adopted as proposed.

The Department received a few comments on this section. Most concerns were about how funds would be expended. Some commenters asserted that the proposal was inconsistent with the Department's statutory authority, that all funds, not just a portion, should return to the District or State from which they came and that all funds should go to construction, not to planning or projects not directly related to livestock production. Others stated that all funds should be used for ecosystem enhancement projects or supported the concept that some funds should be spent on projects to rehabilitate the range and distributed on the basis of priority needs.

Commenters also stated there should be requirements to spend funds in a cost-effective manner. Some supported involvement of the RACs and the interested public in the decisionmaking process on expenditure of the funds. Other commenters asserted that the change will result in fewer improvements being constructed, and that BLM should not require permanent range improvements be constructed at the expense of a permittee or lessee as a requirement to obtain or hold a permit or lease.

The Department's authority for this provision is found in Section 401 of FLPMA, which directs that 50% of the monies put in the range betterment account be authorized to be appropriated and ''* * * made available for use in the district, region, or national forest from which such monies were derived * * *'' It further provides that the remaining 50% ''* * * shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs.'' While it has been common practice for the Secretary to return the discretionary 50% to the District of origin in recent years, that is not required in FLPMA. The Department intends to allocate the discretionary 50% on a priority basis to better meet BLM management objectives and respond to resource condition concerns.

FLPMA also provides that funds can be expended on projects other than those directly related to livestock-oriented projects. The act specifies that ''* * * such rehabilitation, protection, and improvements shall include all forms of range land betterment including but not limited to, seeding, and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement * * *'' FLPMA also allows the expenditure of funds for activities necessary to put projects on the ground such as project planning, design, layout, modification and monitoring. An important goal of the Department in expending the range betterment fund will be to improve the health of the public rangelands. However, all uses authorized by FLPMA will remain valid under this rule including improvements that primarily benefit livestock management.

FLPMA does not specify in what proportions the funds should be spent. The Department believes that the provision, adopted today, providing the maximum flexibility allowed by law in the distribution and use of these funds, will improve the effectiveness of the program and result in increased overall improvement to the public rangelands. Grazing advisory boards received an accounting of the fund expenditures. It is anticipated that RACs will be afforded the same information.

Because under the rule as adopted the Department will be able to expend some funds on a priority basis, rather than returning 100% of the funds to the State or District of origin, the distribution of range improvement projects may shift somewhat. However, this does not mean that the total number of projects will decline. The BLM will not require livestock operators to fund the construction of range improvements. Operators' participation in the development of range improvements will be voluntary. However, there may be some cases where BLM will have to alter grazing use in the absence of needed improvements.

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

Section 4120.3–9 Water Rights for the Purpose of Livestock Grazing on Public Lands

Today's action adopts with one addition this section of the proposed rule which provides that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. This section is prospective, clarifies BLM's water rights policy for livestock watering on public lands, and makes BLM policy consistent with that of the Forest Service.

The section does not create any new Federal reserved water rights, nor does it affect valid existing rights. The provisions of this final rule are not intended to apply to the perfection of water rights on non-Federal lands. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and Section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the proposal does not change

existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Some States, such as Wyoming, grant public land livestock grazing water rights in the name of the landowner but also, in situations where the grazing lessee or permittee of State or Federal public land applies for a water right on that land, automatically include the State or Federal landowner as co-applicant. After consideration of public comment and further analysis, we have determined that co-application or joint ownership will be allowed where State policy permits it; for example, the Wyoming policy is consistent with this final rule.

Some comments questioned whether the language violates State or Federal law. Some commenters questioned whether the language would deny permittees the full use of water and what the impact would be on transferring the point of use of water from or to public lands. Some commenters suggested that the regulation should state that BLM will not have special priority in water adjudications and that the regulation does not affect water on private lands.

The Department's intent in adopting this section is to provide consistent water policy guidance to BLM personnel. It is not the Department's intent to create any new Federal reserved water right, nor does it affect valid existing rights. It has been BLM's policy to seek water rights under State substantive and procedural requirements; the language adopted today does not alter that policy.

The language adopted today clarifies that the United States will acquire, perfect, maintain, and administer water rights obtained on public land for livestock grazing on public land in the name of the United States to the extent allowed by State law. Questions such as qualified applicants, what constitutes beneficial use, and quantity and place of use are addressed through State procedural and substantive law. Thus, the Department is not attempting, through the language adopted today, to prejudge the outcome of proceedings under State water law. For the same reason, the Department has not adopted suggestions to include language relating to priority of rights or water rights on private lands. These matters are addressed by State substantive and procedural requirements.

Other comments questioned whether the provision would have a negative impact on adjacent private property, wildlife, and range conditions. Clarification of BLM water rights policy regarding livestock watering on public lands should not have a negative impact on adjacent property. The provision does not address water rights on non-Federal lands. The language adopted today also does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses. The Department has concluded that wildlife and range conditions will be benefited by clarifying BLM water policy. It is the Department's intent in adopting the language of this section to promote the use of the public lands on a sustained yield basis for multiple use purposes.

Section 4120.5 Cooperation in Management

The proposed rule would have added a new section on cooperation in management to recognize and regulate cooperation with, among others, State, county, Indian tribal, local government entities and Federal agencies. The provision is adopted as proposed.

Very few comments were received on this section, and most commenters combined their comments with comments on § 4120.5–1. Some commenters requested that ''coordinate and consult'' be added after ''cooperate'' and that the Department remove references to ''institutions, organizations, corporations, associations, and individuals.'' Others asked that the Department give special consideration to the customs, culture and economic impact of projects on existing local communities.

The Department will ensure public involvement and cooperation, in the management of the public lands to the maximum extent possible. All citizens have a stake in the management of the public lands. FLPMA is very specific as to the requirement for cooperation with local land use planning. It requires the Secretary to coordinate land use planning and management activities with State and local land use planning and management programs and directs that land use plans shall be consistent with State and local plans to the maximum extent possible under Federal law and the purpose of the Act.

The section deals with the requirement for cooperation in management. There is no basis to add the terms ''coordinate and consult.'' Section 315 of TGA specifically calls for ''cooperation'' with agencies engaged in conservation or propagation of wildlife, local associations of stockmen, and State land officials.

All proposed project and planned actions undertaken to implement these regulations will require more local level assessments. Regulations dealing with impact assessment require consideration of socio-economic impacts.

Section 4120.5–1 Cooperation With State, County, and Federal Agencies

This section would have recognized existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships. The TGA, Noxious Weed Control Act, FLPMA, PRIA and other statutes and agreements require cooperation with State, county and local governments, and Federal agencies.

Many commenters wanted the Department to strengthen the language requiring cooperation with local and county governments and their land use planning efforts. Other commenters wanted the list to include private land owners, only groups that can prove an affected interest in the livestock business or only individuals who have invested as much money as the livestock operators. Many commenters requested that the Department strike references to the Wild Free-Roaming Horse and Burro Act and expressed that Animal Damage Control and similar predator control agencies should be listed as a cooperating partner.

Other commenters wanted the Department to show greater deference to State wildlife agency decisions on critical range for wildlife species, to strengthen cooperation on noxious weeds, and to use its authority to reduce the spread of noxious weeds by requiring certified weed free forage and by spending more rangeland improvement funds on weed control.

The Department believes that the provision as proposed adequately addresses its legal responsibilities and its desire to cooperate with State, county and Federal agencies, and has adopted it with no changes.

This section requires cooperation in management. It does not deal with the Department's responsibilities to consult with permittees or lessees or other private parties. The section derives in part from the statutory provision in section 315h of TGA, which requires the Secretary to provide, by suitable rules, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts. While other authorities would allow the Secretary to expand the reach of this provision, under TGA the Secretary could not limit it to those with

an ''affected interest.'' That terminology relates to different statutory provisions, and is not germane here.

Additionally, FLPMA is very specific as to the requirement for cooperation with local land use planning. It requires the Secretary to coordinate land use planning and management activities with State and local land use planning and management programs and directs that land use plans shall be consistent with State and local plans to the maximum extent consistent with Federal law and the purpose of the Act.

The Department will ensure public involvement and cooperation, including State wildlife agency input, in the management of the public lands to the maximum extent possible. However, it is not appropriate to single out wildlife agencies for greater deference in these regulations. On a case-by-case basis, such deference may be appropriate.

The specifics of noxious weed programs are not germane to this section. It is the intent of this rangeland management effort to improve the Department's ability to address such issues, including through increased cooperation with State agencies responsible for weed control.

Subpart 4130—Authorizing Grazing Use

Many sections of subpart 4130 have been redesignated from the existing CFR section identifiers. These changes are intended to put the various sections into more logical groupings. The following table shows the relationship between section numbers in the existing rules and section numbers in the rule adopted today:

Old CFR section	Final rule section
4130.1	4130.1–1
4130.1–1	4130.4
4130.1–2	4130.1–2
4130.2	4130.2
4130.3	4130.5
4130.4	4130.6
4130.4–1	4130.6–1
4130.4–2	4130.6–3
4130.4–4	4130.6–4
4130.5	4130.7
4130.6	4130.3
4130.6–1	4130.3–1
4130.6–2	4130.3–2
4130.6–3	4130.3–3
4130.7	4130.8
4130.7–1	4130.8–1
4130.7–2	4130.8–2
4130.7–3	4130.8–3
4130.8	4130.9

In addition to changes in many section numbers, the headings of several of the sections have been revised to provide more descriptive titles. The following discussion will use the new numbers and cross reference the old numbers.

Section 4130.1 Applications

A new title, Applications, is added at § 4130.1, to improve the logical structure for the subpart.

Section 4130.1–1 Filing Applications (Formerly Section 4130.1)

In the proposal, there would have been two minor changes in this section from the existing rule. ''Conservation use'' would have been substituted for ''nonuse'' in the parenthetical phrase to clarify that such use must be specified in the application. Another new phrase would have specified that applications for annual grazing authorizations, which in the proposal included active grazing use and temporary nonuse, also had to be filed with BLM.

The Department received very few comments on this section. The few comments that the Department did receive concerned the concept of ''conservation use.'' This term is discussed at § 4130.2.

Upon further consideration, the Department believes that substituting ''conservation use'' for ''nonuse'' may be confusing, because conservation use is actually a subcategory of active use. Furthermore, the meaning of the other phrase proposed to be added to this section can be covered by existing language. Accordingly, the Department has decided not to finalize the proposed changes to this section. However, to improve the structure and logic of the subpart, and to clarify the purpose of this section, it is retitled, ''Filing Applications.''

Section 4130.1–2 Conflicting Applications (Section Number Remains the Same)

The proposed rule would have amended paragraph (b) of this section to expand the criteria used in evaluating conflicting applications to include the applicant's ability to provide for proper use of rangeland resources. When two or more otherwise qualified applicants apply for the same permit or lease, such considerations are legitimate methods of determining which applicant should be selected.

The new criteria would have promoted BLM's ability to award permits to good stewards of public lands in cases where there were competing applicants by taking into account the applicant's ability to manage the land. The criteria included the applicant's history of compliance with the terms and conditions of Federal and State grazing permits and leases.

The few comments that the Department received on this section addressed primarily the expansion of the criteria to include the applicant's history of compliance. Others inquired about additional definitions.

The Department declines to accept the commenters' suggestions to define additional terms because they are defined by common usage in rangeland management or law.

Although TGA does not specifically deal with competing applications, the Department does not believe that Congress, in passing TGA, intended the Department to issue grazing permits to documented violators of statutory provisions related to grazing use. Additionally, improvement of the rangeland under a specific permittee or lessee's livestock management is a valid factor to be considered, when evaluating conflicting applications. Furthermore, this review should extend to all persons who control a permit or lease, not just the specific applicant.

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

Section 4130.2 Grazing Permits or Leases (Section Number Remains the Same)

Under the proposed rule, permits and leases would have continued to be offered for 10-year terms except in specified circumstances. The proposed rule would have clarified that all grazing permits and leases issued, including the transfer or renewal of permits and leases, would have included terms and conditions addressing the national requirements and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other terms and conditions that would assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands.

The proposal also would have clarified the requirements for consultation with interested parties prior to the issuance or renewal of grazing permits and leases. The proposal also would have clarified that the provision prohibiting the offer or grant of permits and leases when the applicant refuses to accept the terms and conditions of the offered permit or lease would have applied to applicants for renewals and new permits and leases.

The proposed rule also would have clarified the granting of conservation use and temporary nonuse. Conservation use would have been established as one of the allowable uses a permittee or lessee may be granted, when in conformance with applicable

land use plans, activity plans and standards and guidelines. Finally, the proposed rule would have provided that forage made available as a result of temporary nonuse may be authorized for temporary use by another operator, although forage used for conservation purposes would not be available to other livestock operators.

The Department received numerous comments on this section. Major themes expressed in the comments were objections to conservation use, concern that expanded public involvement would negatively affect applicants for permits and leases, and opposition to what was perceived as provisions to limit permit and lease tenure.

Many commenters expressed objections to the proposal for conservation use, asserting that conservation use would hurt rangelands and should only be allowed where scientific data demonstrates that rest from grazing will benefit the land. Many held the perception that conservation use would be required by the authorized officer. Others thought the proposal would remove the requirement for base property, would jeopardize water rights, would result in inadequate maintenance of range improvements, would reduce tax revenues, should require payment of grazing fees for conservation use, would lead to reduced fees available for rangeland improvements, would adversely affect operators on isolated or scattered public lands, and would result in purchase of permits for conservation purposes. Others asserted that conservation use was a closing of the range that would require following certain notice and comment requirements of FLPMA, while still others thought conservation use should be offered for a term of greater than 10 years. Some commenters thought that allotments that are not being grazed should be retired or reallocated rather than placed in conservation use. Finally, some comments were concerned that conservation use would be severely limited by existing land use plans because the concept is new and has not been considered in past planning efforts.

Considerable concern was expressed about the addition of public involvement prior to the issuance or renewal of grazing permits and leases. Some commenters opposed the expansion of public input opportunities on the grounds that such opportunities are not part of making decisions in other resource programs and that grazing decisions would be unduly delayed to the detriment of the permittee and lessee. Others suggested that the requirement to consult should be changed to ''consultation, coordination, and cooperation.'' Some commenters believed that public input should only be made part of NEPA analysis and planning efforts affecting grazing. Others stated that authorized officers should be able to issue or renew permits to permittees who demonstrate good stewardship without input from the public.

Some commenters held the perception that the proposed rule would significantly affect the term of permits and were concerned that decisions to issue permits and leases for terms of less than 10 years could be subjective and unfair. Others asserted that terms of less than 10 years would be contrary to FLPMA while still others suggested that only five-year permits and leases should be offered to poor stewards. Still others suggested that permits should be made available for competitive bid at the end of the 10-year term.

A number of respondents suggested provisions pertaining to temporary nonuse should be more flexible, that decisions to not make livestock use should be left to the ranchers, and that leaving forage placed in nonuse available to other applicants would discourage good stewards from resting areas (i.e., others would reap the benefits of the range the permittee protected).

Some concern was expressed about the provisions allowing the authorized officer to deny permits and leases to applicants who refuse to accept terms and conditions. Some commenters believed this provision would result in ''arbitrary'' terms and conditions. Some commenters suggested a one year continuance of a permit where a permittee or lessee seeking renewal refuses to accept proposed terms and conditions in order to provide time to reach agreement.

Some reviewers suggested a review to determine ''suitability'' of the range to support livestock grazing should be required prior to permit or lease issuance and offered criteria to be followed. Some commenters asserted that issuance of 10-year permits requires NEPA compliance and should be subject to administrative appeal, and that annual authorizations to be made in the absence of approved activity plans should be subject to administrative appeal.

Many comments received in this section that pertained to the definition of ''temporary nonuse'' are addressed at § 4100.0–5.

The Department disagrees with assertions that conservation use will be detrimental to the health of the land. Existing data should generally be adequate to make conservation use decisions. Conservation use will only be approved when it is found to be in conformance with land use plans and when it is determined it will promote resource protection or enhancement. This determination may require additional data in a few cases but the Department anticipates that available data and input from the permittee or lessee and others will usually prove sufficient. In addition, allotments placed in conservation use will be monitored in a fashion similar to other allotments to determine whether such use is consistent with standards and guidelines, and established resource management objectives. These requirements, as well as the 10-year limit on permits specifying conservation use, will discourage persons from obtaining permits for the sole purpose of placing them in conservation use.

Conservation use is requested by the permittee and approved by the authorized officer based on the provisions in the applicable land use plan. The BLM will not impose conservation use on an unwilling permittee. Conservation use must be included as part of an application by a permittee or lessee and must be found to be consistent with the land use plan. Appropriate terms and conditions will be attached to permits that specify conservation use, and permittees will be subject to all applicable requirements under the grazing program rules. This includes the requirement for base property. *See* discussion of § 4110.2–1.

Whether placing all or portions of allotments in conservation use will affect water rights will depend on the applicable State laws. However, resting grazing land is a commonly accepted grazing practice. Permit and lease holders possessing rights to water, as well as BLM, will need to consider potential effects on water rights in deciding to apply for or approve conservation use.

With regard to maintenance and operation of range improvements where the forage has been devoted to conservation use, the Department intends that in most, if not all, cases, permittees will be required to maintain improvements during the term of the conservation use. Requirements for maintaining range improvements will be made a condition of any permit specifying conservation use. Occasionally, where an existing improvement enhances neither the goals of conservation use nor the goals of grazing use or any other multiple use, maintenance may not be required. Depending upon the circumstances, specific activities to improve range

conditions might also be incorporated in the terms or conditions of a permit.

Significant reductions in tax revenues or available range improvement funds are not expected to result from conservation use. While grazing fees will not be collected for conservation use, since no forage is being consumed, the Department considers that the benefits to be derived by the conservation use will offset the relatively minimal decrease in grazing receipts. The FEIS analyzes the economic effects of the various management alternatives considered in arriving at this final rule.

Concerning the perceived problems associated with scattered intermingled public lands, conservation use is at the option of the permittee or lessee subject to approval of BLM. If intermingled lands create a problem for the permittees or lessees, they may decide not to apply for conservation use.

The Department disagrees that conservation use constitutes a ''closing of the range'' that is subject to notice and comment requirements of FLPMA. Presumably the commenter was referring to requirements involved when a major use is eliminated from very large tracts of public land (43 U.S.C. 1712); however, this statutory provision does not pertain to conservation use which does not constitute an exclusion of a major use. Conservation use is a grazing management practice and does not constitute a permanent retirement of a grazing allotments. Decisions to retire grazing allotments are considered through BLM's land use planning process.

The 10-year limitation on conservation use is consistent with the statutory requirements for permit limitations. As adopted today, conservation use could be approved for up to 10 years. FLPMA (43 U.S.C. 1752(a)) requires that grazing permits or leases be issued for a term of 10 years or, in circumstances specified at 43 U.S.C. 1752(b), less. This limit also recognizes that conservation oriented objectives may be met or revised and the forage may then be re-allocated for use by livestock. This also is the rationale for why the grazing privilege is not cancelled or ''retired'' or why the area is not closed to livestock grazing.

To clarify how a permittee can change back to active use, the final rule is modified from the proposal to include conservation use in § 4130.4(b), ''Approval of changes in grazing use within the terms and conditions of permits.''

In regards to the comment that the ability to authorize conservation use will be severely limited because current land use plans don't consider conservation use specifically, it is not a requirement that conservation use be explicitly addressed in plans. Rather, it must be found to conform with the land use plan. The Department believes that conservation use will conform with land use plans in most cases.

For responses to general comments concerning public involvement please see §§ 1784.0–5 and 4100.0–5. Analysis of permit or lease issuance currently requires NEPA compliance which in turn provides for broad public input. In addition, issuance or denial of an application constitutes a decision of the authorized officer and, as such, is protestable and appealable under subpart 4160. Careful consideration of public input early in the process for issuing or renewing permits should minimize the time spent in resolving protests and appeals. In response to comments, consultation, coordination, and cooperation is inserted in the language adopted today.

Concerning the comments that expressed concerns over permit tenure, the proposed rule and the rule being adopted today vary little from the existing rule. The principal change pertaining to permit tenure that was proposed was establishing permit and lease terms to coincide with the terms of any base property leases. The authority for this and other tenure provisions is clearly established by FLPMA (43 U.S.C. 1752(b)) which states permits and leases may be issued for terms less than 10 years when determined to be ''* * * in the best interest of sound land management.'' Decisions to approve or deny a permit or lease application are appealable under subpart 4160. The Department does not agree with the suggestions to end preference for renewal in favor of competitive bidding. Given the intermingled patterns of some public lands, statutory provisions pertaining to renewal of permits, and administrative obstacles, competitive bidding would not serve as a viable option in many instances. Competitive bidding for permits and leases was analyzed in the FEIS.

The rule as proposed and adopted today provides a great deal of flexibility to permit and lease holders in terms of temporary nonuse. Under this rule, applications for temporary nonuse will generally be approved. Where the limitations placed on temporary nonuse (maximum of three years and open to other applicants) prevent the permittee or lessee from meeting their needs, the option of applying for conservation use remains.

The provision that applicants who refuse to accept the terms and conditions of the offered permit or lease will be denied will not result in arbitrary terms and conditions. The general requirements of the previous rule for determining appropriate terms and conditions have been retained in this rule. Also, should the applicant believe terms and conditions are not appropriate, the applicant may appeal the decision of the authorized officer under subpart 4160. If, after communication with the involved parties, the decision to deny or approve an application is appealed, the authorized officer would have the option to issue a temporary nonrenewable permit pending resolution of the appeal.

The Department has chosen not to incorporate suggestions pertaining to suitability determinations prior to permit or lease issuance. FLPMA sets forth specific factors BLM must consider in connection with land use planning and use authorizations. A rigid suitability review is not specifically required by FLPMA. Moreover, the process associated with land use planning and decisions on use authorizations, including NEPA compliance and application of standards and guidelines, adequately address concepts of suitability. The fundamentals of rangeland health, guiding principles for State or regional standards and guidelines, and the fallback standards and guidelines, presented in subpart 4180 of this final rule, will focus on attaining and maintaining healthy rangelands.

The use of suitability determinations was considered in the FEIS under the alternative titled Environmental Enhancement. Readers are encouraged to review the discussion of suitability in that document.

This rule will not change existing NEPA implementation procedures. As stated above, decisions under this section are appealable under subpart 4160. Appealable decisions include the issuance or denial of permits and leases and modification of terms and conditions. As explained at § 4130.4, annual ''authorizations'' are merely validations that the requested use falls within the terms and conditions of the permit or lease. Normally, they do not require further NEPA analysis or public input. However, issuance of a grazing permit or lease, even a one-year or nonrenewable permit or lease, does not all under the provisions of the new § 4130.4, and would therefore be subject of NEPA analysis, consultation requirements, and the right of protest and appeal.

In accordance with the above discussion, the Department has decided to adopt this section as proposed except for replacing ''consultation'' with ''consultation, cooperation and coordination'' in reference to obtaining public input, replacing proposed language pertaining to issuance of permits and leases for a period of less than 10 years with wording taken directly from FLPMA (43 U.S.C. 1752), and adding to the requirement that temporary nonuse and conservation use be in conformance with plans, standards, and guidelines a requirement for conformance with the fundamentals of rangeland health presented in § 4180.1.

Section 4130.3 Terms and Conditions (Formerly, Section 4130.6)

This section would have required that permits and leases incorporate terms and conditions that ensure conformance with the national requirements and established standards and guidelines. This requirement would have established that terms and conditions of permits and leases are the principal vehicle for implementing the standards and guidelines and thereby the precepts of ecosystem management.

A few commenters stated that the national requirements and established standards and guidelines and are not linked to livestock grazing, are unattainable due to their lack of site-specific analysis and contradict Congressional intent.

Other commenters asserted that maintenance of national standards and guidelines should be made a condition of the permit and that livestock operators should have to get approval from the authorized officer before making use of any resource beyond their permitted forage such as water, wildlife, etc. and that permits should include a schedule for monitoring.

The fundamental requirements, guiding principles and fallback standards are all linked directly to livestock grazing. Developing standards and guidelines at the local level, with heavy reliance on public involvement through the RACs, will assure that they are attainable and consistent with local conditions. The fundamental requirements and guiding principles are based upon ecological principles. The Department believes this is consistent with the intent of Congress which has mandated the Secretary in FLPMA to protect the quality of scientific, scenic, historical, ecological, environmental, air, and atmospheric, water resources, and archaeological values and to assure the proper use of the public land resources to assure sustainability.

The standards and guidelines will be made part of the terms and conditions of the permit in accordance with § 4130.3. Levels of permitted use are subject to adjustment, depending in part on resource condition concerns, in accordance with § 4110.3–2. Livestock operators are required to get approval from the authorized officer before making use of any resource beyond the uses of public resources directly associated with livestock grazing, as provided in their permit or lease. Monitoring schedules may become part of the terms and conditions of some permits and leases, especially where activity plans have been completed for the allotment.

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

Section 4130.3–1 Mandatory Terms and Conditions (Formerly, Section 4130.6–1)

This section would have been amended to remove reference to acceptable methods for determining carrying capacity and to remove the cross references for those sections of the rule that detail how stocking levels are adjusted. This change was made to recognize the use of methods other than monitoring in determining carrying capacity and to streamline the wording of the mandatory terms and conditions by removing unnecessary cross references. Other provisions in the proposal, such as § 4110.3, would have broadened the sources of information that could be relied upon by BLM as a basis for making decisions about permitted use, carrying capacity, and other factors. The section would have been further amended by adding a paragraph (c) that would have required that standards and guidelines be reflected in the terms and conditions of permits and leases. This provision would have ensured that individual permits or leases contribute to the maintenance or enhancement of healthy rangelands and is the principal mechanism for implementing standards and guidelines.

Many commenters asserted that monitoring should be retained as a requirement for determining carrying capacity and that the Department should add a requirement that the level of use should only be part of the terms and conditions if accepted uncontested by the affected permittee or lessee. Commenters also asserted that conformance with the national requirements, standards, and guidelines would be impossible. Other commenters stated that if the agency cannot afford to protect the public lands used for grazing through monitoring, then grazing should not be allowed.

Use of other sources of information besides monitoring are discussed above, principally at § 4110.3 and also at § 4110.3–2. Carrying capacity for the allotment is set by the permit or lease. Changes in permitted use, including the requirement that they be supported by monitoring, field observations, ecological site inventory or other data is addressed at § 4110.3. The methods to be used are more appropriately dealt with under subpart 4110 rather than being included as a parenthetical statement in § 4130.3–1.

The fallback standards and guidelines are reasonable and achievable. Field testing during development of this proposal showed significant conformance between fallback standards and guidelines and existing land use plans. Regional standards and guidelines will be developed with full public participation (including grazing permittees and lessees) and in consultation with the RAC. This level of public involvement will help ensure that the regional standards and guidelines developed will be realistic and achievable. Issues relating to the standards and guidelines are discussed more fully at subpart 4180.

Reference to ''monitoring'' was eliminated from this section not because the Department does not intend to monitor range conditions, but because other sources of information are legitimate means for BLM to evaluate range conditions and because this section does not establish the practices to be followed in estimating carrying capacity (*See* §§ 4110.3–1 and 4110.3–2).

In accordance with the above discussion the Department has decided to adopt the provision as proposed, with one change. The words ''the national requirements, standards, and guidelines pursuant to'' have not been included in the final rule. Actual achievement of national requirements, (which have been modified from the proposed rule and are now reflected in fundamentals of rangeland health), standards, and guidelines may not be immediately possible but rather may depend on a series of actions taken over a period of time.

Section 4130.3–2 Other Terms and Conditions (Formerly, Section 4130.6–2)

Paragraph (f) of this section would have been amended to allow terms and conditions to provide for temporary changes in livestock use for the improvement of riparian area functions and for protecting other rangeland resources and values consistent with

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

if they are in conformance with the land use plan, AMP, or other activity plan. Frequency of monitoring and evaluation should be dictated by local conditions rather than by general rule.

In accordance with the above discussion, the Department has decided to adopt the provisions, with some changes. The only substantive change is the addition of the phrase ''active use or related management practices'' as clarification that the basis for modifying terms and conditions of permits or leases when management objectives are not being met is use related to grazing. The title of the final section is changed to ''Modification of Permits or Leases'' to further clarify the intent of the section.

Section 4130.4 Authorizations within the Terms and Conditions of Permits and Leases (Formerly, Section 4130.1–1 Changes in Grazing Use).

In the proposed rule, this section would have provided for field managers to make temporary changes in authorized use, either increases or decreases, not to exceed 25 percent of the authorized use or 100 AUMs, whichever is greater, following consultation with the affected permittees or lessees and the State having land or responsibility for resources management within the allotment. This would have provided latitude to the authorized officer for authorizing minor or incidental adjustments in grazing use without extensive consultation, simplifying day-to-day administration.

The Department received a few comments on this section. Most commenters were concerned about the 25 percent or 100 AUMs limit on increases or decreases in grazing use. Some stated the limits were unreasonable, especially in respect to ephemeral ranges. They stated that in some areas occasional very wet years might produce great amounts of forage, so that use could reasonably be increased by much more than the 25 percent limitation. A few cited potential impacts of the provision such as foregone employment associated with higher use levels and increased fire hazard if forage is not harvested. Some commenters suggested changes in use should only be limited by the terms and conditions of the permit or lease.

Some commenters opposed the provision that the authorized officer could impose such a change without the permittee's consent. A few held concerns that the consultation provisions would be burdensome, while others thought consultation should be expanded to ''consultation, coordination and cooperation.''

Some commenters were confused by this section and asked what would happen if changes greater than 25 percent were needed and how the provision affected temporary nonuse and permitted use.

Some reviewers had concerns with how ephemeral grazing would be affected by the provision and expressed the opinion that grazing should not be permitted in the hot desert biome. It was suggested that this provision exclude areas receiving less than 10 inches of rainfall annually.

Based largely on the comments on this section, the Department has retitled the section and removed references to limitations of 25 percent or 100 AUMs and the authorized officer requiring increases or decreases in use. The changes made in this final rule are intended to clarify how proposed changes in grazing use in any given year may be approved when the changes requested by the permittee or lessee are consistent with the terms and conditions of the permit or lease.

Changes in use under this provision would constitute the authorized officer's ministerial validation that the specific kind and numbers of livestock, the dates of use, and other conditions of use requested by the permittee or lessee fall within the terms and conditions of the permit. This process ensures that use is consistent with resource management objectives and that operators and BLM have documented how use will be made for the upcoming grazing year for purposes of maintaining use data and supervising use. (Application for grazing use outside of the terms and conditions of the permit or lease would be considered under other provisions of this final rule. (*See*, for instance, §§ 4110.3–2, 4110.3–3, and 4130.3–3.) Consultation is not required under this section because (a) the request under consideration will come from the permittee or lessee, and (b) in the future consultation will have taken place at the time the permit or lease was issued (*see* § 4130.2) and at any time the terms and conditions of the permit or lease are modified (*see* § 4130.3–3).

This provision for validation of requested grazing use when such use falls within the terms and conditions of the permit or lease does not apply to the issuance of permits or leases. Issuance of permits or leases, including short-term permits or leases, constitute direct Federal actions that are subject to NEPA analysis as well as the provisions of § 4130.2 of this final rule.

Examples of the types of changes that would be considered under this section are the activation of previously approved temporary nonuse or conservation use, placing permitted use in temporary nonuse or conservation use, changes in dates and class, and the use of forage temporarily available on ephemeral or annual ranges. On other than established ephemeral range, use of forage in amounts greater than permitted use that has temporarily been made possible by factors such as above-normal precipitation would require the issuance of a separate nonrenewable permit under § 4130.6–2 of this final rule.

Decisions pertaining to permitting ephemeral grazing use and the establishment of terms and conditions of use are not governed by this section of the rules. These types of decisions typically require NEPA compliance and public involvement. The concerns of commenters about authorizing ephemeral grazing use are best addressed in the planning and NEPA analysis processes.

In accordance with the discussion above, the rule adopted today will provide that the authorized officer may approve requested changes in grazing use when the changes fall within the terms and conditions established in the grazing permit or lease.

Section 4130.5 Free-Use Permits (Formerly, Section 4130.3)

This section was originally proposed as part of § 4130.7–1, however it is moved to the newly redesignated § 4130.5 to consolidate provisions concerning free-use permits. This section would have provided for free-use under three specified circumstances.

The Department received a few comments on this provision. Commenters stated that free use should be allowed only for scientific research projects. Commenters also stated it should not be authorized to control noxious weeds, since overgrazing facilitated the spread of noxious weeds in the first place.

The Department foresees that this provision will be used only when it is a desirable means of accomplishing a particular task. It will also give on-the-ground managers an additional tool to meet resource objectives. For example, there are some circumstances where carefully managed grazing can be used to control noxious weeds. Often, management prescriptions can be developed within existing permits and leases. However, there are some occasions where a free-use permit could be a valuable alternative.

In accordance with the above discussion, the Department has decided

to adopt the final rule language as proposed with the exception of its relocation from the proposed §§ 4130.7–1 to 4130.5 of the final rule.

Section 4130.6–1 Exchange-of-Use Grazing Agreements (Formerly, Section 4130.4–1)

This proposed section would have included requirements that agreements for exchange of use must be in harmony with management objectives, and compatible with existing livestock operations. The agreements would have been required to address the fair sharing of maintenance and operation of range improvements and would have been approved for the same term as any leased lands that are offered.

The Department received comments expressing a desire that all non-Federal lands which are unfenced and intermingled with public land be covered by an exchange-of-use agreement and that lands must be located within the permittee's area of use and not in another permittee's area of use in order for the carrying capacity of the non-Federal lands to be credited to the permittee without charge. Other commenters objected to unnecessary requirements or restrictions on agreements and possible impacts to private and state trust lands.

The Department disagrees that all non-Federal lands should be covered by an exchange-of-use-agreement. It is necessary for the authorized officer to have the flexibility to deal with local situations and use exchange of use where appropriate. The Department agrees that the lands involved in an exchange-of-use-agreement should be within the allotment. This is current BLM practice and will not be altered by this rule.

The Department disagrees that the only restriction should be that such agreements not exceed grazing capacity. Grazing capacity is a critical factor to achieving management objectives; however, it is not in the Department's interest to enter into agreements which are not in harmony with management objectives and compatible with existing grazing operations.

Exchange of use agreements are initiated at the permittee's request. Lands voluntarily included in an exchange of use agreement would be subjected to the terms and conditions of the permit or license.

The requirement that an exchange of use agreement contain provisions for the equitable sharing of operation and maintenance of range improvements will not result in the maintenance of improvements that are of no value. The necessity of range improvements to achieve allotment objectives as well as maintenance requirements are addressed in allotment plans and permit terms and conditions and are not affected by an exchange of use agreement.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of a modification to clarify that the lands subject to the exchange-of-use agreement must be within the applicant's BLM grazing allotment.

Section 4130.6–3 Crossing Permits (Formerly Section 4130.4–3)

The proposed provisions would have clarified that crossing permits are a form of temporary use authorization for grazing, and that the terms and conditions must be contained in the temporary use authorization.

The Department received very few comments on this section. Commenters suggested that the proposed changes would slow down the approval process and create legal risks.

The Department has adopted the provision as proposed. The provisions adopted today are consistent with current practice in the field. These procedures have not resulted in unusual delay or legal risk.

Section 4130.7 Ownership and Identification of Livestock (Formerly, Section 4130.5)

This section would have been amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee is required to have an approved use authorization and have submitted a copy of the documented agreement or contract that includes information required for BLM's administration of permits and leases and management of rangeland resources. This generally does not create a new requirement. Many field offices are currently requiring the information to document the legality of the pasturing of livestock owned by persons other than the permittees.

The proposed rule would also have added an exemption from some of the requirements for ownership of livestock for sons and daughters of permittees or lessees in specified circumstances.

The Department received a few comments on the section. Many commenters wanted grandchildren and other family members or private business partnerships to be covered by the exemption and for the restrictions to be modified or removed.

The Department believes that excluding sons and daughters from the requirements of this section is a reasonable compromise which will address the vast majority of cases and has chosen not to extend the exclusion to other family members or private business partnerships.

The Department believes it is necessary to have all four conditions of approval for granting the exclusion. The Department believes that if livestock owned by sons and daughters exceeds 50% of the total number authorized then consideration should be given to issuing the permit in the name of the person owning the majority of the livestock.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of modifications to clarify the language that was originally proposed.

Section 4130.8–1 Payment of Fees (Formerly Section 4130.7–1)

The fee portion of the proposed rule generated numerous diverse and conflicting public comments. As noted in the August 1993 advance notice of proposed rulemaking, there are a number of alternative base values and alternative fee formulas that could be used to set fees for grazing public lands. There have been numerous studies and much public debate concerning what is a reasonable, fair, and equitable fee for grazing Federal rangelands.

The draft EIS for Rangeland Reform '94, published in May 1994, analyzed seven fee alternatives: PRIA or No Action, *i.e.*, the current fee; Modified PRIA; BLM-Forest Service Proposal; Regional Fees; Federal Forage Fee Formula; PRIA with Surcharges; and, Competitive Bidding. Each was analyzed in conjunction with management alternatives.

The preamble to the proposed rule published in the March 25, 1994 **Federal Register** described the pros and cons of adopting an increased grazing fee. The formula set forth in the proposed rule would have addressed the disparity between rates charged for livestock forage on private and State lands versus the rate charged for Federal lands.

The preamble acknowledged that some permittees and lessees that are highly dependent on Federal forage, do not have off-ranch income, and have heavy debt loads, might be required to make financial adjustments. These adjustments, in some circumstances, might have included sale of the ranch. However, it was expected that such sales would occur in only limited circumstances. It was further noted that such sales occur now and could be

expected to continue even if the fee proposal were not adopted. However, the preamble noted that the economic impact on western communities was expected to be localized and, in most areas, not significant because the portion of the local economy dependent upon the use of Federal forage is relatively minor.

The rule proposed March 25, 1994, discussed the criteria identified by BLM and the Forest Service by which a new fee proposal should be measured:

1. The fee charged for livestock grazing should approximate market value. Using market value helps assure that the public receives a fair return for use of publicly owned resources.

2. The fee should not cause unreasonable impacts on communities that are not economically diverse or to livestock operations that are greatly dependent on public land forage.

3. The grazing fee should recover a reasonable amount of government costs involved in administering grazing permits and leases and should provide increased funds to improve ecological conditions.

4. The fee system should be understandable and reasonably easy to administer.

Public comments on the proposal regarding payment of fees addressed how the fee formula should be derived, impacts of an increase, differences between Federal and private lands rates, non-fee costs associated with Federal lands, fair market value for public land grazing, fair return to the public for livestock grazing use on public lands, recovery of costs for BLM's range program, whether the fee represents a subsidy for public lands ranchers, and funds for range improvements.

Commenters recommending no change to the existing fee formula anticipated that an increase in fees would have adverse effects on individual operations and rural western counties. Some commenters suggested that other factors be considered in setting fees, including regional economic differences and resource conditions.

The final rule will not include the fee provision, thus giving the Congress the opportunity to address appropriate fees for grazing on public lands. In the FY94 Interior Appropriations bill, the Senate voted for a moratorium on the completion of the rangeland reform regulations. Although the House later approved grazing reform by a vote of 314 to 109, the Senate did not approve the measure.

Subsequently, the Department resumed this rulemaking. Five Congressional hearings were held in the field and in Washington following release of the proposed rule. Correspondence from Members of Congress through the process has suggested the need for Congressional involvement and possible action. A few Members of Congress commented that some increase in grazing fees is needed while others indicated that the proposed fee would have a heavy negative impact on public lands ranching. Some Congressional commenters suggested alternative methods of setting fees and leasing land.

Some commenters opposed the proposed fee formula asserting that it would promote poor resource use and would not reflect a fair return for the public. Some public comments suggested a link between the fee formula and overgrazing. Analysis of the relationship between livestock grazing use on BLM lands and the fee indicates that there is little correlation between the two at the current fee level and the fee levels considered by the proposed rule. First, the amount of livestock grazing allowed on Federal lands is set by BLM and is independent of the fee. Second, even within the allowed limits, there is no indication that the proposed fee would have reduced livestock grazing on Federal lands. From 1982 to 1983, while the fee decreased by 25 percent, livestock use did not increase at all, but instead decreased by three percent. While the fee remained the same in 1985, 1986 and 1987, livestock use decreased by nearly seven percent from 1985 to 1986 and increased about seven percent from 1986 to 1987. Moreover, from 1992 to 1993 when the fee decreased, livestock grazing use decreased also, instead of increasing. Therefore, it appears that even within the allowable limits of livestock grazing use, the fee level does not have a dominant effect on livestock use. Apparently other factors such as livestock prices, livestock inventories, cost of production, drought, availability of other forage and market conditions play a substantial role in determining livestock grazing use.

Based on the above statistics, it appears that as long as the Federal forage is not priced above market value the forage will continue to be used, if not by the current permittee, then by a new permittee. The grazing fee analyzed in the preferred alternative was not above the market value for Federal forage. Therefore, it would not have significantly affected the amount or type of grazing use or, in turn, rangeland health.

Other factors, such as proper planning and grazing management based on sound technical and scientific data and professional skills, conformance of terms and conditions with effective management practices such as those embodied in the fundamentals of rangeland health and the standards and guidelines of subpart 4180 of this final rule and timely and appropriate responses to conditions of resource deterioration that are essential to improving rangeland health. Based on the historical data cited above, management practices and market conditions have a greater impact on rangeland health than does the specific fee level.

The Department has concluded that, due to the great amount of comment received against the fee (either because it was being changed too much or too little), significant Congressional interest, and the severability of the fee and management portions of the proposed rule, it is appropriate to retain the current fee structure at this time. This will provide an opportunity for Congress to consider the need to legislate a fee increase.

Other proposals also are not adopted in the final rule. The surcharge associated with base property leases and multiple year billing provisions have not been adopted. As many commenters pointed out, authorized subleasing is a long-standing practice that provides benefits to both the rancher and the public. First, it helps facilitate the entry of new ranchers into the livestock business in Federal land areas. Second, unlike Forest Service lands, many BLM lands are intermingled with private lands, and therefore are affected by and affect the management of intermingled private land and improvements. The Department has decided that the proposed surcharge on the transfer of Federal permits and leases resulting from base property leases would have had negative effects that would have outweighed the benefits of the surcharge, and has not carried this form of surcharge forward into the final rule.

However, the final rule adopts the proposed provision that when the lease or permit is transferred to the base property lessee, it must be issued for a period of not less than three years. Such a lease of the base property constitutes a substantial long-term commitment of resources thus reducing the potential for large short-term windfall profits, as identified by the General Accounting Office (RCED–86–168BR) and the Office of the Inspector General (92–1–1364), and helping to ensure good stewardship. The authorized officer has the discretion to approve a transfer for a shorter period when consistent with management and resource condition objectives.

Other changes proposed in § 4130.7–1 also are adopted in this final rule. In the proposed rule, these changes would have amended § 4130.7–1 to make clear the definition of billing unit, to provide for assessing a surcharge in certain instances for the public landlord's share of authorized livestock pasturing agreements associated with Federal land grazing, to clarify that grazing use that occurs before a bill is paid is an unauthorized use and may be dealt with under the settlement and penalties sections of these rules, and that noncompliance with terms and conditions may result in the loss of after-the-grazing-season billing privileges. These provisions are adopted as proposed. The proposed provision to provide for free use where the primary objective of livestock use is to benefit resource conditions or management, such as scientific study or the control of noxious weeds, is moved to § 4130.5 in the final rule.

The Department received comments that were both supportive and critical of the proposed pasturing agreement surcharge. Commenters criticized the approach to calculating the surcharge because they believed it did not reflect the regional differences in forage value. Other commenters opposed absolutely any pasturing on BLM lands because, they maintained, it results in large windfall profits from sale of public resources. Still other commenters asserted that permittees are entitled to profit from pasturing other operators' cattle on their Federal grazing permits or leases.

The Department believes pasturing agreements have a potential for short-term windfall profits and do not provide an appropriate incentive for good stewardship. Therefore, the provision for a surcharge on pasturing agreements has been adopted in this final rule. However, the calculation of the surcharge is changed to reflect the regional differences in forage value using State private grazing land lease rates, as calculated by NASS. The consideration of the private grazing land lease rate for each State, rather than an average of all States, is intended to reflect the value of the Federal forage involved in a more equitable and efficient manner. After consideration of private land lease rates in the western states, the Department has decided that 35 percent of the difference between the private grazing land lease rate in each respective State and the Federal grazing fee represents a reasonable balance that will allow the permittee or lessee to cover costs that may arise from pasturing other livestock operators' cattle, will provide the government a reasonable rate of return, and will aid in ensuring good stewardship. Sons and daughters of permittees or lessees will be exempt from the surcharge, as set forth in the final rule.

A number of comments were also received on free use, which was originally proposed in this section. Most of the comments expressed concern that the provision would lead to numerous free use grazing permits. This provision is intended to provide for the use of grazing, at the discretion of BLM, for limited scientific and vegetation manipulation objectives. For example, intense grazing by goats may serve as an effective method for the control of weeds such as leafy spurge.

The Department has decided to adopt the provision with the changes discussed above.

Section 4130.8–3 Service Charge (Formerly Section 4130.7–3)

Section 4130.7–3 would have been amended by redesignating the section as section 4130.7–4, and by adding to applications that are made solely for temporary nonuse or conservation use. The service fee would offset the costs of processing such applications.

The Department received very few comments on this section. Accordingly, the Department has decided to adopt the final rule language as proposed with the exception of a minor clarifying change.

Subpart 4140—Prohibited Acts

Section 4140.1 Prohibited Acts on Public Lands

As proposed, paragraph (a)(2) of this section would have been amended to clarify that approved temporary nonuse, conservation use, or temporarily suspended use would be excepted from the requirement to make substantial use, and, therefore would not have been subject to penalty action under § 4170.1. Other proposed amendments to this section would have clarified paragraph (b)(1) to establish that grazing bills for which payment has not been received do not constitute authorization to graze. Paragraph (b)(9) would have been amended to make it clear that the permittee is responsible for controlling livestock so they do not stray on to ''closed to range'' areas where grazing is prohibited by local laws, such as formally designated agriculture districts or municipalities. To be consistent with the Forest Service this section would have restored two provisions that existed in this subpart prior to 1984. These provisions would have made subject to penalty permittee or lessee violations of the Wild and Free Roaming Horse and Burro Act of 1971 and violations of Federal or State laws or regulations concerning animal damage control, application or storage of pesticides, herbicides or other hazardous materials, illegal alteration or destruction of stream courses, pollution of water resources, illegal take, destruction or harassment of fish and wildlife resources, or illegal destruction or removal of archeological resources.

Further provisions would have been added to clarify that attempted payment by a check that is not honored by the bank does not constitute payment and would result in unauthorized use. (However, § 4140.1(c) specifically provides for civil penalties only where payment with insufficiently funded checks is repeated and willful.) The proposal also would have provided for reclamation of lands, property or resources when damaged by unauthorized use or actions.

The proposed rule also would have added reference to the types of violations of Federal and State laws and regulations concerning pest or predator control and conservation or protection of natural and cultural resources or the environment that would be prohibited acts subject to penalty under subpart 4170 where public lands are involved or affected.

The Department received many comments on this section. A number of the comments revealed some confusion as to the interaction between § 4140.1, prohibited acts, and subpart 4170, the penalties section of the grazing rules. Section 4140.1 provides a list of prohibited acts. Specifically, § 4140.1(a) lists prohibited acts for which permittees and lessees might be subject to civil penalties; § 4140.1(b) lists prohibited acts for which all persons using the rangelands might be subject to civil and criminal penalties, and new § 4140.1(c), which incorporates what was proposed as § 4170.1–3, lists additional prohibited acts and establishes the conditions that must be fulfilled before the Department may impose civil penalties on those committing these prohibited acts. Sections 4170.1 and 4170.2 set forth the penalties, both civil and criminal, for committing prohibited acts.

Many commenters objected to including violations of State and Federal statutes related to water pollution, wildlife protection, and other matters, as prohibited acts. Some commenters asserted that this provision exceeded the Secretary's authority, and violated Section 302(c) of FLPMA (43 U.S.C. 1732(c)). In particular, these commenters contended that FLPMA provides only for the revocation or suspension of authorizations for the use,

occupancy, or development of public lands on the basis of violations of State or Federal acts or regulations applicable to air or water quality. Furthermore, these commenters asserted that Section 302(c) of FLPMA provides for the suspension, revocation, or cancellation of authorizations to use, occupy, or develop public lands only when violations of terms and conditions occur on public lands in connection with the exercise of rights and privileges of the use authorization. Others were concerned that penalties would be imposed for even *de minimus* violations.

Although Section 302(c) of FLPMA contains specific references to Federal and State air and water quality standards, its language is expansive. It allows enforcement of terms and conditions, ''including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands * * *.'' The Department has concluded that these provisions of FLPMA would encompass the activities prohibited in § 4140.1 of this rule. Moreover, the Department has concluded that good stewardship of the public lands, as well as the intent and specific language of FLPMA, are served by expanding the prohibited acts section to include violations of State and Federal laws related to natural resources, and that expanding the list of prohibited acts provides the regulated community and the public with improved notice of the prohibited acts.

The final rule as adopted provides penalties where violations are more than *de minimus* and concern, in a more than remote way, the use of the public lands. The Department has addressed commenters' concerns that the provisions should be restricted to violations of terms and conditions that occur on public lands and in connection with the exercise of rights and privileges of the use authorization by adding to § 4140.1 the list of conditions formerly included under § 4170.1–3. Under § 4140.1(c) of this final rule, violations of other State or Federal laws or regulations will not constitute prohibited acts unless public land administered by BLM is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by BLM, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding. This consolidates in one section the list of the types of violations and the three conditions that must be met before a violation of State, Federal, and local laws and regulations constitutes a prohibited act. This reorganization of the provisions from proposed §§ 4140.1 and 4170.1–3 into final § 4140.1 improves the clarity of the final rules by eliminating cumbersome cross-references.

A number of commenters expressed concerns about procedural protection in connection with the imposition of penalties. Under this final rule, enforcement of the penalty provisions is subject to the same Departmental appeal procedures as other types of appeals. These procedures are detailed in regulations of the Department's OHA, Title 43 of the Code of Federal Regulations, Part 4, Subpart B. These provisions provide adequate procedural safeguards, set conventional burdens of proof and provide fair enforcement of the rules. Therefore, the Department has not modified the rule language in response to these concerns.

There was also considerable comment about prohibited acts regarding transit between public and private lands, trespass, straying, and gate closure. Commenters expressed concern about whether the provisions affected the ability of landowners to protect private property or range improvements from trespass and vandalism. Others were concerned that the provisions would affect Department of Agriculture or State agency predator control activities.

Nothing in these rules prohibits landowners from protecting private property from trespass or vandalism, or prohibits the landowner from keeping their gates closed to protect private property. The final rule regarding gates is clarified by the addition of the words ''during periods of livestock use.'' The Department does not intend this provision to apply to situations where gates are left open to give cattle access to forage and water. Closing a gate and consequently denying cattle access to needed forage or water could be covered by the provisions in § 4140.1(a)(5). Nothing in this rule is intended to prevent legitimate use of gates to move and control livestock. The provision of § 4140.1 relating to public access merely reiterates existing requirements. The intent of the provision is to prevent individuals from interfering with lawful uses of the public lands.

The provisions in subpart 4140 apply to BLM's administration of the grazing program on the public lands, and nothing in the subpart prevents the landowner from placing signs on private property to prevent trespass and destruction. Furthermore, nothing in this provision affects Department of Agriculture or State agencies' predator control activities. However, the Department has no authority to prevent human trespass on private lands. Trespass is governed under the State laws in each State.

Stray livestock are a serious problem on public lands. In addition to being an unauthorized use of forage, stray livestock present hazards to vehicles and public land users, carry a potential to transfer disease from sick to healthy stock, disrupt other animals, and cause undesired breedings and unplanned mixtures of livestock gene pools.

It is the responsibility of the permittee to control his or her livestock. However, in evaluating violations, the authorized officer can consider factors beyond the control of the permittee or lessee. For example, the authorized officer could consider the fact that a third party, without any knowledge on the part of the permittee, had destroyed the permittee's fence and as a result livestock had strayed from authorized areas. In contrast, repeated incidents of apparently incidental strays could signify a more serious problem of range management. In such cases, the authorized officer needs authority to penalize the permittee or lessee for the problem.

Some commenters expressed the view that conservation use should not be exempted from the prohibition against failing to make substantial grazing use. Commenters' concerns about conservation use are discussed elsewhere in this preamble, especially at § 4130.2. Failure to make substantial use is discussed at § 4170.1–2.

Some commenters asked whether the rule prohibited alteration of stream courses that might be needed as part of the maintenance of improvements. The proposed and final language indicates that *customary* maintenance of diversion points is an authorized activity. Others were concerned about the provision specifying that attempted payment by a check that is not honored does not constitute a grazing authorization. In response, the language at final § 4140.1(b)(9) has been revised to specify that payment with insufficiently funded checks *on a repeated and willful basis* is a prohibited act.

Other commenters were concerned about the provisions on leasing and subleasing. Nothing in this provision prohibits *authorized* leasing or subleasing. The final rule has been amended to clarify that only unauthorized leasing or subleasing is a prohibited act. The Department understands that transactions that

include the leasing or subleasing of base property and pasturing agreements can be a necessary component of a grazing operation. However, the Department also believes that it has a responsibility to ensure that sublessees are qualified and will be good stewards, that appropriate base property is available, and that livestock grazed pursuant to pasturing agreements must be under the control of the permittee or lessee. Subleasing will be permitted if the authorized officer determines the above criteria are met.

In accordance with the above discussion, § 4140.1 of the proposed rule is adopted as final with the exception of adding the conditions formerly provided at § 4170.1–3 to § 4140.1, addition of the phrase ''repeated and willful'' to paragraph (b)(9), and making minor edits for clarity. Comments on the provisions proposed as § 4170.1–3 are discussed also at that section.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1 Violations

Under the proposal, this section would have been reorganized for clarity and would have added the requirement that the authorized officer shall determine whether a violation is nonwillful, willful, or repeated and willful.

The Department received a few comments on this section. Commenters expressed concerns about the definition of violations and penalties to be imposed, and about the process to be followed by the authorized officer in making decisions about violations and penalties. A typical concern was the investigation of violations. Related concerns included how the authorized officer would determine if a violation had occurred.

Other comments included suggestions that violators not be held liable unless violations were repeated and willful, that damages should be limited to that actually sustained, and that various words be defined.

The Department has decided not to adopt any specific definition for terms that are legal standards and are not unique to BLM rules.

The rule adopted today requires that BLM follow a fair, orderly process when investigating violations and assessing penalties. An appeal process is available under subpart 4160 when the violator believes the rules have been inappropriately interpreted. The Department acknowledges that in any regulatory program there is a potential for inconsistent decisions, and intends that this regulatory reform will improve the consistency of rangeland administration throughout the Bureau. Consistency will be enhanced further through additional information and training.

It is not appropriate to limit liability to cases where violations are repeated and willful, because in some cases a single violation can be considerably damaging to the public lands. However, the final rules provide for nonmonetary settlement of nonwillful violations in some cases. Similarly, the Department does not believe it is appropriate to limit penalties to the cost of correcting the problem. The availability of penalties is a common enforcement mechanism that acts as a deterrent to violations and an incentive to comply.

In accordance with the above discussion, § 4150.1 is adopted as proposed.

Section 4150.2 Notice and Order to Remove

In the proposal, this section would have been amended to grant the authorized officer authority to determine if a nonwillful violation is incidental in nature, to outline a process for doing so, and to clarify actions for expeditious resolution of these innocent or unintended trespasses. The ability to close areas for a period of up to 12 months to specified class and kinds of livestock for the sole purpose of abating unauthorized use was also proposed, as was a provision that would have allowed such decisions to be effective upon issuance or on a specified date, and to remain in effect pending a decision on an appeal. Reference to the agents of livestock owners would also have been added to allow the authorized officer to notify an agent of a nonwillful and incidental violation.

The Department received very few comments on this section, most of which related to the administrative burden of pursuing incidental violations and land closures. The Department agrees that pursuing violations for incidental unauthorized use increases the workload for BLM and has provided for relief by making final the provision of the proposed rule that allows for nonmonetary settlement of nonwillful trespass under specific conditions.

In accordance with the above discussion, the Department has adopted § 4150.2 as proposed except for minor changes to eliminate redundancy between § 4150.2 and § 4150.1.

Section 4150.3 Settlement

Under the proposed rule this section would have been amended to provide guidelines for nonmonetary settlements where fees could be waived for unintentional incidental trespasses in a fair manner. The authorized officer could have made a nonmonetary settlement only under the following conditions: the operator is not at fault, an insignificant amount of forage is consumed, no damage occurred, and nonmonetary settlement is in the best interest of the United States. The method for determining the settlement amounts would have been amended to base the value of forage on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in each of the 17 western States. Other proposed amendments would have reduced the potential for abuse of discretion by clarifying when a nonmonetary settlement for nonwillful violations may be made.

The Department received very few comments on this section. Nearly all commenters supported the basic principle of nonmonetary settlement but suggested alternatives for implementation. Commenters also sought additional definition or suggested that nonmonetary settlement should be excluded from the record to prevent every violation from being appealed.

The Department believes that the proposed conditions under which the nonmonetary settlement would be used are defined in sufficient detail and are appropriate. The specific circumstances of each case vary greatly and will have to be evaluated in view of the conditions in the rules by the authorized officer to make a determination of nonmonetary settlement.

The Department does not agree with some commenters' suggestions that nonmonetary settlements should be excluded from the record. The purpose of the provision is to ease the administrative burden for the agency and relieve the financial burden for the operator. While nonmonetary settlement may be appropriate under the terms of this rule, unauthorized use should be documented in the record.

The Department has decided to revise the provision of the proposed rule that would have based the settlement fee for unauthorized use on the average of private grazing land lease rates in the 17 western States as reported annually by the Department of Agriculture's National Agriculture Statistics Service. This provision would have provided for an unauthorized use settlement that would have been uniform across all public lands administered by BLM as well as western National Forest System lands. Also, the settlement fee would have been based on the same data set

that would have been used to calculate the forage value index included in the proposal to amend the grazing fee formula, which has not been carried forward in this final rule. The Department has decided to base settlement of unauthorized use on the average private grazing land lease rate, reported annually by the National Agriculture Statistics Service, for the individual State in which the unauthorized use occurs rather than on an average across the 17 States. This change will provide for a more fair settlement across all affected States.

In accordance with the above discussion, the proposed rule is adopted as final except for the noted change from the average private grazing land lease rate for all 17 western States to the average private grazing land lease rate for each individual State.

Subpart 4160—Administrative Remedies

Section 4160.1 Proposed Decisions

The proposed rule would have amended this section to provide clarification that a final decision may be issued without first issuing a proposed decision when action under § 4110.3–3(b) of this part is necessary to stop resource damage, or when action is taken under § 4150.2(d) to close an area to unauthorized grazing use. It would have served to expedite the decision process where immediate action is necessary and would have clarified what information must be contained in a proposed decision. The provision is adopted as proposed.

A number of comments objected to the use of the term ''interested public.'' Comments indicated a concern that the use of the term broadens public participation which may result in delays due to administrative appeals and thus uncertainty for permittees. Comments questioned whether the ''interested public'' would have an interest in the matter they appeal and whether the ''interested public'' would automatically have ''standing'' to challenge the final decision of an authorized officer. One commenter suggested that decisions should be sent to affected public land users, and any party showing a concrete and particular injury from the decision.

The term ''interested public'' replaces the term ''affected interest'' in the existing rules. The definition of the term ''interested public,'' adopted by today's action, appears at § 4100.0–5. One of the goals in adopting the changes to this section is to clarify that the ''interested public'' will be notified of all proposed decisions in order to involve the public in an early stage of the decision making process. Under the existing rules ''affected interests'' were notified of proposed decisions on permits and leases. Today's change provides for notification to the ''interested public.'' The Department expects that by involving the interested public early in the decision making process on such issues as permit issuance, renewal and modification, increasing and decreasing permitted use, and development of activity plans and range improvement programs, there will be fewer protests and appeals because parties will have a better understanding of the final decision and the factors considered in reaching the decision. The determination of whether a person has ''standing'' to appeal a final decision of the authorized officer has not been changed. Any person whose interest is ''adversely affected'' by a final decision of the authorized officer may appeal the decision. The OHA determines if a party is ''adversely affected'' and thus has standing to bring an appeal. The Department did not adopt the suggestion to send decisions to only affected public land users and parties showing a concrete and particular injury from the decision since this would have the affect of limiting public participation.

Comments were received on the proposed clarifying amendment to allow the authorized officer to forgo issuance of a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Some comments were supportive of the change. Others indicated that the change was not needed because BLM currently has the ability to place decisions in effect on issuance or on a date specified in the decision without issuing a proposed decision. Other commenters asserted that the provision raises procedural questions, does not provide security of tenure, impacts private and State lands, removes incentives to settle appeals, creates uncertainty for lending institutions, and lowers property values and thus the local tax base.

The changes adopted today clarify that in the case of determinations under § 4110.3–3(b) or § 4150.2(d), the authorized officer does not have to first issue a proposed decision. The Department is making this change to clarify what had been implicit in the existing rules. This is consistent with the interpretation in the existing BLM Manual.

These changes clarify that the authorized officer may act quickly to arrest damage to rangeland resources resulting from conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage. There continues to be a provision to consult with the affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area. The authorized officer will have developed a record prior to taking action which will allow permittees and lessees, the interested public, and the affected State the opportunity to provide pertinent information and to discuss the impacts of adopting a final decision without a protest period. The changes being made preserve the rights of appeal and the ability to seek a stay by those affected by BLM's decisions. Clarifying the existing provision and practice should not create uncertainty for lending institutions nor lower property values and thus the local tax base. Nor should it raise concerns with security of tenure or remove incentives for settling appeals. The Department's intent in adopting this provision is to clarify that the authorized officer does not have to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §§ 4110.3–3(b) or 4150.2(d).

Other comments recommended a notification period for violations, sought an expansion of the protest time period, and suggested a definition of repeated willful violations. The Department is not adopting these suggestions because existing early communication provides sufficient notification and time for protest. Regarding the willful violation suggestion, the Department has concluded that it is more effective to retain discretion to consider each violation of the grazing rules individually to determine the appropriate action.

Section 4160.3 Final Decisions

Under the proposed rule, this section would have been amended to clarify the process for filing an appeal and a petition for a stay of a final decision. Decisions would have been implemented at the end of a 30-day appeal period except where a petition for stay has been filed with OHA, in which case OHA has, under § 4.21 of this title, a period of 45 days from the end of the appeal period in which to decide on the petition for stay. A stay, if granted, would have suspended the effect of the decision pending final disposition of the appeal. Under the present grazing administration appeals process, decisions other than those pertaining to situations where

immediate action was required are automatically stayed upon the timely filing of an appeal.

The amendment also would have clarified how the Departmental rule at § 4.21 would have been applied and the amount of grazing use that would be allowable when a decision has been stayed. Where an appellant had no authorized grazing use the preceding year, the authorized grazing use would have been required to be consistent with the decision pending a final determination on appeal. Appellants affected by this provision would have included persons that are applicants for permit or lease transfers. Where a decision proposed to change the amount of authorized grazing use, the permitted grazing use would not have exceeded the appellant's previously determined permitted use during the time an appeal is pending. Reference to ephemeral use would have been added to the amendments which would have pertained to levels of use pending determination on appeal. This amendment would also have provided for making decisions effective upon issuance or on a date specified in the decision when necessary to protect the rangeland resources or to facilitate abatement of unauthorized use by closing an area to grazing use under §§ 4110.3–3 and 4150.2 of this part. These provisions are being adopted as proposed, with minor changes to add references to annual rangeland and OHA and to clarify that the proposed term ''previously permitted use'' means ''authorized use in the last year during which any use was authorized.''

Many comments addressed the proposed change to conform the grazing appeals process with the general appeals provisions of the Department. Some comments supported the changes, while others reflected the same concern expressed in response to § 4160.1, above. Responses to those comments are not repeated here.

Some commenters questioned if the change would provide sufficient procedural protections for the permittee or lessee, and add to the number of stays sought from OHA. Other commenters questioned the authorized officer's discretion to make a decision effectively immediately; whether stay provisions would apply; whether the stay process was in conflict with the factual hearing process; and whether decisions should be placed in immediate effect only if ''required for the orderly administration of the range or for the protection of other resource values.''

It is the Department's intent in making the grazing appeals process consistent with the Department's general appeals process to put decisions in place in a timely manner unless OHA grants a stay. The amendments adopted by today's action preserve the ability to file an administrative appeal and a petition to stay a final decision. The stay provision allows OHA to determine if it is appropriate to stay all or a portion of a final decision.

The rule adopted today provides for two separate mechanisms for the issuance and appeal of decisions: (1) Making decisions effective at the end of a 30-day appeal period and, if a petition for stay is filed, upon any denial of the petition but not later than 75 days from the date of the decision, or (2) making decisions effective upon issuance or on a date specified in the decision to stop or prevent imminent damage to resources, in accordance with the standards set forth in §§ 4110.3–3(b) and 4150.2(d). The first mechanism is expected to serve as the usual way in which decisions will be made. Making decisions effective during the 30 day appeal period will be reserved for situations where immediate action is needed to protect rangeland resources or to abate unauthorized use, in accordance with the standards set forth herein.

The rules governing the consideration of petitions to stay a decision pending appeal are provided at 43 CFR 4.21(b)(i) through (iv), and are not changed by this rulemaking. The standards are (i) the relative harm to the parties if the stay is granted or denied; (ii) the likelihood of the appellant's success on the merits; (iii) the likelihood of immediate and irreparable harm if the stay is not granted; (iv) whether the public interest favors granting the stay. As it does currently, BLM will make available to involved persons the required components of an appeal and petition to stay a decision at the time a final decision is issued. A party will not have to choose between a hearing or seeking a stay. A hearing before an administrative law judge will review the facts associated with an appeal, while OHA will consider stay petitions consistent with the standards at 43 CFR 4.21(b)(1).

In the case of decisions under §§ 4110.3–3(b) and 4150.2(d), the Department has concluded that the rule and BLM Manual provide sufficient guidance to the authorized officer. For this reason, the Department has not adopted the suggestion to place decisions in effect immediately only if ''required for the orderly administration of the range or the protection of other resource values.'' As discussed above, the Department has concluded that this authority is needed to stop or prevent imminent damage to rangeland resources or to abate unauthorized use. The amendments adopted today may result in an increased number of stay petitions, but this is balanced by the benefits of making the grazing appeals process consistent with the general Departmental process.

Section 4160.4 Appeals

Under the proposed rule, this section would have provided instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, all parties whose interests have been adversely affected would have been able to file an appeal and a petition for stay of the decision within 30 days from the date of receipt of a final decision, or 30 days from the date a proposed decision becomes final in the absence of a protest. Under the process of § 4.21 of this title, the OHA is allowed 45 days from the end of the appeal period to review the petition and issue a determination. Under the proposal, a decision would not have been in effect during the consideration of a petition for stay unless it were made effective for reasons under § 4110.3–3(b) or 4150.2(d). The provision would have included a requirement for prompt transmittal by the authorized officer of appeals and petitions for stay to the OHA. These provisions are being adopted as proposed.

Comments filed on this section suggested alternative time limits and questioned if the amendments would encourage appeals by the interested public. Commenters also inquired whether there should be a presumption of grazing use when an applicant had no grazing use the preceding year.

The Department has not adopted the suggestion that the time for appeal or OHA review of petitions for stay should be expanded or limited. Past experience with the timing periods for appeals and stays has indicated that these timing requirements are reasonable. A permittee or lessee will almost always be aware of impending implementation of a decision before the final decision is issued. In addition, except for some cases that require that decisions be placed in immediate effect, the permittee or lessee is provided with a proposed decision, which may be protested, at least 15 days before a final decision is issued. It is the Department's intent in involving the interested public at early stages to reduce the number of protests and appeals because all of the parties will have an understanding of the factors considered in issuing a decision.

The Department has not adopted the view that applicants without grazing use

the preceding year should not be allowed to graze livestock at the levels allowed by a decision that is under appeal. This provision is consistent with the basic concept of subpart 4160 and 43 CFR 4.21 that the decision of the authorized officer will be put into effect unless a stay is granted. The Department intends that this concept apply consistently throughout the rules pertaining to livestock grazing.

Subpart 4170—Penalties

Section 4170.1–1 Penalty for Violations

The proposed rule would have been amended to provide for a penalty for unauthorized leasing and subleasing in the amount of two times the private grazing land lease rate for the 17 western States as supplied annually by the National Agricultural Statistics Service, plus all reasonable expenses incurred by the United States in detecting, investigating, and resolving the violation. This penalty would have been more consistent with the penalties provided for unauthorized use and simpler to administer than the penalty provided in the existing rules. This would have facilitated consistent application of the provisions by BLM. The Department has adopted the provision as proposed, with minor clarifying changes. The Department received few comments on this section. Some suggested that penalties should be based on public land AUM values, not private land values. Others stated that the rate suggested in the proposal was punitive. The concept of assessing penalties upon ''value of forage'' removed is not new. Under PRIA and the existing Federal grazing fee formula (from 1985 to present), BLM has assessed penalties for unauthorized use on that basis.

Others stated that using twice the average private rate of all 17 states would be a bargain in some cases, or that BLM should use the private rate for each area. The Department agrees that the private rate for each State should be used to calculate the fee. The final language of the rule is revised to clarify this point.

Some commenters stated that violations should not be penalized unless they were willful. One common comment suggested that penalties should apply to other public land users, not just grazing permittees. Others suggested that the authorized officer should have the authority to cancel a lease or permit, but not be required to do so.

Regarding commenters' concerns about willful violations, the penalties discussed in this section apply specifically to unauthorized leasing and subleasing. Leasing or subleasing agreements are oral or written contractual arrangements between permittees or lessees and third parties, even though the grazing privileges obtained by Federal permittees or lessees is not transferrable or assignable without approval. Such arrangements are willful actions. The authorized officer must produce competent evidence to support a finding that the permittee has in fact violated § 4140.1(a)(6). This section does not alter the procedural rights of permittees under this part. It merely establishes the penalty for unauthorized grazing of livestock owned by persons other than the permittee or lessee or their sons and daughters as provided in this part. It does not apply to authorized base property leases or subleases or authorized pasturing agreements. Other penalties set forth elsewhere in these rules do pertain to public land users who enter public lands without authorization and remove publicly-owned assets or damage public lands.

Some commenters suggested that payment of expenses should be limited to specific legal costs, and that payment of salaries of Federal personnel should not be included. Others stated that none of the statutes listed by BLM provide for revocation of permits as a permissible penalty. The Secretary has adequate legal authority to provide for penalties for such violations. The penalties adopted in this section are fair and consistent with other similar programs, and contribute to BLM's effective enforcement of the grazing program. Pricing Federal forage at market rates can be a very effective deterrent to the use of unauthorized grazing of livestock owned by persons other than the permittee or lessee except for sons and daughters of permittees and lessees.

A typical comment discussed the fact that the proposal imposes the same penalty for unauthorized subleasing as for willful trespass, and suggested that this was excessive since the livestock involved with the subleasing were probably included in an existing authorized permit and therefore a permittee subject to a penalty for subleasing would have paid the grazing fee for authorized use plus the penalty. The Department believes that individuals who have violated the subleasing provisions should be penalized to the same extent as those who have trespassed. In some cases, trespass violations determined to be repeated and willful will result in a penalty of three times the private grazing land lease rate, plus administrative expenses. Experience in resolving cases of livestock trespass has shown a need for a gradient of penalties that can be specific for certain nonwillful, willful, and repeated willful offenses. In the Department's determination, unauthorized pasturing or other unauthorized subleasing will constitute a willful violation of the rules pertaining to grazing and will be discouraged by the penalty of twice the private rate plus administrative expenses. Should such violations be repeated, other enforcement mechanisms are available.

Others stated that the proposal does not take into account use upon intermingled private land maintenance of improvements, or suggested that some sort of penalty should be available to the authorized officer to penalize a permittee, short of cancelling a permit. Differing land ownership patterns could make these provisions more difficult to enforce. However, the provisions adopted do provide for authorizing grazing of public lands by livestock owned by persons other than the permittee or lessee. Penalties for violations of the subleasing or pasturing provisions would be limited to the public land forage AUMs consumed. The authorized officer does have discretion to use lesser sanctions than permit cancellation when warranted.

Others asserted that the penalties were not serious enough to be effective, and suggested that there should be a debarment provision. The penalty established in the final rule is intended to serve as a strong deterrent to unauthorized pasturing of livestock owned by other than permittees, lessees, or their sons or daughters. Setting the penalty at two times the private grazing land lease rate plus administrative expenses will ensure that there is no financial impetus for committing such a violation, i.e. an effective penalty must result in a cost greater than the reward. The provisions adopted today ensure this by using the private land rate, which in itself should generally exceed the cost of public land forage, and then doubling that figure. Administrative costs to be added to the penalty merely serve as a further disincentive to violate the provision and highlight the expenses to the public that result from the detection and resolution of violations of the provisions.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed, with a few changes. The phrase ''for the 17 western States'' is revised to ''in each State'' and is moved to modify the phrase ''required to pay'' to provide a penalty that is tied to the private land

lease rate in each individual State. This responds to commenters' suggestions and makes the penalty more proportionate to the benefit received from the unauthorized use.

Section 4170.1–2 Failure To Use

This section would have been amended to clarify the consultation requirements imposed on BLM when an authorized officer is considering taking action to cancel, in whole or in part, a permit or lease in response to failure to use. This section also would have clarified that failure to make substantial grazing use as authorized means failure to make active grazing use as approved on a grazing use authorization. Failure to make authorized use may result in monitoring studies providing false information which can cause decisions to over-obligate the forage resource of the rangeland.

Permittees and lessees would have been required to apply and receive approval for nonuse or conservation use. Failure to apply for conservation use or nonuse prevents BLM from having an opportunity to determine if conservation use or nonuse is in conformance with the rules at 43 CFR 4130.2(g) and applicable planning documents.

The proposal would also have included failure to maintain or use water base property in the grazing operation as a type of failure to use. Providing for the use of such waters is critical to the effective administration of grazing within an allotment. Water property is crucial to the proper use and operation of livestock grazing in water base areas. If base property waters are not kept in serviceable condition, livestock are forced to overuse the service areas of the remaining waters.

BLM received very few comments on this section. The Department has decided to adopt the substance of the provision as proposed, with editorial changes for clarity. The most common issue raised was what readers viewed as an exemption from the ''substantial use'' provisions for conservation use. Some commenters who specifically supported cancellation for non-use objected to the exemption for conservation use. Others stated this was a double standard, and that it made no difference to the resource if someone with grazing use simply did not use the permit or if someone had conservation use. Still others stated that permittees with conservation use should be subject to the cancellation provisions for failure to maintain or use water base property.

The Department disagrees that conservation use is an exemption from the substantial use standard. Conservation use is an active use, and therefore provisions regarding failure to use do not apply. Issues regarding conservation use are discussed at § 4130.2.

Some comments asserted there should be no penalty for using a permit less than the permitted use, and that fees collected should be based on actual AUMs used. Others asserted that the proposed changes eliminate any incentive on the part of BLM to reach an agreement with the permittee, and suggested limiting cancellation to situations where the permittee or lessee has failed to maintain use without reason, has unreasonably failed to maintain or use base property or to install or maintain range improvements.

There is no penalty for using less than permitted use provided that the authorized officer has approved either temporary nonuse or conservation use. The Department does not believe that the provisions will be a disincentive to reach an agreement. The provision does not displace the cooperative processes set out in FLPMA, as amended by PRIA. Parties to be consulted are limited to permittees and lessees because any action taken in response to failure to make use will be a ministerial action addressing a requirement of the rule and permit or lease.

Other commenters asked what ''failure to maintain or use water-based property in the grazing operations for two consecutive grazing fee years'' meant. ''Failure to maintain or use water-based property. . . for two consecutive grazing fee years'' means that the permittee has not had cattle on the range for two consecutive years, has not allowed livestock to use the base water, has neglected to conduct necessary repair and maintenance activities of the base water for two consecutive years, or a combination of these three. In response to the commenters' concerns, the final rule as adopted is revised to clarify this point.

One commenter stated that the provision assumes the permittee has the funds to purchase livestock or maintain base property. The commenter was concerned that if the permittee could not get funding, BLM might place a lien on the permittee's base property, thus reducing its collateral value. The Department does assume that the permittee has the funds necessary to maintain a grazing operation, including the purchase or lease of livestock and the maintenance of base water facilities. The BLM will not place liens on base property. If a permittee cannot afford to make use of, or maintain, base water in any one year, there will be no penalty under thus provision. However, if the situation extends into the second year, then BLM will consider cancelling whatever amount of permitted use the permittee or lessee has failed to use, as provided in this section of the final rule.

Regarding specific requests for definitions, the Department believes the use of the term ''substantial use'' is sufficient without definition for purposes of national rules. The meaning of the word ''substantial'' in a legal context has been well-established in the courts.

In accordance with the above discussion, the Department has decided to adopt the substance of the provision as proposed, with editorial changes for clarity. The language in the final section is rewritten to clarify the meaning of the ''2 consecutive grazing fee years'' provision.

Section 4170.1–3 Federal or State Animal Control and Environmental Protection or Resource Conservation Regulations or Laws

The proposed rule would have amended this section to make subject to penalty under § 4170.1–1 violations of Federal or State regulations or laws that are listed as prohibited acts under § 4140.1 and that pertain to predator animal and pest control, wild free-roaming horses and burros, natural and cultural resources, resource conservation, or the environment. The heading of this section would have been amended to reflect the change in scope. These changes were proposed to conform with similar amendments in § 4140. The types of violations that may result in the withholding, suspension or cancellation of a permit or lease under § 4170.1–1(a) would have been expanded to include violations of regulations and laws that pertain to the protection of the environment and conservation of natural and cultural resources where public lands are involved or affected, the violation is related to grazing use authorized by the permit or lease, and the permittee or lessee has been found to be in violation by the relevant court or other authority and no appeals are outstanding. Principal users of the rangelands should be expected to comply with such laws and regulations. The proposed amendments would have adopted language of the grazing administration regulations that existed before 1984. Today's action adopts the provision with minor clarifying changes, and also moves the entire provision to § 4140.1(c) for clarity.

Commenters on this section were strongly divided on its provisions. Some asserted, as they had on § 4140.1 of the proposal, that inclusion of other statutes

in the penalty provisions of the grazing program was outside the Secretary's legal authority, which they asserted applies only to public lands governed by a grazing permit. Others asserted that the provisions placed too much emphasis on other values, that under this program only grazing values should be considered.

Section 2 of TGA directs the Department to preserve public rangeland and its resources from destruction or unnecessary injury and to provide for the orderly use, improvement, and development of the range to ensure that the public grazing lands are administered in a reasonable and orderly fashion. The Department believes that the language of this section represents a reasonable and practical balance between those responsibilities and limitations placed on it by resource and other practical considerations.

The Secretary has full authority to establish terms and conditions for grazing permits to ensure compliance with the laws affecting public lands. Consideration of natural and cultural resource values is fully consistent with the Department's responsibility for multiple resource management under its statutory authorities. The Department cannot condone violations of other statutes and expects that principal users of public lands, such as grazing permittees, will comply with these statutes in the conduct of their activities. These related statutes do have separate enforcement provisions that would be unaffected by this rule. However, as discussed at § 4140.1, there are limitations placed on the Secretary's authority to impose penalties for violations under other laws. These limitations are that public land administered by the Bureau of Land Management must be involved or affected, the violation must be related to grazing use authorized by a permit or lease, and the permittee or lessee must be convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, with no further appeals outstanding.

Some commenters asked whether lesser violations of State laws would be cause for loss of a permit, or suggested that only repeated, willful violations should be penalized. Others asserted that paragraph (c) should be amended to limit the provision to penalizing violations resulting from court decisions.

The Department does not intend that *de minimis* violations of State or even Federal laws or regulations will result in penalties affecting the grazing permit or lease under this provision. However, the rule as adopted will not affect how violations of State or Federal law or regulations are dealt with initially by the various enforcement or regulatory agencies.

Others stated that the provisions were too narrow, and should apply to additional statutes addressing natural resource protection. One specific suggestion was the American Indian Religious Freedom Act. Some of these commenters suggested that penalties for violation be nondiscretionary. Other comments suggested omitting paragraph (c) altogether on the basis that there is no legal argument to support such a limitation on the Department's responsibility under FLPMA and TGA to promulgate and enforce its own regulations.

As stated in the preamble to the proposed rule, a list of relevant laws will be made available to grazing permittees and lessees. No State or Federal statutes were added to the list presented in the preamble to the proposed rule.

In accordance with the above discussion, the Department has decided to retain the substance of § 4170.1–3, as proposed. However, in response to comments on §§ 4140.1 and 4170.3, the Department has moved the entire section establishing conditions limiting when violations of certain laws and regulations would constitute prohibited acts for the purposes of grazing administration to § 4140.1(c). This change from the proposed rule is intended to clarify the provision by removing cumbersome cross-references and by consolidating discussions of prohibited acts. Further discussion of this provision can be found at that section.

Section 4170.2–1 Penal Provisions Under the Taylor Grazing Act

Under the proposal, this section would have clarified a confusing existing statement by rewriting the provision to state that any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations, is punishable by a fine of not more than $500, under the penal provisions of TGA.

The Department received no comments on this section, and it is finalized as proposed.

Section 4170.2–2 Penal Provisions Under the Federal Land Policy and Management Act

The proposed rule would have amended this section to adopt the alternative fines provisions of Title 18 U.S.C. section 3571, which was enacted after enactment of FLPMA. This action would have strengthened the protection of natural or cultural resources under the grazing program. Other language changes consistent with similar changes to § 4170.2–1 regarding willful commission of acts prohibited under § 4140.1(b) would also have been made.

The Department received very few comments on this section. The major theme of the comments was that the establishment of civil and criminal sanctions are outside the authority of the Secretary, but rather are within the exclusive jurisdiction of the legislature.

The Department disagrees that the provisions of this section are outside the authority of the Secretary. The Secretary has full authority to enforce provisions of FLPMA, TGA and other statutes, and has authority to promulgate rules to implement FLPMA and other statutes pertaining to public lands (43 U.S.C. 1740). Section 4170.2–2 establishes the penalty provision for criminal acts.

Subpart 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration (Titled ''National Requirements and Standards and Guidelines for Grazing Administration'' In Proposed Rule)

Under the proposed rule, this subpart would have been added to establish national requirements for the administration of grazing on public lands. It would also have included a provision for the development of State or regional standards and guidelines for grazing administration. These requirements, standards, and guidelines were proposed to establish clear direction for managing rangelands in a manner that would achieve or maintain ecological health, including the protection of habitats of threatened or endangered species and candidate species, and the protection of water quality.

The heading of the subpart is modified from the proposed rule, as noted above.

Section 4180.1 Fundamentals of Rangeland Health (Titled ''National Requirements for Grazing Administration'' In Proposed Rule)

Under the proposed rule, this new section would have established national requirements for grazing administration on public rangelands. Permits, leases, other grazing authorizations and grazing related plans and activities on public lands would have incorporated, as applicable, grazing practices that help achieve healthy, properly functioning ecosystems and riparian systems. All

grazing-related actions on public lands would have been required to conform with the national requirements. Where the national requirements were not being met, the authorized officer would have been required to take corrective action prior to the start of the next grazing season. This would have included actions such as reducing livestock stocking rates, adjusting the season or duration of livestock use, or modifying or relocating range improvements. Nothing in the national requirements relating to riparian systems was to be construed to create a water right based on Federal law. The national requirements presented in the proposed rule have been retitled ''fundamentals of rangeland health'' to better reflect the Department's view that they represent the basic components of healthy rangelands. These components will be referred to as the ''fundamentals of rangeland health'' in the discussion below.

The Department received many comments on this section. Comments suggested that establishing fundamentals that were unique to grazing administration discriminated against public land livestock operators and questioned the statutory authority of the Secretary to promulgate such provisions. Other comments expressed the view that the provisions were too lax; still others asserted that the section discounted the role that herbivores have played in the history of the public rangelands and would create problems and complexities in BLM grazing program due to the variation in standards and guidelines.

It is the Department's intent to establish through the fundamentals of rangeland health and the applicable standards and guidelines appropriate grazing practices to help ensure productive rangelands. These fundamentals will guide BLM in the development of plans for public lands and in the authorization of grazing-related activities, consistent with the provisions of FLPMA and TGA, that lead toward or maintain healthy, sustainable rangelands. It is not unusual for BLM programs to have unique requirements that pertain to a particular group of activities on the public lands, for example the Onshore Orders regulating portions of the oil and gas program.

The fundamentals are statements of the conditions that are representative of healthy rangelands across the West, and, as such, are relatively broad as pointed out in some comments. The fundamentals establish the Department's policy of managing for healthy rangelands. State or regional standards and guidelines will be developed, under the umbrella of the fundamentals, to provide specific measures of rangeland health and to identify acceptable or best management practices in keeping with the characteristics of a State or region such as climate and landform. State or regional standards and guidelines will provide the measures and guidance needed to develop terms and conditions of permits, leases, and other authorizations, AMPs and other activity plans, cooperative range improvement agreements and to issue range improvement permits in a manner that will result in maintaining or making significant progress toward healthy, functional rangelands.

The focus on the fundamental requirements of healthy rangelands does not discount the role played by herbivores. Applying the principles of ecosystem management to grazing administration requires consideration of herbivores, both wild and domestic. The historical role of herbivores is discussed in some detail in the FEIS on this rule.

The intent in adopting this section is to facilitate compliance with relevant requirements of Acts such as the ESA and the Clean Water Act and to ensure functional rangelands in order to improve ecological conditions while providing for sustainable development. The Department does not agree with some commenters who asserted that the fundamentals would exceed the requirements of the relevant statutes. The fundamentals, along with State or regional standards and guidelines, will be used to establish management practices that are appropriate for the particular region that lead toward or maintain healthy, sustainable rangelands and provide security of tenure for permittees and lessees.

Regarding comments that the section creates complexities and problems for BLM's grazing program due to State or regional variations, the Department has concluded that such variation is necessary to address the specific conditions present within individual areas. The fundamentals, however, provide the basic components of healthy rangelands that will apply to all States and regions (exclusive of Alaska). These overarching principles will be supplemented by standards and guidelines that will be tailored to more local conditions.

Finally, some commenters also asserted that the fundamentals of rangeland health and the standards and guidelines would result in a ''taking'' if grazing use was modified as a result of this section. Issues associated with ''takings'' are discussed in the General Comments section.

In accordance with the above discussion, the Department has decided to adopt the substance of the provision as proposed with reordering and modifications for clarity, adding wording that requires significant progress toward meeting the fundamentals, and rewording to incorporate more fully a watershed management approach.

Section 4180.2 Standards and Guidelines for Grazing Administration

Under the proposed rule, this new section would have established the requirements for the development of standards and guidelines for grazing administration on public lands, and guiding principles for their development. All grazing related actions within the affected area would have been required to conform with the appropriate standards and guidelines. The geographical area to be covered by the standards and guidelines to be developed pursuant to this section were to be determined by the BLM State Director. Standards and guidelines would have been required to be developed for an entire State, or for an ecoregion including portions of more than one State, except where the geophysical or vegetal character of an area is unique and the health of the rangelands could not be ensured by using standards and guidelines developed for a larger geographical area. The preparation of standards and guidelines would have involved consultation with multiple resource advisory councils, coordination with Indian tribes, and Federal agencies responsible for the management of lands within the affected area. Public participation would have included the involvement of the interested public.

The proposed rule would have established guiding principles to be addressed in the development of standards and guidelines. The guiding principles for standards to be developed were to have pertained to the minimum soil, water and biological conditions required for rangeland ecosystem health. All standards for grazing administration would have been required to address factors relating to soil stability and watershed function, the distribution of nutrients and energy, and the recovery mechanisms of plant communities and riparian functioning conditions. The guiding principles for the development of guidelines for grazing administration were to have pertained to the types of management actions necessary to ensure that the standards could be met. Included in

these guiding principles were the requirements that State or regional guidelines address grazing practices that can be implemented to benefit threatened or endangered species and candidate species, and to maintain, restore or enhance water quality; critical periods of plant growth or regrowth and the need for rest from livestock grazing; situations in which continuous season-long grazing, or use of ephemeral rangelands, could be authorized; the allowable types and location of certain range improvements and management practices; and utilization or residual vegetation limits.

The proposed rule would have provided that where State or regional standards and guidelines were not developed within 18 months after the effective date of the proposed rule, fallback standards and guidelines included in the text of the rule would be implemented. The fallback standards addressed the same factors relating to soil stability and watershed function, the distribution of nutrients and energy, the recovery mechanisms of plant communities, and riparian functioning condition as provided for under the guiding principles. The fallback guidelines addressed the grazing management practices that would be acceptable across a broad variety of rangelands. Both the proposed fallback standards and fallback guidelines were general in order to be applicable to most western rangelands.

As with the previous section, some commenters questioned whether the provisions for standards and guidelines were discriminatory and whether they exceeded the requirements of numerous statutes. These comments were addressed above under the discussion of § 4180.1. Some commenters expressed views that the standards and guidelines should be developed in coordination, cooperation and consultation with permittees, that local grazing advisory boards should be retained and involved, and that local and county government should be consulted. Some commenters questioned the expertise of the RACs to develop standards and guidelines and questioned why the interested public and the public in general is included in the development process.

Some commenters asserted that the 18-month development period is too short and that the fallback provisions should be eliminated. Others questioned whether there should be any waiting period before the fallback standards and guidelines come into effect.

Some commenters asserted that the standards and guidelines should be developed through the land-use planning process. Comments were received that questioned the efficacy of the standards and guidelines while some felt the standards and guidelines were too strict and would harm livestock operations. Finally, a few commenters questioned the intent and wording of individual guiding principles and fallback standards and guidelines.

The Department recognizes the need for an effective partnership with livestock operators and will continue to work closely with them. The Department has also concluded that public land management in general will be improved by providing for a more inclusive partnership which extends to RACs, the interested public, and State and local government. The RACs, the interested public and the public in general will be involved in the development of the standards and guidelines. RAC members will have a variety of qualifications that will contribute to the standards and guidelines development process. Grazing permittees and lessees will be represented on the RACs and will have a variety of opportunities to provide input to BLM through the RACs and public forums during the development of State or regional standards and guidelines. The RACs and their subgroups will be able to provide technical advice in a manner similar to the former grazing advisory boards, while at the same time representing a broader array of interests. For further discussion of member qualifications and experience, see section-by-section analysis of subpart 1780.

The Department has concluded that the 18-month time frame for development of the State or regional standards and guidelines will provide adequate time to develop appropriate standards and guidelines for several reasons. First, the standards and guidelines build off of current range science, existing policies and land-use planning decisions concerning grazing activities. Second, it is anticipated that any additional NEPA analysis that may be needed can be tiered from the FEIS for this rule and incorporate analyses of other NEPA documents. The Department believes that an 18-month period is necessary to allow opportunity to consider local needs and concerns. In the long term, the Department believes that a development process that considers local circumstances along with national priorities will produce superior standards and guidelines.

The fallback standards and guidelines are intended to provide protection should the development of the State or regional standards take longer than anticipated. The fallbacks are relatively general because they are intended to be applicable wherever State or regional standards and guidelines have not been put into effect within 18 months of the effective date of this final rule. The fallback provisions cannot be as specific or detailed as State or regional standards and guidelines that will be tailored to the conditions and needs of each State or region.

Concerning the comment that the standards and guidelines should be developed through the land-use planning process, State or regional standards or guidelines that are inconsistent with existing land use plans will be analyzed in land use plan amendments. Management decisions such as resource condition objectives, thresholds, stipulations, and terms and conditions of BLM use authorizations that have been or are developed for purposes other than State or regional standards and guidelines for grazing administration are not subject to the provisions of developing and approving standards or guidelines presented in § 4180.2. For example, an AMP decision that livestock use should not exceed a specified level of usage would not constitute a standard that would be subject to the provisions of § 4180.2, but would remain as an AMP decision. However, the Department expects that the merits of officially adopting existing land use plan and other management decisions as State or regional standards or guidelines will be considered and that many proven practices will serve as the basis for State or regional standards or guidelines.

The fundamentals of rangeland health, guiding principles for standards and the fallback standards address ecological components that are affected by all uses of public rangelands, not just livestock grazing. However, the scope of this final rule, and therefore the fundamentals of rangeland health of § 4180.1, and the standards and guidelines to be made effective under § 4180.2, are limited to grazing administration. Under this final rule, actions are to be taken by the authorized officer upon determining that grazing management practices and levels of use on public lands are significant factors in preventing achievement of the standards and conformance with the guidelines. Application of the principles contained in subpart 4180 to uses of public rangelands other than authorized grazing activities would require separate action by BLM or the Department.

Some commenters questioned how the PACFISH standards and guidelines affect the standards and guidelines developed in this section. The Department recognizes that

coordination between the PACFISH effort and BLM range program is essential. The Rangeland Reform '94 EIS considered cumulative impacts of PACFISH and rangeland reform. Nothing in subpart 4180 is intended to affect special planning efforts such as those related to anadromous fish habitat (PACFISH) or the Upper Columbia River Basin EIS. These are separate efforts that will be coordinated, as appropriate, with activities under subpart 4180.

Concerning the comment that the standard and guideline provisions are too strict and will drive livestock operators out of business, the guiding principles for the State or regional standards and guidelines are designed to allow State and regional issues to be considered while still resulting in significant progress toward established goals. Specific quantitative assessment methods for the listed items were not proposed because the Department believes specific assessment methodologies should be chosen in light of more site-specific considerations.

The guiding principles for standards and guidelines require that State or regional standards and guidelines address the basic components of healthy rangelands. The Department believes that by implementing grazing-related actions that are consistent with the fundamentals of § 4180.1 and the guiding principles of § 4180.2, the long-term health of public rangelands can be ensured. The fallback standards and guidelines will also lead to improved rangeland health, but the fallbacks do not provide the same opportunities for tailoring to meet more-local resource conditions and livestock management practices.

Standards and guidelines will be implemented through terms and conditions of grazing permits, leases, and other authorizations, grazing-related portions of activity plans (including AMPs), and through range improvement-related activities. The Department anticipates that in most cases the standards and guidelines themselves will not be terms and conditions of various authorizations but that the terms and conditions will reflect the standards and guidelines. For example, a standard for maintaining water quality may be implemented via a condition of a permit that livestock will not be allowed to occupy specified riparian areas during a certain time of year. In assessing the health of rangelands to determine whether action of the authorized officer is necessary, the BLM will generally consider the extent to which standards are being met and guidelines followed across the area of a grazing allotment or group of allotments. The Department intends that failing to comply with a standard in an isolated area would not necessarily result in corrective action.

The Department recognizes that it will sometimes be a long-term process to restore some rangelands to properly functioning condition. The Department intends that the standards and guidelines will result in a balance of sustainable development and multiple use along with progress towards attaining healthy, properly functioning rangelands. For that reason, wording has been adopted in this final rule that will require the authorized officer to take appropriate action upon determining that existing grazing management practices are failing to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines.

Also, the Department recognizes that it is not possible to complete all assessments of rangeland health and to take appropriate corrective action, pursuant to § 4180.2(c) of this final rule, immediately upon completion of the State or regional standards and guidelines or upon the fallbacks taking effect. The Department intends that assessments and corrective actions will be undertaken in priority order as determined by BLM.

In some areas, it may take many years to achieve healthy rangelands, as evidenced by the fundamentals, established standards, and guidelines. The Department recognizes that, in some cases, trends may be hard to even document in the first year. The Department will use a variety of data including monitoring records, assessments, and knowledge of the locale to assist in making the ''significant progress'' determination. It is anticipated that in many cases it will take numerous grazing seasons to determine direction and magnitude of trend. However, actions will be taken to establish significant progress toward conformance as soon as sufficient data are available to make informed changes in grazing practices.

Many commenters had suggestions or concerns specific to one or more of the guiding principles or fallback standards or guidelines. Commenters asserted the requirement pertaining to A-horizon soils was unrealistic, that suitability determinations need to be addressed, and that greater specificity should be provided for water quality and the protection of riparian areas. Commenters also stated that the standards and guidelines should include a prohibition on exceeding the livestock-carrying capacity and should require an upward trend in soil and vegetation.

The Department agrees that the A-horizon requirement would not serve as a useful standard on some BLM-administered lands since some naturally-occurring soil structures do not conform to this requirement. The standard that referenced ''A'' soil horizons has not been carried forward in this final rule. Comments suggesting the addition of suitability determinations have been addressed in the section-by-section analysis for § 4130.2. This final rule does not add a requirement for suitability determinations. The Department has decided not to add more detailed guidance pertaining to water quality or riparian areas but the wording of the guiding principles and fallbacks has been modified from that of the proposed rule to provide greater focus on watershed function. The Department intends that more specific provisions will be considered in the development of State or regional standards and guidelines following consideration of public input and the site-specific characteristics of the public rangelands. The concern that grazing use not be allowed to exceed the livestock carrying capacity is dealt with in §§ 4110.2–2 and 4110.3 of this final rule. The suggestion that public rangelands be required to exhibit an upward trend in condition is adopted, in part, through the addition of the requirement that action be taken to ensure significant progress toward the fulfillment of the standards and toward conformance with the guidelines when the authorized officer determines that grazing management practices or levels of use are significant factors in failing to meet the standards or conform with the guidelines.

References to meeting the minimum requirements of the ESA and State water quality standards have been removed from the fallback standards and guidelines. Both ESA requirements and water quality standards are included in the fundamentals presented in § 4180.1 of this final rule and, therefore, do not need to be restated in the fallbacks. The fallback guidelines retain reference to promoting the restoration and maintenance of habitats of special status species, to make clear that it is the Department's intent to take reasonable measures to interrupt the decline of such habitats.

References to minimum ESA requirements and State water quality standards have been retained in the guiding principles for the development of State or regional standards and guidelines. The Department intends that, as State or regional standards and

guidelines are developed, more specific and useful application of ESA requirements and water quality standards can be made. For instance, habitat requirements may be presented in measurable terms or tied to specific areas within the State or region.

In accordance with the above discussion, the Department has decided to adopt the provision as proposed with the exception of modifications for clarity, consolidation and reordering of paragraphs, clarifying the concept of upward trend by adding the requirement for making ''significant progress'' toward fulfilling the standards and toward conforming with the guidelines, removal from the fallbacks the redundant reference to ESA requirements and State water quality standards, and to incorporate more fully a watershed management approach and current science consistent with rangeland health goals.

VI. Procedural Matters

NEPA

The BLM analyzed the impacts of these final rules in its ''Rangeland Reform '94: Final Environmental Impact Statement,'' in accordance with section 102(2)(C) of the NEPA of 1969 (42 U.S.C. 4332(c)(C)).

A Record of Decision for the EIS for Rangeland Reform '94 was issued on February 13, 1995. The Department's decision is represented in the rule adopted today. The ROD departs from the preferred alternative in the FEIS in that it retains the existing grazing fee formula, identified as the PRIA (No Action) alternative, and makes minor modifications to the Preferred Management alternative. Changes made from the Preferred Management alternative of the FEIS, and adoption of the No Action Fee alternative, which are represented in the Record of Decision and this final rule, were found to be within the range of alternatives considered in the FEIS. Also, these changes were found not to affect the analysis of environmental consequences presented in the FEIS.

Executive Order 12778: Civil Justice Reform Certification

This rule has been reviewed under the applicable standards of Executive Order 12778, Civil Justice Reform (56 FR 55195). The requirements of the Executive Order are covered by the preamble discussion of this rule. The Department certifies that this rule meets the applicable standards provided in Section 2(a) and 2(b)(2) of that Order. Where applicable, the recommendations and analyses required under Section 2(d) of that Order are attached to the certification and included in the administrative record of this rule.

Regulatory Flexibility Act

The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final regulatory flexibility analysis has been prepared and may be requested from the following address: Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240. The final rule will not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Executive Order 12630

This rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Department Guidelines, and the Attorney General Supplemental Guidelines to determine the takings implications of the proposed rule if it were promulgated as currently drafted. Because the relevant statutes and rules governing grazing on Federal land and case law interpreting said statutes and rules have consistently recognized grazing on Federal land as a revocable license and not a property interest, it has been determined that this final rule does not present a risk of a taking.

Paperwork Reduction Act

The collections of information contained in this rule have been approved by OMB under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068.

Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Author

The principal authors of this final rule are Annetta L. Cheek and Charles Hunt, Regulatory Management Team, with the assistance of many other staff members of the Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240.

List of Subjects

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claims, Equal access to justice, Government contracts, Grazing lands, Indians, Interior Department, Lawyers, Mines, Penalties, Public lands, Surface mining.

43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands.

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements.

For the reasons stated in the preamble and under the authority of the FACA (5 U.S.C. Appendix), section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix, as amended; 64 Stat. 1262), the TGA of 1934 (43 U.S.C. 315, 315a–r), the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 (43 U.S.C. 1181d), and the FLPMA of 1976 (43 U.S.C. 1739, 1740), part 4 of subtitle A of title 43, and part 1780, group 1700, subchapter A, and part 4100, group 4100, subchapter D, of subtitle B of chapter II of title 43 of the Code of Federal Regulations are amended as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. The authority citation for subpart E of part 4 continues to read as follows:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

3. Section 4.477 is amended by removing paragraph (a); removing the paragraph designations (b) (1), (2), and (3); and revising the first sentence of the paragraph to read as follows:

§ 4.477 Effect of decision suspended during appeal.

Notwithstanding the provisions of § 4.21(a) of this part pertaining to the period during which a final decision will not be in effect, and consistent with the provisions of § 4160.3 of this title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. * * *

PART 1780—COOPERATIVE RELATIONS

4. The authority citation for part 1780 is revised to read as follows:

Authority: 5 U.S.C. App. (Federal Advisory Committee Act); 43 U.S.C. 1739.

Subpart 1784—Advisory Committees

§ 1784.0–5 [Amended]

5. Section 1784.0–5 is amended by removing from paragraph (d) the term ''Authorized representative'' and adding in its place the words ''Designated Federal officer''.

6. Section 1784.2–1 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising the newly redesignated paragraph (b) to read as follows:

§ 1784.2–1 Composition.

* * * * *

(b) Individuals shall qualify to serve on an advisory committee because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the committee's charter; they have demonstrated experience or knowledge of the geographical area under the purview of the advisory committee; and they have demonstrated a commitment to collaborate in seeking solutions to resource management issues.

7. Section 1784.2–2 is amended by revising paragraphs (a)(1), and (b), and by adding a new paragraph (c) to read as follows:

§ 1784.2–2 Avoidance of conflict of interest.

(a) * * *

(1) Holders of grazing permits and leases may serve on advisory committees, including resource advisory councils, and may serve on subgroups of such advisory councils;

* * * * *

(b) No advisory committee members, including members of resource advisory councils, and no members of subgroups of such advisory committees, shall participate in any matter in which the members have a direct interest.

(c) Members of advisory committees shall be required to disclose their direct or indirect interest in leases, licenses, permits, contracts, or claims and related litigation which involve lands or resources administered by the Bureau of Land Management. For the purposes of this paragraph, indirect interest includes holdings of a spouse or a dependent child.

8. Section 1784.3 is amended by removing paragraphs (a), (b)(3), (b)(4), (b)(5), (c), (d) and (g); redesignating paragraphs (b)(1) and (b)(2) as paragraphs (a)(1) and (a)(2), respectively; adding introductory text before newly redesignated paragraph (a)(1); removing from newly redesignated paragraph (a)(1) the word ''district'' and adding in its place the words ''geographical area''; removing paragraph (b) and redesignating paragraphs (e) and (f) as paragraphs (b) and (c), respectively; removing the words ''his authorized representative'' from newly redesignated paragraph (c) and adding in its place the words ''the designated Federal officer''; and adding a new paragraph (d) to read as follows:

§ 1784.3 Member service.

(a) Appointments to advisory committees shall be for 2-year terms unless otherwise specified in the charter or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorized appointing official.

* * * * *

(d) For purposes of compensation, members of advisory committees shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703. No reimbursement shall be made for expenses incurred by members of subgroups selected by established committees, except that the designated Federal officer may reimburse travel and per diem expenses to members of subgroups who are also members of the parent committee.

§ 1784.5–1 and 1784.5–2 [Amended]

9. Sections 1784.5–1 and 1784.5–2 are amended by removing the phrase ''his authorized representative'' and adding in its place the phrase ''the designated Federal officer.''

10. Section 1784.6 is revised to read as follows:

§ 1784.6 Membership and functions of resource advisory councils and sub-groups .

11. Section 1784.6–1 is revised to read as follows:

§ 1784.6–1 Resource advisory councils—requirements.

(a) Resource advisory councils shall be established to cover all lands administered by the Bureau of Land Management, except where—

(1) There is insufficient interest in participation to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed; or

(2) The location of the public lands with respect to the population of users and other interested parties precludes effective participation.

(b) A resource advisory council advises the Bureau of Land Management official to whom it reports regarding the preparation, amendment and implementation of land use plans for public lands and resources within its area. Except for the purposes of long-range planning and the establishment of resource management priorities, a resource advisory council shall not provide advice on the allocation and expenditure of funds. A resource advisory council shall not provide advice regarding personnel actions.

(c) The Secretary shall appoint the members of each resource advisory council. The Secretary shall appoint at least 1 elected official of general purpose government serving the people of the area to each council. An individual may not serve concurrently on more than 1 resource advisory council. Council members and members of a rangeland resource team or other local general purpose subgroup must reside in 1 of the States within the geographic jurisdiction of the council or subgroup, respectively. Council members and members of general purpose subgroups shall be representative of the interests of the following 3 general groups:

(1) Persons who—

(i) Hold Federal grazing permits or leases within the area for which the council is organized;

(ii) Represent interests associated with transportation or rights-of-way;

(iii) Represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities;

(iv) Represent the commercial timber industry; or

(v) Represent energy and mineral development.

(2) Persons representing—

(i) Nationally or regionally recognized environmental organizations;

(ii) Dispersed recreational activities;

(iii) Archeological and historical interests; or

(iv) Nationally or regionally recognized wild horse and burro interest groups.

(3) Persons who—

(i) Hold State, county or local elected office;

(ii) Are employed by a State agency responsible for management of natural resources, land, or water;

(iii) Represent Indian tribes within or adjacent to the area for which the council is organized;

(iv) Are employed as academicians in natural resource management or the natural sciences; or

(v) Represent the affected public-at-large.

(d) In appointing members of a resource advisory council from the 3 categories set forth in paragraphs (c)(1), (c)(2), and (c)(3) of this section, the Secretary shall provide for balanced and broad representation from within each category.

(e) In making appointments to resource advisory councils the Secretary shall consider nominations made by the Governor of the State or States affected and nominations received in response to public calls for nominations pursuant to § 1784.4–1. Persons interested in serving on resource advisory councils may nominate themselves. All nominations shall be accompanied by letters of reference from interests or organizations to be represented.

(f) Persons appointed to resource advisory councils shall attend a course of instruction in the management of rangeland ecosystems that has been approved by the Bureau of Land Management State Director.

(g) A resource advisory council shall meet at the call of the designated Federal officer and elect its own officers. The designated Federal officer shall attend all meetings of the council.

(h) Council charters must include rules defining a quorum and establishing procedures for sending recommendations forward to BLM. A quorum of council members must be present to constitute an official meeting of the council. Formal recommendations shall require agreement of at least a majority of each of the 3 categories of interest from which appointments are made.

(i) Where the resource advisory council becomes concerned that its advice is being arbitrarily disregarded, the council may request that the Secretary respond directly to such concerns within 60 days of receipt. Such a request can be made only upon the agreement of all council members. The Secretary's response shall not constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal, and shall not be appealable.

(j) Administrative support for a resource advisory council shall be provided by the office of the designated Federal officer.

12. A new § 1784.6–2 is added to read as follows:

§ 1784.6–2 Resource advisory councils—optional features.

(a) Resource advisory councils must be established consistent with any 1 of the 3 models in paragraphs (a)(1), (a)(2), and (a)(3) of this section. The model type and boundaries for resource advisory councils shall be established by the BLM State Director(s) in consultation with the Governors of the affected States and other interested parties.

(1) Model A

(i) *Council jurisdiction.* The geographic jurisdiction of a council shall coincide with BLM District or ecoregion boundaries. The Governor of the affected States or existing resource advisory councils may petition the Secretary to establish a resource advisory council for a specified Bureau of Land Management resource area. The councils will provide advice to the Bureau of Land Management official to whom they report regarding the preparation, amendment and implementation of land use plans. The councils will also assist in establishing other long-range plans and resource management priorities in an advisory capacity, including providing advice on the development of plans for range improvement or development programs.

(ii) *Membership.* Each council shall have 15 members, distributed equally among the 3 interest groups specified in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* At least 3 council members from each of the 3 categories of interest from which appointments are made pursuant to § 1784.6–1(c) must be present to constitute an official meeting of the council. Formal recommendations shall require agreement of at least 3 council members from each of the 3 categories of interest from which appointments are made.

(iv) *Subgroups.* Local rangeland resource teams may be formed within the geographical area for which a resource advisory council provides advice, down to the level of a single allotment. These teams may be formed by a resource advisory council on its own motion or in response to a petition by local citizens. Rangeland resource teams will be formed for the purpose of providing local level input to the resource advisory council regarding issues pertaining to the administration of grazing on public land within the area for which the rangeland resource team is formed.

(A) Rangeland resource teams will consist of 5 members selected by the resource advisory council. Membership will include 2 persons holding Federal grazing permits or leases. Additional members will include 1 person representing the public-at-large, 1 person representing a nationally or regionally recognized environmental organization, and 1 person representing national, regional, or local wildlife or recreation interests. Persons selected by the council to represent the public-at-large, environmental, and wildlife or recreation interests may not hold Federal grazing permits or leases. At least 1 member must be selected from the membership of the resource advisory council.

(B) The resource advisory council will be required to select rangeland resource team members from nominees who qualify by virtue of their knowledge or experience of the lands, resources, and communities that fall within the area for which the team is formed. All nominations must be accompanied by letters of recommendation from the groups or interests to be represented.

(C) All members of rangeland resource teams will attend a course of instruction in the management of rangeland ecosystems that has been approved by the BLM State Director. Rangeland resource teams will have opportunities to raise any matter of concern with the resource advisory council and to request that BLM form a technical review team, as described below, to provide information and options to the council for their consideration.

(D) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a rangeland resource team.

The purpose of such teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(2) Model B

(i) *Council jurisdiction.* The jurisdiction of the council shall be Statewide, or on an ecoregion basis. The purpose of the council is to promote federal, state, and local cooperation in the management of natural resources on public lands, and to coordinate the development of sound resource management plans and activities with other states. It will provide an opportunity for meaningful public participation in land management decisions at the state level and will foster conflict resolution through open dialogue and collaboration.

(ii) *Membership.* The council shall have 15 members, distributed equally among the 3 interest groups specified in § 1784.6–1(c), and will include at least one representative from wildlife interest groups, grazing interests, minerals and energy interests, and established environmental/conservation interests. The Governor shall chair the council.

(iii) *Quorum and voting requirements.* The charter of the council shall specify that 80% or 12 members must be present to constitute a quorum and conduct official business, and that 80% or 12 members of the council must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* Local rangeland resource teams may be formed by the Statewide council, down to the level of a 4th order watershed. Rangeland resource teams will be formed for the purpose of providing local level input to the resource advisory council. They will meet at least quarterly and will promote a decentralized administrative approach, encourage good stewardship, emphasize coordination and cooperation among agencies, permittees and the interested public, develop proposed solutions and management plans for local resources on public lands, promote renewable rangeland resource values, develop proposed standards to address sustainable resource uses and rangeland health, address renewable rangeland resource values, propose and participate in the development of area-specific National Environmental Policy Act documents, and develop range and wildlife education and training programs. As with the resource advisory council, an 80% affirmative vote will be required to send a recommendation to the resource advisory council.

(A) Rangeland resource teams will not exceed 10 members and will include at least 2 persons from environmental or wildlife groups, 2 grazing permittees, 1 elected official, 1 game and fish district representative, 2 members of the public or other interest groups, and a Federal officer from BLM. Members will be appointed for 2 year terms by the resource advisory council and may be reappointed. No member may serve on more than 1 rangeland resource team.

(B) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a rangeland resource team. The purpose of such teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(3) Model C

(i) *Council jurisdiction.* The jurisdiction of the council shall be on the basis of ecoregion, State, or BLM district boundaries.

(ii) *Membership.* Membership of the council shall be 10 to 15 members, distributed in a balanced fashion among the 3 interest groups defined in § 1784.6–1(c).

(iii) *Quorum and voting requirements.* The charter of each council shall specify that a majority of each interest group must be present to constitute a quorum and conduct official business, and that a majority of each interest group must vote affirmatively to refer an issue to BLM Federal officer.

(iv) *Subgroups.* Resource advisory councils may form more local teams to provide general local level input to the resource advisory council on issues necessary to the successful functioning of the council. Such subgroups can be formed in response to a petition from local citizens or on the motion of the resource advisory council. Membership in any subgroup formed for the purpose of providing general input to the resource advisory council on grazing administration should be constituted in accordance with provisions for membership in § 1784.6–1(c).

(A) Technical review teams can be formed by the BLM authorized officer on the motion of BLM or in response to a request by the resource advisory council or a local team. The purpose of such technical review teams is to gather and analyze data and develop recommendations to aid the decisionmaking process, and functions will be limited to tasks assigned by the authorized officer. Membership will be limited to Federal employees and paid consultants. Members will be selected based upon their knowledge of resource management or their familiarity with the specific issues for which the technical review team has been formed. Technical review teams will terminate upon completion of the assigned task.

(B) [Reserved]

§ 1784.6–3 through 1784.6–5 [Removed]

13. Sections 1784.6–3 through 1784.6–5 are removed.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

14. The authority citation for part 4100 is revised to read as follows:

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

15. Section 4100.0–2 is revised to read as follows:

§ 4100.0–2 Objectives.

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR part 1720, 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. 1740).

16. Section 4100.0–5 is amended by removing the definition of ''Affected interests,'' ''Grazing preference,'' and ''Subleasing''; revising the definitions of

''Active use,'' ''Actual use,'' ''Allotment management plan (AMP),'' ''Consultation, cooperation and coordination,'' ''Grazing lease,'' ''Grazing permit,'' ''Land use plan,'' ''Range improvement,'' ''Suspension,'' and ''Utilization''; and by adding in alphabetical order the definitions of ''Activity plan,'' ''Affiliate,'' ''Annual rangelands,'' ''Conservation use,'' ''Ephemeral rangelands,'' ''Grazing preference or preference,'' ''Interested public,'' ''Permitted use,'' ''Temporary nonuse,'' and ''Unauthorized leasing and subleasing'' to read as follows:

§ 4100.0–5 Definitions.

* * * * *

Active use means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

* * * * *

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term ''control'' means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

* * * * *

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

* * * * *

Conservation use means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of—

(1) Protecting the land and its resources from destruction or unnecessary injury;

(2) Improving rangeland conditions; or

(3) Enhancing resource values, uses, or functions.

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

* * * * *

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing.

* * * * *

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference or *preference* means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Interested public means an individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decisionmaking process for the management of livestock grazing on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 *et seq.*) and establish management direction for resource uses of public lands.

* * * * *

Permitted use means the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs.

* * * * *

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

* * * * *

Suspension means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the permitted use in a grazing permit or lease.

Temporary nonuse means the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to a request of the permittee or lessee.

* * * * *

Unauthorized leasing and subleasing means—

(1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;

(2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or

(4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

17. Section 4100.0–7 is revised to read as follows:

§ 4100.0–7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

18. A new § 4100.0–9 is added to read as follows:

§ 4100.0–9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068. The information would be collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Subpart 4110—Qualifications and Preference

19. Section 4110.1 is amended by redesignating the introductory text of the section, and paragraphs (a), (b), and (c) as the introductory text of paragraph (a), (a)(1), (a)(2), and (a)(3), respectively, revising the introductory text of newly redesignated paragraph (a), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§ 4110.1–1, 4130.5, and 4130.6–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

* * * * *

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) *Renewal of permit or lease.* (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease.* Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when—

(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

(c) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(d) Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

20. Section 4110.1–1 is revised to read as follows:

§ 4110.1–1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of § 4110.1.

21. Section 4110.2–1 is amended by revising paragraphs (a)(1), (a)(2) and (c) to read as follows:

§ 4110.2–1 Base Property.

(a) * * *

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

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

* * * * *

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section. A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

* * * * *

22. Section 4110.2–2 is amended by removing the term ''grazing preference'' from paragraph (c) and adding in its place the term ''permitted use'' and by revising the section heading and paragraph (a) to read as follows:

§ 4110.2–2 Specifying permitted use.

(a) Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under § 4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

* * * * *

23. Section 4110.2–3 is amended by redesignating paragraph (f) as paragraph (g), removing from paragraph (b) the term ''grazing preference'' and adding in its place the term ''permitted use,'' revising paragraph (a)(1), and adding a new paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

(a) * * *

(1) The transferee shall meet all qualifications and requirements of §§ 4110.1, 4110.2–1, and 4110.2–2.

* * * * *

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

* * * * *

24. Section 4110.2–4 is revised to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

25. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in permitted use.

The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

26. Section 4110.3–1 is amended by removing the words ''grazing preferences'' from paragraph (b) and adding in their place the words ''suspended permitted use''; removing from paragraph (c)(2) the term ''grazing preference'' and adding in its place the term ''permitted use'' and removing the words ''and/or'' and adding in their place the word ''and''; revising the section heading, paragraph (a), the introductory text of paragraph (c), and paragraph (c)(1), to read as follows:

§ 4110.3–1 Increasing permitted use.

* * * * *

(a) Additional forage temporarily available for livestock grazing use may be apportioned on a nonrenewable basis.

* * * * *

(c) After consultation, cooperation, and coordination with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportioned in the following priority:

(1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

* * * * *

27. Section 4110.3–2 is amended by revising the section heading, removing from paragraph (a) the term ''Active'' and adding in its place the term ''Permitted,'' removing paragraph (c) and revising paragraph (b) to read as follows:

§ 4110.3–2 Decreasing permitted use.

* * * * *

(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

28. Section 4110.3–3 is revised to read as follows:

§ 4110.3–3 Implementing reductions in permitted use.

(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing § 4110.3–2 shall be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

29. Section 4110.4–2 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available

forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

Subpart 4120—Grazing Management

30. Section 4120.2 is revised to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall—

(1) Include terms and conditions under §§ 4130.3, 4130.3–1, 4130.3–2 4130.3–3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the multiple resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

31. Section 4120.3–1 is amended by adding the words ''range improvement'' immediately before the word ''agreement'' in paragraphs (b) and (e), and by adding a new paragraph (f) to read as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

32. Section 4120.3–2 is revised to read as follows:

§ 4120.3–2 Cooperative range improvement agreements.

(a) BLM may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. A permittee's or lessee's interest in contributed funds, labor, and materials will be documented by BLM to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

(c) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by BLM does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

33. Section 4120.3–3 is amended by revising the first sentence of paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 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 removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. * * *

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse or conservation use has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the

fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

34. Section 4120.3–8 is added to read as follows:

§ 4120.3–8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which BLM is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

35. Section 4120.3–9 is added to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

36. Section 4120.5 is added to read as follows:

§ 4120.5 Cooperation.

37. Section 4120.5–1 is added to read as follows:

§ 4120.5–1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

38. Section 4120.5–2 is added to read as follows:

§ 4120.5–2 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including—

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

Subpart 4130—Authorizing Grazing Use

39. Sections 4130.1 through 4130.8 are redesignated as follows:

Old section	New section
4130.1	4130.1–1
4130.1–1	4130.4
4130.3	4130.5
4130.4	4130.6
4130.4–1	4130.6–1
4130.4–2	4130.6–2
4130.4–3	4130.6–3
4130.4–4	4130.6–4
4130.5	4130.7
4130.6	4130.3
4130.6–1	4130.3–1
4130.6–2	4130.3–2
4130.6–3	4130.3–3
4130.7	4130.8
4130.7–1	4130.8–1
4130.7–2	4130.8–2
4130.7–3	4130.8–3
4130.8	4130.9

40. Section 4130.1 is added to read as follows:

§ 4130.1 Applications.

41. Newly redesignated § 4130.1–1 is amended by revising the heading to read as follows:

§ 4130.1–1 Filing applications.

42. Section 4130.1–2 is amended by revising paragraph (b), removing the word ''and'' from paragraph (e) and adding new paragraphs (g) and (h) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(b) Proper use of rangeland resources;

* * * * *

(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

(h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

43. Section 4130.2 is amended by redesignating paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (i), respectively, revising paragraphs (a) and newly redesignated paragraph (d) and by adding new paragraphs (b), (f), (g), and (h) to read as follows:

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits and leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

* * * * *

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless—

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

* * * * *

(f) The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.

(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, AMP or other activity plans and the provisions of subpart 4180 of this part.

(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed nonuse will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or

(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.

(h) Application for nonrenewable grazing permits and leases under §§ 4110.3–1 and 4130.6–2 for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under § 4130.6–2.

* * * * *

44. Newly redesignated § 4130.3 is revised to read as follows:

§ 4130.3 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

45. Newly redesignated § 4130.3–1 is amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 4130.3–1 Mandatory terms and conditions.

(a) * * * The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

* * * * *

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

46. Newly redesignated § 4130.3–2 is amended by revising paragraph (f), removing the period from the end of paragraph (g) and adding an ''; and'' and by adding a new paragraph (h) to read as follows:

§ 4130.3–2 Other terms and conditions.

* * * * *

(f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, 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;

* * * * *

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.

47. Newly redesignated § 4130.3–3 is revised to read as follows:

§ 4130.3–3 Modification of permits or leases.

Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

48. Newly redesignated § 4130.4 is amended by revising the heading and paragraph (b) to read as follows:

§ 4130.4 Approval of changes in grazing use within the terms and conditions of permits and leases.

* * * * *

(b) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer. Permittees and lessees may apply to activate forage in temporary nonuse or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the use of forage that is temporarily available on designated ephemeral or annual ranges.

49. Newly redesignated § 4130.5 is amended by designating the text as paragraph (a), and by adding paragraph (b) to read as follows:

§ 4130.5 Free-use grazing permits.

* * * * *

(b) The authorized officer may also authorize free use under the following circumstances:

(1) The primary objective of authorized grazing use or conservation use is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;

(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of noxious weeds.

50. Reserved §§ 4130.5–1 through 4130.5–3 are removed.

51. In newly redesignated § 4130.6–1, paragraph (a) is revised to read as follows:

§ 4130.6–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

* * * * *

52. Newly redesignated § 4130.6–2 is amended by adding a sentence to the end to read as follows:

§ 4130.6–2 Nonrenewable grazing permits and leases.

* * * The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance of nonrenewable grazing permits and leases.

53. Newly redesignated § 4130.6–3 is revised to read as follows:

§ 4130.6–3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

54. Newly redesignated § 4130.7 is amended by revising paragraph (d) and adding a new paragraph (f) to read as follows:

§ 4130.7 Ownership and identification of livestock.

* * * * *

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

* * * * *

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized livestock use and is consistent with other terms and conditions of the permit or lease.

55. Newly redesignated § 4130.8–1 is amended by revising paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, adding a new paragraph (d) and amending newly designated paragraph (e) by adding a new sentence after the second sentence and a sentence to the end of the paragraph to read as follows:

§ 4130.8–1 Payment of fees.

* * * * *

(c) Except as provided in § 4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats, over the age of 6 months at the time of entering the public lands or other lands administered by BLM; by any such weaned animals regardless of age; and by such animals that will become 12 months of age during the authorized period of use. No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management, that are the natural progeny of animals upon which fees are paid, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period. In calculating the billing the grazing fee is prorated on a daily basis and charges are rounded to reflect the nearest whole number of AUMs.

(d) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in § 4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per AUM for the appropriate State as determined by the National Agricultural Statistics Service.

(e) * * * Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. * * * Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

* * * * *

56. The first sentence of newly designated § 4130.8–3 is revised to read as follows:

§ 4130.8–3 Service charge.

A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. * * *

Subpart 4140—Prohibited Acts

57. Section 4140.1 is amended by revising the introductory text of paragraph (a), paragraphs (a)(2), (a)(6), the introductory text of paragraph (b), paragraphs (b)(1)(i), (b)(5), (b)(7), (b)(9), and (b)(10); and by adding paragraphs (b)(11), and (c) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under § 4170.1:

* * * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.

* * * * *

(6) Unauthorized leasing or subleasing as defined in this part.

(b) Persons performing the following prohibited acts related to rangelands to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(1) * * *

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

* * * * *

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

* * * * *

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

* * * * *

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) Performance of an act listed in paragraphs (c)(1), (c)(2) or (c)(3) of this section where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by the Bureau of Land Management, and the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, constitutes a prohibited act that may be subject to the civil penalties set forth at § 4170.1–1.

(1) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources;

(2) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(3) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

58. Section 4150.1 is amended by designating the second sentence as paragraph (b) and adding a new paragraph (a) following the undesignated first sentence to read as follows:

§ 4150.1 Violations.

* * * * *

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

* * * * *

59. Section 4150.2 is amended by redesignating paragraph (b) as paragraph (c), and adding new paragraphs (b) and (d) to read as follows:

§ 4150.2 Notice and order to remove.

* * * * *

(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

* * * * *

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

60. Section 4150.3 is amended by removing the quotation mark, semicolon, and the word ''and'' at the end of paragraph (c), and removing the first sentence of the introductory text, and revising the sentence following the new first sentence of the introductory text, and revising paragraph (a) to read as follows:

§ 4150.3 Settlement.

* * * The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. * * *

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

(2) The forage use is insignificant;

(3) The public lands have not been damaged; and

(4) Nonmonetary settlement is in the best interest of the United States.

* * * * *

Subpart 4160—Administrative Remedies

61. Section 4160.1 is revised to read as follows:

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall

reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§ 4130.8 and 4150.3 and the action to be taken under § 4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d).

§§ 4160.1–1 and 4160.1–2 [Removed]

62. Sections 4160.1–1 and 4160.1–2 are removed.

63. Section 4160.3 is amended by removing from paragraph (b) the words ''on other affected interests'' and adding in their place the words ''the interested public,'' revising paragraph (a), and paragraph (c), and adding new paragraphs (d), (e), and (f) to read as follows:

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

* * * * *

(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See §§ 4.21 and 4.470 of this title for general provisions of the appeal and stay processes.

(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under § 4110.3–1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.

(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.

(f) Notwithstanding the provisions of § 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in § 4.21(a)(1) of this title.

64. Section 4160.4 is revised to read as follows:

§ 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 by following the requirements set out in § 4.470 of this title. As stated in that part, the decision must be filed within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in § 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.

Subpart 4170—Penalties

65. Section 4170.1–1 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 4170.1–1 Penalty for violations.

* * * * *

(d) Any person found to have violated the provisions of § 4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. * * *

66. Section 4170.1–2 is revised to read as follows:

§ 4170.1–2 Failure To use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of permitted use the permittee or lessee has failed to use.

§ 4170.1–3 [Removed]

67. Section 4170.1–3 is removed.

68. Section 4170.2–1 is revised to read as follows:

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

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

69. Section 4170.2–2 is revised to read as follows:

§ 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 commits an act prohibited under § 4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

70. Subpart 4180 is added to read as follows:

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Sec.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

§ 4180.1 Fundamentals of rangeland health.

The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.

§ 4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of § 4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, State or regional standards developed under paragraphs (a) and (b) of this section must address the following:

(1) Watershed function;

(2) Nutrient cycling and energy flow;

(3) Water quality;

(4) Habitat for endangered, threatened, proposed, Candidate 1 or 2, or special status species; and

(5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

(1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;

(2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;

(3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;

(4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;

(5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;

(7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;

(8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(9) Restoring, maintaining or enhancing habitats of Federal Proposed, Category 1 and 2 Federal candidate, and other special status species to promote their conservation;

(10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;

(11) Emphasizing native species in the support of ecological function; and

(12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section.

(1) *Fallback standards.* (i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

(ii) Riparian-wetland areas are in properly functioning condition.

(iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.

(iv) Healthy, productive and diverse populations of native species exist and are maintained.

(2) *Fallback guidelines.* (i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

(ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;

(iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;

(iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;

(v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;

(vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);

(viii) Conservation of Federal threatened or endangered, Proposed, Category 1 and 2 candidate, and other special status species is promoted by the restoration and maintenance of their habitats;

(ix) Native species are emphasized in the support of ecological function;

(x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

(xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;

(xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;

(xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and

(xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–3866 Filed 2–21–95; 8:45 am]

BILLING CODE 4310–84–P