

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