Morris; and Counsel to the Governors Califano.

As to the first of these agenda items, the Board is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

As to the second agenda item, the Board is of the opinion that public access to the discussion would be likely to disclose information that could become involved in future rate or classification litigation.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information in connection with proceedings under chapter 36 of title 39, (having to do with postal ratemaking, mail classification and changes in postal services), which is specificaly exempted from disclosure by section 410(c)(4) of title 39, United States Code. The Board has determined further, that pursuant to section 552b(c)(10) of title 5, United States Code, and § 7.3(j) of title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to sections 552b (c)(3), (9)(B) and (10) of title 5 and sections 410(c) (3) and (4) of title 39, United States Code, and § 7.3 (c), (i) and (j) of title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84-4613 Filed 2-16-84; 12:34 pm]

BILLING CODE 7710-12-M

6

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: United States Synthetic Fuels Corporation

ACTION: Notice of Continuation of Recessed Meeting.

SUMMARY: Interested member of the public are advised that a recessed portion of the meeting of the Board of Directors of the United States Synthetic Fuels Corporation closed by resolution of the Board of Directors of February 16, 1984, will be held on the date and at the time and place specified below by telephone conference call. This public announcement is made pursuant to the requirements of Section 116(f)(1) of the Energy Security Act (9 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings.

DATE AND TIME: February 24, 1984 at 10:00 a.m. (EST)

PLACE: 2121 K Street, NW., Room 403, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Mr. Owen J. Malone, Legal Services Group (202) 822-6336.

United States Synthetic Fuels Corporation.

Robert W. Gambino,

Group Vice President-Corporate.

[FR Doc. 84-4719 Filed 2-17-84; 8:45 am]

BILLING CODE 0000-00-M

federal register

Tuesday
February 21, 1984

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 4100

Grazing Administration, Exclusive of Alaska; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[Circular No. 2541]

Grazing Administration, Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the regulations for the management of grazing on the public lands under the jurisdiction of the Bureau of Land Management. These regulations were issued by the Department of the Interior as proposed rulemaking and published in the **Federal Register** on May 13, 1983 (48 FR 21820) with an initial public comment period of 60 days. At the request of commenters, this period was extended an additional 30 days ending on August 11, 1983. One hundred fifty-six comments were received and considered during the development of this final rulemaking. These final regulations revise the regulations in 43 CFR Part 4100 by eliminating redundant items, clarifying existing language and terms, and reorganizing the regulations for easier understanding.

EFFECTIVE DATE: March 22, 1984.

ADDRESS: Assistant Director for Renewable Resources (220), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Alexander (202) 653–9210; or Mr. Richard Miller (202) 343–8735.

SUPPLEMENTARY INFORMATION: A **Federal Register** Notice was published on December 16, 1982 requesting comments from the public concerning the Bureau of Land Management's grazing regulations in 43 CFR Part 4100. Comments received were considered during the development of the proposed regulations which were published in the **Federal Register** on May 13, 1983 (48 FR 22081).

Comments received on the proposed regulations have been reviewed by the Department of Interior and carefully considered in developing the final rulemaking. Discussion of the comments is divided into two parts: the first deals with general comments on the proposed regulations and the second specifically addresses points or issues raised by commenters on individual sections of the regulations.

General

One hundred fifty-six letters of comment were received during the public comment period. Most of the public comments opposed the proposed regulations. Generally, comments opposing the regulations expressed the view that the proposed regulations would diminish the ability of the Bureau of Land Management to manage domestic livestock grazing on the public lands within a framework of multiple use management and sustained yield as mandated by the Taylor Grazing Act and the Federal Land Policy and Management Act of 1976. Many comments also interpreted the proposed regulations as limiting the opportunity for public input regarding grazing management decisions.

Some comments supported the proposed changes, generally expressing the view that they streamlined the regulations and made them easier to understand. A major objective was to remove redundant material from this section of title 43. Material which relates to internal operational procedures has been removed and is or will be incorporated into Bureau of Land Management Manuals, handbooks, and other internal directives. The preamble to these final regulations indicates where material has been removed and has been or will be placed in the BLM Manual.

Other comments expressed concern about modification of definitions by the proposed rulemaking and suggested that these and other changes proposed were not sufficiently addressed in the preamble to the proposed regulations.

Most comments opposing the proposed regulations were directed to five principal areas. These areas are addressed briefly in this general section as well as in the section on specific comments received on the proposed rulemaking:

1. Deletion of the provision in § 4120.2–1 of the existing regulations that authorized livestock use shall not exceed the livestock grazing capacity. The removal of the language that prohibited exceeding the level of grazing capacity was interpreted by many commenters as meaning that the Bureau would no longer require livestock grazing to be limited to the grazing capacity. This was not the intent of the proposal. Specific language is included in § 4130.6–1—Mandatory terms and conditions—to reflect the policy that authorized livestock grazing will not exceed the grazing capacity.

2. Deletion of the clause in § 4130.2(d)(3) of the present regulations by the proposed rulemaking which provides that permits and leases would be made subject to cancellation, suspension, or modification "as required by land use planning decisions". Deletion of this provision by the proposed regulations (§ 4130.6–1(b)) was perceived by many commenters as allowing existing grazing leases and permits to override land use planning decisions rather than making leases and permits subject to land use planning decisions as required by the Federal Land Policy and Management Act (FLPMA). Section 4130.6–3 in the final rulemaking retains authority to modify permits or leases to meet land use plan or management objectives.

3. Deletion of the clause in § 4140.1(b)(7) that an operator's grazing permit could be revoked if the operator violates Federal or State environmental protection laws (existing § 4140.1(b) (7) and (8) in the proposed § 4140.1(b)). Many comments expressed the view that use of the public lands for grazing is a privilege that should be revoked if a person fails to respect the laws protecting the public land and its resources. Other comments agreed with the regulation as proposed.

Section 4140.1(b)(5) of the final rulemaking modifies the language of the proposed rulemaking to include violation of the Bald Eagle Protection Act (16 U.S.C. 668) and the Endangered Species Act (16 U.S.C. 1540) as acts prohibited on the public lands which may result in cancellation of a grazing permit or lease because these acts specifically provide that authority to the Secretary.

4. Removal or modification of language in sections 4100.0–5 and 4160 that discusses affected interests other than livestock operators. Comments interpreted these changes as tending to exclude segments of the public from the decisionmaking process and limiting the right to protest and appeal decisions concerning livestock grazing on the public lands. Other comments expressed support for these sections of the proposed regulations. The final rulemaking provides for notifying affected interests concerning proposed and final decisions relating to grazing on the public lands.

5. Cooperative Management Agreements. (§ 4120.1) This proposal was interpreted by many comments as turning management of the public lands over to the livestock operator. Some comments approved the proposal, but suggested that complete discretion concerning the management of grazing should not be provided to the livestock operator under a Cooperative Management Agreement. The

Department has made changes to this section in the final regulations.

A comment suggested including a section on district grazing advisory boards to clarify their roles and functions. The final rulemaking does not include this suggestion because § 1784.6–5 of this title addresses this topic. To repeat the information would be redundant and add unnecessary length to the regulations.

Response of the Department of the Interior to Specific Comments on the Proposed Rulemaking

Section 4100.0–2 Objectives.

One comment requested modification of this section to indicate that the objective of the regulations was to provide technical and administrative services to facilitate and enhance the multiple use of the public lands.

After consideration of this comment the Department of the Interior determined that the section be revised to indicate more clearly that the objectives of the regulations are to provide for orderly use, improvement and development of public rangelands.

Section 4100.0–5 Definitions.

Many comments were received concerning the modification or deletion of definitions in the proposed regulations. Comments opposed modification of the definition of "affected interests" on the grounds that this modification would limit the participation of the general public in livestock grazing management decisions. Comments suggested that the proposed rule would circumscribe the scope of "affected interests" to include only those who have a direct interest in the livestock business. As proposed, the regulations would allow the authorized officer to determine which members of the public were affected by a grazing management decision. Comments opposed this provision, as well as the further requirement that individuals request in writing that they be considered as an affected interest. Comments contended that these requirements might possibly be subject to abuse and be unduly burdensome on the public.

After careful consideration of these comments, the Department of the Interior has modified the definition of affected interest to make it clear that it is the responsibility of individuals or organizations to communicate in writing to the authorized officer that they wish to be considered an affected interest.

The regulations in Part 4100 of this title do not affect the provisions for public participation in the development of land use plans found in § 1601.2 of this title. Any and all people and interests may participate in the development of land use plans and have the right to protest the final decision. The land use plan establishes the goals, objectives and management direction for livestock grazing of the public lands. In addition, a member of the public who has expressed concern in writing for management of livestock grazing on a specific allotment may be considered an affected interest with whom there is to be further consultation, cooperation and coordination in addition to being given copies of grazing decisions for an allotment.

Sections 4.470 and 4160.4 of this title provide that any party may protest management decisions where they are considered to be adverse.

A comment recommended that the definition of "allotment" be modified to indicate that allotments are administered for grazing of livestock. The Department of the Interior has considered this comment and has concluded that the existing language is adequate.

A comment suggested modifying the definition of "Allotment Management Plan" to focus on a particular public land allotment. Another opposed the deletion of the term "operations". The Department has determined that the proposed definition is sufficiently clear for the purposes of grazing management.

It was suggested that the use of the term "authorized officer" be deleted to avoid fragmentation of authority. The Department of the Interior has determined that it is important to retain the use of the term "authorized officer". The delegation of authority for range management decisions is not uniform among states and may change from time to time. In most cases, however, this will be the Area Manager or District Manager.

Comments suggested modifying the definition of "base property" by deleting the requirement of commensurability. However, the Department of the Interior has determined that the existing definition is more appropriate and should be retained because it requires that base property be capable of supporting livestock when they are not on the public lands.

Comments also were received concerning the definition of "Certified Actual Use". Some comments expressed the view that the livestock operator should be required to certify his/her actual use. Another suggested that certified actual use reports should be used only in cases of after-the-fact billing for grazing use. The Department of the Interior has determined that in actual practice the livestock operator certifies the accuracy of the actual use information when he or she signs the actual use form and the inclusion of the word "certified" in the heading of the report provides no additional benefit to the Bureau or to the operator. The proposed definition is adopted in this final rulemaking.

Comments were received on the proposed deletion of the definition of "class and kind of livestock". After considering these comments, the Department of the Interior has determined that although existing definitions in the regulations are consistent with commonly used definitions, confusion may exist because of previous definitions in this title. The final rulemaking retains existing definitions.

Although the definition was not proposed for modification in proposed rulemaking, comments were received concerning the definition of the terms "Consultation, cooperation and coordination". Three comments opposed modification of the existing definition while two proposed that the definition be revised to reflect equality of rank among the participants in the development of a grazing program. After careful consideration, the Department of the Interior has determined that the definition should be revised to clearly reflect the interactive nature of the process of consultation, cooperation and coordination. This change is made in the final rulemaking.

One comment suggested modification of the definition of "grazing preference" to indicate that grazing preference was a right to the privilege of grazing. This suggestion is inconsistent with the language of the Taylor Grazing Act (43 U.S.C. 315 et seq.) which specifically states that no rights are created through the granting of grazing permits or leases. The existing definition is retained in final rulemaking.

One comment opposed the deletion of the definition of "modification". The final rulemaking does not contain a definition of modification as its use in the regulations is standard and well understood.

Comments opposed deletion of the definition of the term "indigenous animal", interpreting the deletion to mean that wildlife would not be considered during the development of allotment management plans.

It is the policy of the Department of the Interior that requirements for wildlife habitat be considered during the development of land use plans and allotment management plans. The reference to indigenous animals in subpart 4100 of this title addresses only the issuance of special grazing permits or leases for privately owned or controlled indigenous animals and does not refer to those wildlife managed by State game and fish departments or to endangered species for which the Department of the Interior has responsibility. The definition is a standard dictionary definition and therefore its inclusion in these regulations is not necessary for an understanding of the intent of the regulations.

Comments were received concerning the definition of "land use plan" and all opposed modification of this definition, interpreting the proposed new definition to mean that a land use plan was no longer a decision document. In order to clarify the distinction between grazing decisions and the land use plan, the proposal was modified in final rulemaking to indicate that the land use plan establishes coordinated management direction for all resource uses on the public lands including livestock grazing. Livestock grazing is then adjusted through decisions and agreements to be consistent with the coordinated management direction established in the land use plan.

Comments opposed the proposed definition of "livestock grazing capacity", perceiving the new definition to mean that the Bureau of Land Management would no longer develop a precise estimate of grazing capacity on public lands. Other comments supported this change.

After considering these comments, the final rulemaking adopts the proposed language. This definition of grazing capacity is more sensitive to the fact that grazing capacity is not an immutably fixed quantity, but is instead variable, subject to a number of factors, including goals, objectives, type of management, and weather conditions. It is important for the final regulations to reflect that the determination of grazing capacity will always be an estimate because such factors as the effect of weather on grazing capacity cannot be determined precisely in advance.

Comments were received concerning the definition of "monitoring" and how monitoring will be used by the Bureau. The Department of the Interior has determined that the existing definition is adequate and accurate, and the existing language is retained in the final rulemaking.

One comment suggested a modification in the definition of "range improvement" to make it more concise. The Department of the Interior has adopted this suggestion in final rulemaking.

No comments were received concerning the definition of "supplemental feed". However, in light of revisions to section 4140 in response to comments, the definition of "supplemental feed" was also modified in final rulemaking.

Comments were also received concerning the definition of "service area" and "suspended preference". After careful consideration of these comments the Department of the Interior has determined that the proposed definition of "service area" is accurate. Factors that should be considered in the determination of service area are more appropriately placed in the Bureau Manual System. The term "suspended preference" is not used in the regulations and therefore it is not needed in final rulemaking.

Comments suggested replacing the term "suspended preference" with the term "Temporary non-use" and developing a new definition. The Department of the Interior has determined that including this term is not necessary and has therefore not adopted this suggestion.

A definition of "State Director" has been included in final rulemaking.

Comments proposed adding a definition of the term "Stewardship Program". However, this term is not used in the regulations and would be confusing if added to the existing regulations. Therefore, this suggestion was not adopted.

Comments also suggested that a definition of "Cooperative Management Agreement" be incorporated into the regulations. The Department of the Interior has determined that inclusion of a definition of "Cooperative Management Agreement" would be in the public interest and has included a definition in the final regulations.

Section 4110 Allocation of Grazing Use.

A comment suggested the title "Grazing Allocation and Use" be substituted for the proposed section title, because the section dealt with more activities than allocating grazing use. After considering this suggestion, the Department of Interior has adopted a new title, "Qualifications and Preference", which more accurately describes the contents of this section.

4110.1–1 Acquired lands.

The final rulemaking has a new § 4110.1–1 Acquired lands. This section was added in response to a comment that the proposed regulations should clarify that permittees or lessees on lands acquired by the Bureau may be qualified without owning base property.

Comments suggested deleting § 4110.2–1(2)(b) on the grounds that the Bureau of Land Management has no authority to make a determination regarding the length of time the land base property is capable of supporting authorized livestock during the year. This provision has been in the regulations for many years as implementation of the mandate of Section 2 of the Taylor Grazing Act to provide for the orderly use, improvement and development of the public rangelands. The authority of the Department to make such a determination is consistent with the language of the Taylor Grazing Act. However, the Department has determined that the decision should not be made without cooperation, consultation, and coordination. The final rulemaking revises the proposal to reflect this policy.

One comment suggested modification of the title of § 4110.2–2 to delete the term "allocation". After considering the comment, the Department has decided to retain the term to avoid confusion with the title of section 4110.2.

Comments opposed modification of § 4110.2–2. One suggested revision of the section to require that both wild horses and wild burros be controlled in accordance with existing statutes and proper range management. Others expressed the view that the proposed language of § 4110.2–2(a) would prevent future allocation of forage to wildlife or other uses of the public lands. The intent of the proposed regulation was to clarify that present users will have priority over new preference applicants. The Department of Interior agrees that the new wording detracted from the original intent of the paragraph. The final rulemaking retains the existing language of the regulation.

Comments suggested modification of § 4120.2–2(c) by eliminating references to how the preference would be attached to the base property. After considering this comment, the Department has determined that the existing language is appropriate. No change has been made to the provision in the final rulemaking.

The proposed rulemaking deleted existing § 4120.1 Allotments and replaced it with a new proposed § 4120.1 Cooperative Management Agreements.

Comments opposed this proposed deletion. They expressed the view that such a designation of allotments is an important part of land use planning and is also important for informing the public of the condition of the public lands. Another comment suggested adding the requirement of consultation.

cooperation and coordination to the existing paragraph. The Department of the Interior has concluded that authority for the Bureau of Land Management to designate and adjust allotment boundaries is necessary for proper management of the public lands, and that this authority should not be confined to the land use planning process. Therefore the final rulemaking provides such authority in § 4110.2–2(d).

A comment supported the proposed language for § 4110.2–3 Transfer of Grazing Preference. Other comments suggested that § 4110.2–3(a)(3) be deleted as it amounted to the Bureau of Land Management establishing the conditions of sale for a livestock operation. The Department of Interior has determined that it is appropriate for the transferee to discuss the terms and conditions of a new permit or lease with the authorized officer. It is also appropriate for the authorized officer to modify the terms and conditions of the previous permit or lease as necessary to achieve multiple use objectives; and that these terms and conditions be binding. Therefore, the Department of the Interior has modified the proposed language adopted in the final rulemaking.

Another comment suggested that paragraph (d) of this section in the existing regulation be retained and modified and that approval of transfers be made mandatory by inserting the word "shall" in place of the word "may" in the paragraph. After considering this suggestion, the Department of Interior has determined that the language of the proposed regulation is appropriate.

Comments indicated that § 4110.2–3(f) as proposed requires that the transferee and transferor comply with regulations, while the responsibilities apply only to the transferee. In consideration of the comments, the Department of the Interior has determined that a properly executed transfer application requires that the transferor sign the application for transfer of the preference and the interest in range improvements. Therefore, this section of the proposed rulemaking has been adopted in the final rulemaking.

Other comments suggested that the authority to cancel a preference for failure to make proper application for transfer should be retained to assure that applications are timely filed. The final rulemaking provides that authority to the authorized officer.

Comments on the existing § 4110.2–4 urged retention of this section in final rulemaking (§ 4110.2–3) to protect the lienholder. However, the Department of the Interior has concluded that the interests of lienholders are adequately protected because notification of lienholders is part of the existing terms and conditions printed on the grazing permit or lease. Specific procedures for notifying lienholders are more appropriately placed in the Bureau Manual. The section has been deleted from the final rulemaking.

Section 4110.3 Changes in Available Forage.

One comment suggested revision to the introductory paragraph to require consultation, cooperation and coordination with district grazing advisory boards and permittees/lessees. The Department of Interior has determined that such a requirement would not be appropriate for the allocation of forage temporarily available because of the need for a timely decision. However, this requirement would be appropriate for forage that is permanently available. The final rulemaking modifies the proposed § 4110.3–1(c) to reflect the comment.

Other comments suggested that specific procedures be added to the regulations to provide for the allocation of additional available forage. Because of the wide variety of grazing management situations on the public lands, the Department of the Interior has determined that specific guidance should be provided through the Bureau Manual System. Because of this, existing language is retained except for reference numbers which were changed to their location in the final regulations.

A comment suggested retaining § 4110.3–1(d) and revising it to state that where monitoring over five years shows that additional forage for livestock is available the forage would be made available without a phase-in period. It has been determined that § 4110.3–3(a) provides authority to increase grazing in less than five years where agreement with affected interests can be reached. The suggestion was not adopted.

A comment suggested that the phrase "deteriorating forage condition" be added to the list of conditions which would serve to suspend grazing permits or leases in whole or in part in § 4110.3–2. This suggestion was not adopted, because forage deterioration is within the concept of natural causes as specified in this section of the existing regulations.

Several comments opposed deletion of § 4110.3–2(d)(2). They suggested that the new section did not provide for reduction in use to be implemented in less than five years when needed to sustain resource productivity. After careful review of the proposed §§ 4110.3–2 and 4110.3–3, the Department has determined that adequate authority is available for temporary resource protection under §§ 4110.3–2(a) and 4110.3–3(c). Permanent reductions to achieve multiple use objectives should be phased in over a five year period unless agreement can be reached by the parties involved (§ 4110.3–3(b)). Where resource conditions warrant an immediate significant reduction, the initial reductions made the first year may be large enough to significantly improve resource conditions and may be placed in full force and effect to stop resource deterioration (§ 4160.3). Therefore, the final rulemaking adopts the language of the proposed rulemaking.

Section 4110.3–3 Implementation of Changes in Available Forage.

In general, comments opposed this section of the proposed rulemaking expressing the view that delay in decisions may result in substantial long term damage to the resources. After careful consideration of these comments, particularly with reference to correct interpretation of 43 U.S.C. 1732(b), 43 U.S.C. 1752(d) and (e), the Department of the Interior has determined that existing policy and guidance for implementation of changes in available forage are consistent with the statutory language.

Comments also expressed the view that Rangeland Program Summary documents should be retained. The Department of Interior has determined that the procedures for preparation and distribution of Rangeland Program Summary documents found in the existing regulations at § 4110.3–3 are obsolete because of new procedures for land use planning. The requirement to prepare an environmental impact statement concerning livestock grazing is now often being met through the preparation of a Resource Management Plan (RMP) of which an environmental impact statement is an integral part.

In these situations, the summary record of decision for the RMP which follows the preparation of a completed land use plan may replace the Rangeland Program Summary. In some instances, additional summary documents relating to grazing management are prepared to supplement the record developed for the RMP. Guidelines for the development of such Rangeland Program Summary documents are more appropriately placed in the Bureau Manual. Therefore, there is no provision for mandatory development of Rangeland Program Summary documents in these final regulations.

Comments expressed concern that monitoring provisions in the proposed regulations would delay necessary reductions in grazing use on the public lands and result in needless deterioration of the forage resource.

Other comments supported the concept of monitoring as it was proposed. After consideration of these comments, the Department of the Interior has concluded that the proposed rulemaking is consistent with the existing policy of accumulating an accurate data base upon which to make long term resource use decisions which may have substantial impact on public land users. Therefore, this section is adopted in the final regulations.

One comment suggested that the authority in § 4110.3–2(b) should be applied following consultation, cooperation and coordination with district grazing advisory boards, permittees and/or lessees or when other tools are not practical or economical. The final rulemaking revised § 4110.3–3(b) to include consultation, cooperation and coordination prior to a grazing decision. The other procedures suggested are more appropriate for the Bureau Manual System.

Comments received on the proposed regulation at § 4110.3–3(c) recommended that overgrazing be included as one of the causes which would require temporary closure of allotments or portions of allotments to grazing, or to modify the grazing use. The Department of Interior has concluded that the proposed language is adequate in that the paragraph applies to unusual and unexpected circumstances and conditions on the public lands and is not limited to the example cited. Overgrazing would occur as a result if action were not taken to reduce the livestock grazing. Therefore, § 4110.3–3(c) has been adopted as proposed.

A comment suggested deleting the requirement for consultation with affected permittees prior to closure. After consideration of the comment, the Department of the Interior concluded that in situations which require closure to grazing it is important to consult those interests which are affected by such actions to assure that a united approach is taken to the emergency. The proposed language is retained in final rulemaking. Procedures to be followed regarding closures will be placed in the Bureau's Manual System.

Another comment suggested adoption of language to address periods of abundant forage on the public lands and the manner in which this forage should be allocated. This situation is treated in § 4110.3–1 of this title and need not be duplicated in § 4110.3–3(c). Additional procedures for allocation of temporary available forage will be provided by the Bureau Manual System.

One comment suggested that § 4110.4–1 Additional land acreage, be modified to require the authorized officer to coordinate with the district grazing advisory boards prior to allocation of additional forage to qualified applicants. This suggestion was considered and it was determined that such a requirement would not be appropriate in all cases. The suggestion was not adopted in final rulemaking. More detailed instructions will be incorporated into the Bureau Manual System.

Section 4110.4–2 Decrease in land acreage.

Comments suggested that when the public lands are disposed of or devoted to another public purpose, provision be made for compensating for the cancelled permit or lease in addition to compensating for a permittee's or lessee's interest in authorized permanent range improvements on the public lands. The suggestion also provided procedures for compensation. Other comments expressed concern that the proposed language to require a 2 year notification prior to cancelling a permit or lease in whole or in part (§ 4110.4–2(b)) would create planning and financial hardships and delays in developing mineral leases or conducting other non-grazing activities. Comments also expressed the opinion that there is confusion regarding suspension versus cancellation under such circumstances.

These comments and suggestions were considered but not adopted because of inconsistency with current policy and legislative guidance. Regulations providing for a two year notification to lessees or permittees prior to cancellation of a lease or permit are in accordance with section 402(g) of the Federal Land Policy and Management Act.

Section 4120.1 Cooperative Management Agreements.

This proposed section received numerous comments which generally objected to the proposal as it was written. Comments expressed the view that as written this provision provided insufficient authority and control to the Bureau of Land Management overgrazing on the public lands. Comments also indicated that the policy of developing cooperative management agreements which had been implemented by the Bureau of Land Management had insufficient public review. Some comments suggested that the concept of a cooperative management agreement was basically sound, but that existing guidance in the regulations was not adequate. Other comments suggested that the proposed rulemaking provided incentives for livestock operators to practice better range management practices on the public lands. Other comments argued that this section of the proposed regulations was not consistent with present policy or statutory guidance.

After considering the many comments received, the Department of the Interior determined that this section of the proposed regulations should be modified to more clearly indicate the objectives and approach of the cooperative management agreement within the general framework of multiple use management. Modifications to this effect were made in the final rulemaking.

Section 4120 Grazing Management.

The proposed rulemaking deleted § 4120.2–1(b) concerning incorporation of terms and conditions for grazing into the grazing permit in situations where there is no allotment mangement plan. A comment was recommended that this section should be retained because it is needed to give the authorized officer the ability to act in a timely manner. The Department considered this suggestion and has added §4130.6–3 which clearly provides authority to modify a permit or lease if present grazing use is not meeting the objectives established for the allotment.

A number of comments were received recommending retention of § 4120.2–1(c) which was proposed for deletion. Comments recommended retention to make it clear that under the law, permits and leases are subject to land use plans and can be cancelled or modified. In the final rulemaking, § 4130.6–3 was added to provide for modification of permits and leases to meet the objectives of a land use plan or allotment.

The proposed rulemaking would have deleted § 4120.2–1(d) because § 4130.6–1 was considered to be adequate authority for modification of terms and conditions of the grazing permit. However, comments indicated that deletion of paragraph (d) could be regarded as eliminating the requirement for annual review of the terms and conditions of a permit. Comments expressed the view that an annual requirement for review was necessary and that the existing regulations made it clear that the Bureau of Land Management has the authority to review and modify permits. Since the proposed change was not discussed the preamble to the proposed rulemaking, the comment expressed the view that the change should not be made. The Bureau of Land Management regrets this oversight in the proposed rulemaking. However, the change was made in the body of the proposed rulemaking and did receive comments. After considering these comments, the Department of Interior has added § 4140.6-3 in the final rulemaking which provides authority to modify permits or leases where present grazing use is not meeting the land use plan or management objectives. Guidance concerning frequency of review is more appropriately placed in the Bureau Manual System.

Section 4120.2 regarding development, approval and implementation of allotment management plans received a number of comments concerning proposed language which deleted the reference to prescribing a system of grazing for an allotment. They believed the proposed language indicated a weakening of the Allotment Management Plan approach to grazing management. Comments also provided alternative language concerning the inclusion of private and State lands in an allotment management plan. Comments also suggested that the authority to revise and terminate allotment management plans should be retained by the Bureau of Land Management.

After considering these comments, the Department adopted the proposed language of § 4120.2 in the final rulemaking with a modification. The introductory sentence is deleted in final rulemaking. It was determined that the sentence did not provide any additional authority or guidance to the authorized officer or to the public concerning required contents or procedures for developing allotment mangement plans.

The proposed language regarding State and private lands more accurately reflects existing policy. Each allotment management plan will be incorporated in a lease or permit (§ 4120.2(c)) and can be modified under § 4130.3-6. The Department does not regard the proposal as weakening the approach to allotment management plans. All allotments do not require systematic grazing. Therefore, a description of livestock grazing practices to be used to achieve the objectives is adequate for a quality AMP.

Several comments were received opposing § 4120.2 of the proposed rulemaking. That section noted that the proposed section did not include the provision of the existing § 4120.2-3(e) which requires submission of a Certified Actual Use Report within 15 days of completing their annual grazing use under an allotment management plan. Comments expressed the view that certified actual use should not be a discretionary item. In studying the comments, the Department has determined that authority for the authorized officer to require an actual use report is found under § 4120.6-2(d) of this title. Further authority under § 4120.2 is not required.

The existing regulation § 4120.6-1—Conditions for range improvements, was not amended in the proposed rulemaking but was renumbered as § 4120.3-1. One comment suggested that this section should be modified to indicate that the Bureau of Land Management shall require a permittee or lessee to maintain or modify range improvements located on public lands as this is consistent with existing Bureau policy. Other commenters expressed the view that the Bureau did not have authority to require maintenance of privately owned range improvements on public lands. Another comment suggested that all fences should be maintained by permittees on both sides of the fence. One comment expressed the view that under the proposed regulations, the Bureau would not require upgrading of substandard range improvements. Other comments all suggested modified wording to this section. After considering these comments, it has been determined that it is important for the Bureau of Land Management to retain its existing authority to require maintenance, modification, and removal of range improvements on public lands. Specific guidance for implementing this authority is more appropriately placed in the Bureau of Manual System.

Section 4120.3-2 Cooperative Agreements.

Several comments were received on proposed regulations in § 4120.3-2. Some comments suggested that only permittees or lessees should be allowed to construct a range improvement. Other comments suggested sharing title to non-structural non-removable range improvements to encourage private investment. Another comment suggested that language be clarified as to why the proposal deleted language referring to lessee or permittee but retained language referring to designated allotment. The final rulemaking further modifies the existing regulation by deleting reference to designated allotment but adopted the proposed language. The final rulemaking also provides that the Bureau of Land Management will retain title to non-structural non-removable range improvements. However, the interest in such range improvements by other parties will be recognized as provided for in § 4120.3-6(c).

Section 4120.3-2 Range Improvement Permits.

Comments were also received on § 4120.3-3—Range Improvement Permits. One comment suggested that the Bureau of Land Management control the use of stock ponds or wells because of their importance for wildlife habitat. Another suggested that before the authorized officer approve a range improvement permit, he or she should consult with the local district grazing advisory board. Another suggested language that would make the issuance of range improvement permits non-discretionary. After consideration of these comments, the Department of the Interior has concluded that the language of the proposed rulemaking should be incorporated in final rulemaking. Where range improvements are privately funded the range improvement permit will include design requirements and other stipulations to assure that these improvements are compatible with wildlife habitat and other multiple use management objectives.

The Department of the Interior has further determined that discretionary authority to grant permits should be retained by the authorized officer for approval of range improvements.

The suggestion to modify the regulations to require consultation with the district grazing advisory board prior to the approval of all range improvement permits would result in an unnecessary delay to the approval of an application for a permit in many cases. Because of this, the suggestion was not adopted in final rulemaking.

Section 4120.3-4 Standards, Design and Stipulations.

Several comments were received concerning § 4120.3-4. One comment opposed adoption of the proposed language, and others suggested deleting or changing the language of the proposed rule. Comments expressed the view that this section of the rulemaking may not be consistent with State standards for design of range improvements. After considering this comment, the Department of the Interior has determined that this section should be retained in final rulemaking. The Bureau of Land Management must retain authority to assure that range improvements meet the objectives of managing the public lands on a multiple use basis.

Section 4120.3-5 Assignment of Range Improvements.

Although only the numbering and placement of this section was changed by the proposed rulemaking, the section received some comments on substantive issues. One comment suggested deleting the section, expressing the view that improvements should not be considered separately from the permit. Another suggested that they not be separated from the land. Both comments suggested that they be automatically transferred. A comment also suggested that where disagreement exists on the amount of compensation the transferor should receive from the transferee the matter should be resolved by the district grazing advisory board. The Taylor Grazing Act specifically gives the Secretary of the Interior the authority described in this section. Therefore, the existing language has been retained in final rulemaking.

Section 4120.3–6 Removal and Compensation for Range Improvements.

This section received a number of comments. Two comments suggested that language requiring the Bureau of Land Management to be notified prior to removal of range improvements be deleted where the permittee or lessee owns the improvement. This comment was not adopted because it is important that the authorized officer be aware of the proposed removal of a range improvement to assure that proper rehabilitation of the range improvement site is made and that orderly administration of the range can be accomplished without the range improvement.

Another comment suggested language which was intended to make paragraph (b) of this section more consistent with existing policy. After considering this comment, changes were made to the language of this section in the final rulemaking.

Additional comments were received on § 4120.3–6(c). One comment suggested that this paragraph should be deleted and expressed the view that private lessees who elect to assume the risk of building a range improvement on public lands should not be compensated because of a change in use of the public lands which eliminated the need for the range improvement. This provision is consistent with Section 402(h) of the Federal Land Policy and Management Act which provides specific authority to the Secretary to provide reasonable compensation to a permittee for . . . "his interest in authorized permanent improvements placed or constructed on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein." Thus, the pertinent paragraph is retained in final rulemaking.

Another comment suggested that the adjusted value of the range improvement be the fair market value less salvage value and where there is disagreement about such value, it should be set by standard appraisal methods.

Language has been adopted to clarify that the permittee or lessee has the option of compensation or salvage, but not both, for his/her interest in range improvements. Guidelines for determining how the adjusted value will be determined belong in the Bureau Manual.

A final suggestion was that, as written, this section only applies to range improvements made pursuant to a permit and that it should be amended to include range improvement projects constructed under cooperative agreements. Paragraph (c) contains no distinction between the two types of authorizations. Compensation can be made for either pursuant to these final regulations.

A comment was submitted concerning § 4120.3–6(d) which suggested permittees or lessees should be allowed one year to remove range improvements and should not be required to rehabilitate the site when the Bureau determines that the land should be devoted to another use or disposed of. This comment was not adopted in final rulemaking as the livestock operator has the option of either not removing the improvement and being compensated for the adjusted value or of salvaging the materials and rehabilitating the site. In addition, the 180 days allowed to salvage material may be extended by the authorized officer where there are extenuating circumstances on a case-by-case basis.

Section 4120.7 Cooperation in Management.

A comment was received regarding the proposed deletion of this section. The comment suggested that the paragraph should be retained but that the word "may" should replace the word "shall" where it appears. However, Section 307 of the Federal Land Policy and Management Act uses the word "may". Therefore, it would be inconsistent to use "shall". The Department has determined that the repetition of a section of the law is not needed and the section was deleted from final rulemaking.

Section 4130 Authorizing Grazing Use.

Comments directed to most of this section generally were supportive, agreeing that this reorganization of the existing regulations contributed to better understanding of the regulations.

Section 4130.1 Applications.

A comment referencing the proposed rulemaking at § 4130.1–2(d) expressed the view that the Department of the Interior did not have the authority to consider the availability of public access across privately owned or controlled land to public lands when deciding among conflicting applications for grazing use. This criterion has been utilized for many years in evaluating conflicting applications for livestock grazing authorized by the Taylor Grazing Act in order to assist in the orderly administration of the public lands. Eliminating it without providing adequate opportunity for the affected public to comment would be a major substantive change to the regulations. Therefore, the language in paragraph (d) is retained in final rulemaking.

Section 4130.2 Grazing Permits and Leases.

Some comments were opposed to the proposed deletion of § 4130.2(d)(2) that is in the existing regulations. However, the Department of Interior has concluded that it is repetitive of the proposed § 4130.2(c)(1) and this suggestion was not adopted in final rulemaking.

Numerous comments opposed the deletion of § 4130.2(d) (2), (3) and (4) that are in the present regulations from the proposed § 4130.2. The comments suggested that the sections be retained to assure that the Bureau will modify permits and leases to meet the land use plan objectives and constraints. The final rulemaking in § 4130.6–3 provides authority to modify permits and leases when grazing use is not consistent with the land use plan or management objectives.

Numerous comments suggested retaining § 4130.2(e) (1) and (3) to provide for multiple use consideration. This authority appears in § 4130.2(d) of the final rulemaking.

Section 4130.4–1 Exchange of Use Agreements.

This section was modified in the proposed rulemaking to eliminate the 10-year limit on exchange of use agreements. A comment suggested that this limitation be retained so that exchange of use agreements would receive periodic review. After carefully considering this suggestion, the Department of Interior has determined that the authority to enter into exchange-of-use agreements should not be limited by regulations. The BLM Manual is the appropriate place for guidance for the appropriate cycle of review, modification, and renewal of exchange of use agreements.

Another comment on § 4130.4–1 suggested wording which would require the authorized officer to coordinate exchange of use agreements with state administering agencies to ensure that the Federal permit holder also holds a State grazing lease. This suggestion was not adopted by final rulemaking. Such a change would be a major substantive modification, granting considerable additional authority to the authorized officer. As a major change, it would require that it be presented as proposed rulemaking with an opportunity for public comment.

The proposed regulation deleted wording in § 4120.4(d) concerning the control of unauthorized grazing use and relocated this provision with modified language in § 4130.5(c). The existing regulation states that the authorized officer may require counting and/or additional or special marking or tagging of the authorized livestock in order to control unauthorized grazing use or in order to otherwise promote the orderly administration of the public lands. The Department of the Interior proposed to delete the words ". . . in order to control unauthorized grazing use or in order to otherwise . . ." because it was determined that language relating to control of unauthorized grazing was redundant. One comment suggested that the entire section be deleted. Another comment suggested that this section be modified to apply only under conditions of demonstrated willful trespass, arguing that as written, the requirement was a substantial burden on the livestock operator. After considering these comments, the Department of the Interior has determined that authority to require counting and/or additional or special marking or tagging of the authorized livestock should be clearly stated in these regulations. The proposal was adopted in final rulemaking.

Section 4130.6 Terms and Conditions.

In general, the comments received from non-livestock interests and others objected to this provision. Major concerns of most of the respondents focused on the proposed deletion of four paragraphs describing the terms and conditions for grazing permits and leases.

Many comments reacted negatively to the proposed deletion of the provision in the existing regulations which states that authorized livestock shall not exceed the grazing capacity. Comments interpreted the deletion of this provision as meaning that the Bureau of Land Management would no longer confine authorized grazing to the livestock grazing capacity. The Department of the Interior proposed this change to existing regulations because the language was redundant since livestock grazing capacity would be a factor to be considered in the development of objectives for an allotment. However, to clarify that it is the policy of the Department of the Interior to limit livestock use to livestock grazing capacity, the proposal was modified in the final rulemaking to retain a reference to livestock grazing capacity.

The Bureau of Land Management's approach to determining livestock grazing capacity is premised on establishing management objectives for an allotment. These objectives reflect the management direction and habitat goals which are developed in the land use plan. Following this, a monitoring program is implemented to determine the extent to which these goals and objectives are being attained under existing management and levels of use.

Based on the data yielded by the monitoring program, average livestock grazing capacity may be estimated. This capacity is the estimated average number of animal unit months of forage available for livestock grazing on a sustained yield basis within the framework of the objectives established for the allotment. The grazing capacity depends upon more factors than forage production and animal diet. Such management factors as season of use, kind and class of livestock, distribution of livestock, availability of water, periods of rest from grazing, and goals and objectives may be the controlling or limiting factors of grazing capacity. Forage production on much of the grazing land in the western United States is quite sensitive to external variables such as time and extent of rainfall, temperature, and rates of evaporative loss. These factors vary from year to year. Estimates of average grazing capacity derived through monitoring will reflect the average forage production and management practices actually applied to an allotment.

Another comment suggested that only in common use allotments would the authorized officer establish the number and kinds of livestock, periods of use, allotment to be used, and the amount of use in animal unit months. Another suggestion was to retain § 4120.2–1(b) of the existing regulations and move it to this section of the proposed rulemaking, adding the requirement for consultation with district grazing advisory boards. After considering these comments, the Department of the Interior has placed the authority found in the existing § 4120.2–1(b) in § 4130.6–3 of this final rulemaking.

Section 4130.6–2 Other terms and conditions.

A comment on § 4130.6–2(d) requested including language that indicated that actual use be certified. Another comment supported the proposal, expressing the view that it would contribute to better relationships between the Bureau of Land Management and the rancher, and would improve management of rangelands. As previously discussed, the livestock grazing operator certifies the accuracy of the information by signing the actual use form and the term need not be included in this section of the regulations. Other comments suggested extending the time for submission of actual use reports from 15 to 30 days. After consideration of all comments, the provision in the proposed regulation was adopted in final rulemaking.

One comment suggested adding a discussion of Stewardship Programs. After considering this comment, it has been determined that the provisions in § 4120.1 concerning cooperative management agreements respond to this comment.

Section 4130.7–1 Payment of Fees.

Several comments were received on this section. One comment requested that the term "certified" be included and that detailed procedures be retained. Another comment questioned eliminating publication of the Annual Grazing Fee in the **Federal Register.** After considering these comments, a provision has been added which clearly indicates that bills for grazing use are due upon issuance even under actual use procedures. Annual publication of the grazing fee in the **Federal Register** is not as cost effective as other means of disseminating this information. The grazing fee is published in local newspapers throughout the West where timely access to the **Federal Register** may be limited.

Section 4140 Prohibited Acts.

One comment suggested that prohibited acts should be limited to public lands. After consideration of the comment, the Department of the Interior has determined that these prohibited acts should apply to public lands and other lands administered by the Bureau of Land Management. Comments were received concerning the modification to the regulations concerning placement of supplemental feed (§ 4140.1(a)(3)). The comments suggested that there could be significant impact from supplemental feeding without the Bureau of Land Management being aware and the Bureau would not have the administrative resources necessary to modify a large number of permits. After consideration of these comments, the Department has adopted the proposed provision in the final rulemaking. Authority to modify a permit or lease to prohibit supplemental feeding, especially maintenance supplemental feeding, is provided for in §§ 4130.6–3 and 4110.3–3(c). However, such actions should be based on local resource conditions and not apply bureauwide. The Bureau Manual will provide proper procedures for the authorized officer to manage supplemental feeding.

Numerous comments were received concerning the proposed deletion of §§ 4140.1 (b)(7) and (b)(8). The existing regulations state that permits or leases are subject to cancellation or suspension if a permittee or lessee violates Federal or State laws or regulations concerning conservation or protection of natural and cultural resources or the environment. These laws or regulations include but are not limited to those relating to air and water quality, protection of fish and wildlife, plants, the use of chemical toxicants, and wild horses and burros.

The comments expressed the view that livestock operators on the public lands should be required to respect and comply with other conservation laws and regulations.

After careful consideration, the Department has determined that the Bald Eagle Protection Act and the Endangered Species Act provide the Secretary with the authority to cancel a grazing permit or lease because of violations of these acts. Therefore, it is appropriate to express this authority in the regulations.

Another comment suggested that regulation requirements concerning littering be deleted. After considering this comment, it has been determined that this regulaiton is appropriate and it is retained in final rulemaking. Littering can be detrimental, potentially hazardous and affects other uses and users of the public lands.

Another comment suggested wording to clarify § 4140.1(b)(7). The final rulemaking corrected a typographical error by replacing "of" with "or". Section 4140.1(b)(8) has also been modified by removing the term "certified" to be consistent with other sections in this title.

Section 4150 Unauthorized Grazing Use.

This section received a number of comments, some supporting the proposed regulation and others expressing opposition to some of the proposed revisions. Other suggestions urged modification of the proposed language to clearly distinguish between willful and nonwillful trespass and urged a more lenient penalty for nonwillful trespass. These suggestions have been considered by the Department of the Interior and no change has been made in final rulemaking.

Section 4160 Administrative Remedies.

Numerous comments were received on the proposed § 4160 Administrative Remedies. The majority of the comments that addressed § 4160.1–1—Proposed Decisions were opposed to the proposed regulation. Comments interpreted the proposal as significantly limiting the non-livestock oriented public's ability to receive notice about public land grazing decisions and limit the opportunity to appeal decisions which would affect their interests. Comments expressed particular concern over the deletion of the paragraph requiring authorized officers to send copies of decisions to individuals who had indicated in writing that their interests may be affected by the proposed decision and the requirement that the authorized officer prepare and distribute a Rangeland Program Summary following completion of a grazing environmental statement.

After carefully considering these comments the Department of the Interior has concluded that it would be in the public interest to modify the proposed language to include affected interests in the procedures for proposed decisions about livestock grazing. However, as in the proposed rulemaking, a requirement for a Rangeland Program Summary document has not been included in final rulemaking. Guidelines for preparing a record of decision following environmental impact statements addressing livestock grazing will be included in the Bureau Manual system.

Section 4160.1–1 Proposed decisions on permits or leases.

Two comments opposed the proposed deletion of § 4160.1–1(c) of existing regulations stating that it is important that all individuals understand what procedures will be used in adjusting livestock use. After careful review of the proposal the Department of Interior has determined that procedures regarding what to include in a decision are more appropriately placed in a Manual Section or handbook rather than in regulations.

Section 4160.1–2 Proposed decisions on alleged violations.

One comment suggested that § 4160.1–2 be modified to provide 30 days for filing a protest to a proposed decision. The Department of Interior has determined that 15 days is adequate time to file a protest with the authorized officer.

Section 4160.2 Protests.

Numerous comments were received on this section. The proposal deleted the provision for including other affected interests among those who could protest a proposed decision. The comments believed that such a modification seriously limited the ability of the non lessees or permittees to participate in grazing decisions and protect their interests on the public lands. The Department of Interior has concluded that it is in the public interest to provide for protests of proposed decisions by affected interests and language is provided for this in the final regulations.

Section 4160.3 Final decisions.

Section 4160.3 received numerous adverse comments. They focused on the deletion of language to provide that the authorized officer serve his final decision on other known affected interests in addition to the protestant or his/her agent or both. The Department of Interior has considered the comments and concluded that it is in the public interest to notify other affected interests of the final decision. The final rulemaking adopted the proposal, with modifications.

Additional comments opposed the proposed language for § 4160.3(c), which provided authority for the authorized officer to place decisions in full force and effect only in an emergency. The comments expressed the view that the Bureau of Land Management should retain authority to place decisions in full force and effect for other than emergency reasons. The Department of Interior has concluded that the authority to place decisions in full force and effect should be utilized only in emergency situations to stop resource deterioration. Therefore, the proposed language is adopted in final rulemaking.

Section 4160.4 Appeals.

Numerous comments were also received on the proposed wording of § 4160.4 concerning appeals. The proposed regulation deleted the term "applicant, permittee, lessee, or any other". The comments expressed the view that the wording change would limit the public's involvement in public rangeland management. After considering these comments, the Department has concluded that the proposal will not reduce the ability of the public to appeal because the proposed regulation allows any person whose interest is adversely affected by a final decision to appeal. Therefore, the proposed regulation is adopted in final rulemaking.

Section 4170 Penalties.

Section 4170.1–2 Failure to use.

In response to comments, language in § 4170.1–2 was revised to reflect the Department of Interior's policy of consultation, coordination and cooperation with livestock operators.

Section 4170.1–3 Balk Eagle Protection Act and Endangered Species Act.

The proposed regulation removed from the existing regulations the authority to modify, suspend, or cancel grazing permits or leases because of violations of the Bald Eagle Protection Act, the Endangered Species Act and other Federal and State conservation laws. Numerous comments were received concerning allowing violators of Federal or State environmental, conservation, or wildlife laws to retain grazing privileges on the public lands.

The comments were carefully considered and the Department of Interior has determined that authority for cancellation of a grazing permit or lease extends only to those statutes where such penalties are specifically provided. Thus, the final rulemaking states that violation of the Bald Eagle Protection Act or the Endangered Species Act is a prohibited act and prescribes penalties for violation. The Department has further decided to retain § 4170.1–3 to clearly specify when a penalty would be appropriate.

Section 4170.1–4 Cooperative Management Agreement.

A new section has been added which provides authority to cancel a Cooperative Management Agreement for violations of the terms and conditions of the agreement.

The principal author of these regulations is Robert Alexander, Division of Rangeland Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

To reduce the cost of publication in the **Federal Register**, only changes to existing regulations are provided in this notice. Following publication, copies of the complete subpart 4100 will be mailed to all lessees and permittees and will be available at BLM field offices.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. Impacts are not expected to exceed 100 million dollars per year. Impacts are expected to affect all individuals or firms associated with livestock grazing on the public lands equally.

The Department of the Interior has further determined that this rulemaking will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Changes to the existing regulations made by these amendments will to some extent reduce the compliance burden for those individuals who hold permits or leases to graze livestock on the public lands under the jurisdiction of the Bureau of Land Management.

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and have been assigned the following approval numbers: Cooperative Agreement for Range Improvement 1004–0068; Grazing Application 1004–0005; Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Grazing Application-Authorized Agent 1004–0049; Actual Grazing Use Record 1004–0051; and Cooperative Agreement 1004–0068.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Taylor Grazing Act of 1934 (43 U.S.C. 315 et seq.), The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.), Part 4100, Group 4100 Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: January 10, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

PART 4100—[AMENDED]

1. Section 4100.0–1 Purpose is revised to read as follows:

"§ 4100.0–1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska."

§ 4100.0–2 [Amended]

2. Section 4100.0–2 Objectives is revised by deleting all the language to the word "range" where it first appears and inserting instead:

The objectives of these regulations are orderly use, improvement and development of the public lands; enhancement of their productivity by prevention of overgrazing and soil deterioration, stabilization of the livestock industry dependent upon the public range;".

§ 4100.0–3 [Amended]

3. Section 4100.0–3 is amended by:

a. Revising paragraph (a) to read:

(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a–315r);

* * * * *

b. Revising paragraph (b) to read:

* * * * *

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);

* * * * *

c. Revising paragraph (d) to read:

* * * * *

(d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 118(d); and

d. Redesignating paragraph (e) as paragraph (f) and inserting a new paragraph (e) to read:

* * * * *

(e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.).

§ 4100.0–5 [Amended]

4. Section 4100.0–5 is amended by:

a. Amending the definition of affected interest to read as follows:

" 'Affected interest' means an individual or organization that has expressed in writing to the authorized officer concern for the management of livestock grazing on specific grazing allotments and who has been determined by the authorized officer to be an affected interest.' "; and

b. Amending the definition of "allotment management plan" by removing the word "document" where it appears and replacing it with the word "documented" and removing the word "operations" where it appears and replacing it with the word "grazing";

c. Amending the definition of "cancellation" by removing the word "Cancellation" where it appears and replacing it with the words "Cancelled or cancellation";

d. Amending the term "certified actual use" by removing the word "Certified";

and replacing the new term in the proper alphabetical order;

e. Removing the definition of "class of livestock" in its entirety; and replacing it with a definition to read: " 'class of livestock' means ages and/or sex groups of a kind of livestock.";

f. Amending the definition of "consultation, cooperation and coordination" by inserting a period after the word "disputes" where it appears and deleting all thereafter;

g. Removing the definition of "contiguous land" in its entirety;

h. Revising the definition of "Consultation, cooperation and coordination" to read:

" 'Consultation, cooperation and coordination' means an interactive process for seeking advice, agreement, or interchange of opinions on issues, plans, or management actions from other agencies and affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be covered by an allotment management plan and other affected interests."

i. Inserting a definition of "Cooperative management agreement" to read:

" 'Cooperative management agreement' means a mutually agreed to plan of action embodied in an agreement between the Bureau of Land Management and a qualified applicant or operator that identifies the responsibility of the cooperative partner and performance standards applicable to the grazing operation.";

j. Revising the definition of "grazing fee year" to read:

" 'Grazing fee year' means the year, used for billing purposes, which begins on March 1, of a given year and ends on the last day of February of the following year";

k. Removing the definition of "indigenous animal" in its entirety;

1. Revising the definition of "Land use plan" to read:

" 'Land use plan' means a planning document developed in accordance with the provisions of the Federal Land Policy and Management Act which establishes coordinated management direction for resource uses on public lands."

m. Amending the definition of "livestock grazing capacity" by inserting the word "estimated" before the word "number" and by removing the phrase "on the public lands";

n. Removing the definition of "modification" in its entirety;

o. Removing the definition of "other lands under Bureau of Land Management control" in its entirety;

p. Amending the definition of "public lands" by removing the phrase "lands located on the Outer Continental Shelf" where it appears;

q. Revising the definition of "Range improvement" to read as follows:

" 'Range improvement' means authorized activities or programs which contribute to accomplishing allotment goals and objectives.";

r. Amending the definition of "service area" by removing all after the first sentence;

s. Inserting a definition of "State Director" to read as follows:

" 'State Director' means the State Director, Bureau of Land Management, or his or her authorized representative.";

t. Amending the definition of "Supplemental feed" to read as follows:

" 'Supplemental feed' means a feed which supplements the forage available from the public lands and is provided to improve livestock nutrition or rangeland management.";

u. Removing the definition of "suspended preference" in its entirety; and

v. Revising the definition of "suspension" to read:

* * * * *

" 'Suspension' means temporarily withholding, in whole or in part, a grazing preference from active grazing use. The withholding may be done voluntarily by the permittee or lessee."

* * * * *

5. Subpart 4110.

a. Subpart 4110 is revised by changing the heading to read: "Qualifications and Preference";

b. Section 4110.1 is revised by inserting the figure "4110.1–1," after the figure "§§" and before the figure "4130.3" in the first sentence and adding a new § 4110.1–1 to read as follows:

§ 4110.1–1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management (BLM) through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that BLM shall honor existing grazing permits or leases, such permittees or lessees shall be considered qualified for grazing use on those acquired lands.

§ 4110.2–1 [Amended]

6. Section 4110.2–1 is amended by removing "§ 4100.0–5(g)" where it appears and replacing it with "§ 4100.0–5.".

7. Section 4110.2–1(b) is revised to read as follows:

"(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, relative to the multiple use management objective of the public lands."

§ 4110.2–2 [Amended]

8. Section 4110.2–2 is amended by removing the "s" from the word "plans" where it appears in paragraph (a) and adding a new paragraph (d) to read as follows:

"(d) Allotments.

After consultation, cooperation and coordination, the authorized officer may designate and adjust allotment boundaries."

§ 4110.2–3 [Amended]

9. Section 41102–3 is amended by:

a. Revising paragraph 4110.2–3(a)(2) to read as follows:

"(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under § 4120.3 and maintained in conjunction with the transferred preference (see § 4120.3–5). The terms and conditions of the cooperative agreements and range improvement permits are binding on the transferee.";

b. Removing § 4110.2–3(d) in its entirety;

c. Redesignating § 4110.2–3(e) and 4110.2–3(f) as § 4110.2–3(d) and 4110.2–3(e), respectively; and

d. Redesignating § 4110.2–3(g) as § 4110.2–3(f) and revising it to read:

* * * * *

(f) Failure of either the transferee or the transferor to comply with the regulations of this section may result in rejection of the transfer application or cancellation of grazing preference.

§ 4110.2–4 [Removed]

10. Section 4110.2–4 is revised by removing it in its entirety.

§ 4110.3–1 [Amended]

11. Section 4110.3–1 is amended by:

a. Amending § 4110.3–1 (a) by removing the citation "§ 4130.6" where it appears and replacing it with the citation "§ 4130.1–1":

b. Amending § 4110.3–1(c) by inserting the words "After consultation, cooperation and coordination"at the beginning of the sentence; end of paragraph (c)(1); removing the word "or" at the end of paragraph (c)(2); and removing "§ 4110.5" in paragraph (c)(3) and replacing it with "§ 4130.1–1"; and

c. Removing § 4110.3–1(d) in its entirety.

§ 4110.3-2 [Amended]

12. Section 4110.3-2 is amended by:

a. Removing § 4110.3.2(c) in its entirety;

b. Removing § 4110.3-2(d) in its entirety; and

c. Removing § 4110.3-2(e) in its entirety.

13. A new section 4110.3-3 is added to read;

§ 4110.3-3 Implementation of changes in available forage.

(a) Permanent increases in the allocation of livestock forage (see 4110.3-1(b)) or suspensions of preference (see § 4110.3-2(b)) shall be implemented over a 5-year period, unless after consultation with the affected permittees or lessees and other affected interests, an agreement is reached to implement the increase or suspension in less than 5 years.

(b) After consultation, coordination and cooperation, suspensions of preference shall be implemented through a documented agreement or by decision. If data acceptable to the authorized officer are available, an initial reduction shall be taken on the effective date of the agreement or decision and the balance taken in the third and fifth years following that effective date, except as provided in paragraph (a) of this section. If data acceptable to the authorized officer to support an initial reduction are not available, additional data will be collected through monitoring. Adjustments based on the additional data shall be implemented by agreement or decision that will initiate the 5-year implementation period.

(c) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require temporary protection because of conditions such as drought, fire, flood, or insect infestation, after consultation with affected permittees or lessees and other affected interests, action shall be taken to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use. Notices of closure and decisions requiring modification of authorized grazing use shall be issued as final decisions which are placed in full force and effect under § 4160.3(c) of this title.

14. Section 4110.4 is amended by:

§ 4110.4-1 [Amended]

a. Amending § 4110.4-1 by removing "4110.5" where it appears and replacing it with "4130.1-2";

§ 4110.4-2 [Amended]

b. Amending § 4110.4-2(b) by revising it to read as follows:

* * * * *

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency, national defense requirements in time of war, natural disasters, national emergency needs, etc. before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands. (see § 4120.3-6).

§ 4110.5 [Removed]

15. Section 4110.5 is amended by removing it in its entirety.

§ 4110.5 [Redesignated from § 4110.6]

16. Section 4110.6 is amended by redesignating it as section 4110.5.

§§ 4120.1, 4120.2 and 4120.2-1 [Removed]

17. Subpart 4120 is amended by:

a. Removing § 4120.1 in its entirety;

b. Removing § 4120.2 in its entirety; and

c. Removing § 4120.2-1 in its entirety.

§ 4120.2-2 [Removed]

18. Section 4120.2-2 is revised by removing it in its entirely and adding a new § 4120.1 to read as follows:

§ 4120.1 Cooperative management agreements.

(a) The authorized officer of the Bureau of Land Management may enter into a cooperative management agreement with any permittee or lessee who has demonstrated exemplary rangeland management practices.

(1) A cooperative management agreement establishes the responsibilities and performance standards of the cooperating parties in managing and using of the public lands to graze livestock.

(2) A cooperative management agreement shall be consistent with, and incorporate by reference, all applicable provisions of any existing land use plan as well as the terms of the authorization(s) issued to the cooperative party to graze livestock on the allotment(s).

(3) A cooperative management agreement shall not empower the cooperating party to exclude or limit other authorized uses on the allotment(s).

(b) A cooperative management agreement shall be issued for a term of 10 years and, at the discretion of the authorized officer of the Bureau of Land Management, may be renewed.

(c) A cooperative management agreement, and a cooperating party's performance under it, shall be periodically evaluated by the Bureau of Land Management.

(d) A cooperative management agreement may be transferred by operation of law. If the cooperating party is organized as a corporation or partnership, the cooperative management agreement may, upon notice to the authorized officer, also be transferred as an incident to any change of less than 100 percent in the business organization. All other transfers of the cooperative management agreement are prohibited and shall result in its automatic termination.

§ 4120.2-3 [Amended]

19. Section 4120.2-3, Allotment management plans, is amended by:

a. Redesignating § 4120.2-3 as § 4120.2;

b. Revising the introductory text to read:

When allotment management plans are developed, the following provisions apply:

* * * * *

c. Amendment paragraph (a) by removing the second sentence;

d. Removing "§ 4120.2-1" from paragraph (a) and replacing it with "§ 4130.6";

e. Removing the phrase "prescribe a system of grazing designed" from the third sentence of paragraph (a) and replacing it with the phrase "describe the livestock grazing practices necessary";

f. Revising paragraph (b) to read:

* * * * *

b. Private and State lands shall be included in allotment management plans with the consent or at the request of the party(ies) who owns or controls those lands.;

* * * * *

g. Removing paragraph (c) in its entirety;

h. Redesignating paragraph (d) as paragraph (c) and revising it to read:

* * * * *

(c) Completed allotment management plans shall be incorporated into the terms and conditions of the affected grazing permits and leases.;

* * * * *

j. Removing paragraph (e) in its entirety; and

k. Removing paragraph (f) in its entirety;

§ 4120.3 [Amended]

20. Section 4120.3 is amended by removing it in its entirety and adding the following new §§ 4120.3, 4120.3–1, 4120.3–2, 4120.3–3, 4120.3–4, 4120.3–5, 4120.3–6, and 4120.3–7 to read as follows:

§ 4120.3 Range improvements.

§ 4120.3–1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under § 4130.6–2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

§ 4120.3–2 Cooperative agreements.

Any person may enter into a cooperative agreement with the Bureau of Land Management for the installation, use, maintenance, and/or modification of range improvements needed to achieve management objectives. The cooperative agreement shall specify the division of costs or labor, or both, between the United States and cooperator(s). Title to structural or removable improvements shall be shared by the United States and cooperator(s) in proportion to the actual amount of the respective contribution to the initial construction. Title to nonstructural or nonremovable improvements shall be in the United States.

§ 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 range improvements that are needed to achieve management objectives within his/her designated allotment. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee shall have title to removable range improvement authorized under range improvement permits.

(c) The use by livestock of stock ponds or wells or wells authorized by a range improvement permit shall be controlled by the grazing permittee or lessee holding the range improvement permit.

§ 4120.3–4 Standards, design and stipulations.

Range improvement permits and cooperative agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§ 4120.3–5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2–3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for fair market value of his interest in the authorized improvements within the allotment as of the date of the transfer. If the parties are unable to agree as to the amount or manner of reasonable compensation, the matter shall be resolved by the authorized officer.

§ 4120.3–6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives if they fail to meet the criteria under § 4120.3–4 of this title.

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessees interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative agreement to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

§ 4120.3–7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

21. Section 4120.4 is amended by removing it in its entirety and inserting a new section to read:

§ 4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon approval, shall become effective when published in the Federal Register as final rules. Special rules shall be published in a local newspaper.

"(b) Where the Bureau of Land Management administers the grazing use of other Federal Agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply."

§§ 4120.5, through 4120–6 4120.6–7, 4120.7 and 4120.8 [Removed]

22. Section 4120.5 is removed in its entirety.

23. Sections 4120.6 through 4120.6–7 are removed in their entirety.

24. Sections 4120.7 and 4120.8 are removed in their entirety.

25. Section 4130.1 is amended by removing the word "timely" where it appears;

26. Two new sections, 4130.1–1 and 4130.1–2 are added to subpart 3140 to read:

§ 4130.1–1 Changes in grazing use.

(a) Applications for changes in grazing use should be filed with the authorized officer before the billing notices for the affecting grazing use have been issued. Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued and which required the issuance of a replacement or supplemental billing notice shall be subject to a service charge under § 4130.7–3 of this title .

(b) Changes in grazing use may be granted by the authorized officer.

§ 4130.1–2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional livestock forage or additional acreage becomes available, the authorized officer may allocate grazing use of such land or forage on the basis of § 4110.3–1 of this title or on the basis of any of the following factors:

(a) Historical use of the public lands (see § 4130.2(1)(d));

(b) Proper range management and use of water for livestock;

(c) General needs of the applicants, livestock operations;

(d) Public ingress or egress across privately owned or controlled land to public lands;

(e) Topography; and

(f) Other land use requirements unique to the situation.

§ 4130.2 [Amended]

27. Section 4130.2 is amended by:

a. Removing paragraph (a) in its entirety;

b. Redesignating paragraph (b) as paragraph (a) and revising it to read:

(a) Grazing permits or leases shall be issued to authorize livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management. These grazing permits or leases shall specify terms and conditions as required by § 4130.6 of this title;

* * * * *

c. Redesignating paragraph (c) as paragraph (b);

(d) Redesignating paragraph (d)(1) as paragraph (c) and removing paragraphs (d) (2), (3) and (4);

(f) Redesignating paragraph (e) as paragraph (d) and revising it to read as follows:

"(d) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease;

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease."

g. Adding paragraph (e) to read:

* * * * *

(e) Permits or leases may incorporate the percentage of public land livestock use (see § 4130.6–2) or may include private land offered under exchange-of-use grazing agreements (see § 4130.4–1).

§ 4130.3 [Amended]

28. Section 4130.3 is amended by removing "§ 4110.5" where it appears and replacing it with § 4130.1–2".

§ 4130.4 [Amended]

29. Section 4130.4–1 is amended by removing paragraphs (b), (d), and (e) in their entirety and redesignating paragraph (c) as paragraph (b).

30. Section 4130.5 is amended by removing it in its entirety and adding a new section to read:

§ 4130.5 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands are located relating to branding of livestock, breed, grade, and number of bulls, and health and sanitation requirements; and

(c) The authorized officer may require counting and/or additional special marking or tagging of the authorized livestock in order to promote the orderly administration of the public lands.

31. Section 4130.6 is revised to read:

§ 4130.6 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management objectives for the public lands and other lands under Bureau of Land Management control identified in land use plans.

32. A new section, § 4130.6–1, mandatory terms and conditions, is added to read:

§ 4130.6–1 Mandatory terms and conditions.

(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock grazing capacity and may be limited or excluded to the extent necessary to achieve the objectives established for the allotment.

(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.

27. A new section § 4130.6–2, Other terms and conditions, is added to read:

§ 4130.6–2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

(a) The class of livestock that will graze on an allotment;

(b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;

(c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;

(d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;

33. Section 4130.6 is amended by adding a new § 4130.6–3 Modification to read as follows:

§ 4130.6–3 Modification.

Following careful and considered consultation, cooperation and coordination with the lessees, permittees, and other affected interests, the authorized officer may modify terms and conditons of the permit or lease if monitoring data show that present grazing use is not meeting the land use plan or management objectives.

(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction establishment or restoration of vigor of plants, 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; and

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee.

§ 4130.8 [Redesignated from § 4130.7]

35. Section 4130.7 is amended by redesignating it as § 4130.8 and adding new §§ 4130.7, 4130.7–1, 4130.7–2 and 4130.7–3 to read as follows:

§ 4130.7 Fees.

§ 4130.7–1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) The full fee shall be charged for each paying animal unit which is defined as each animal six (6) months of age or over at the time of entering the public lands, for all weaned animals regardless of age, and for such animals as will become twelve (12) months of age during the authorized period of use. No charge will be made for animals under six (6) months of age at the time of entering the public lands, that are the natural progeny of animals upon which fees are paid, provided they will not become twelve (12) months of age during the authorized period of use, or for progeny born during that period.

(d) Fees are due upon issuance of billings. When billings are issued prior to the grazing season, payment will be made prior to grazing use. If allotment management plans or cooperative management agreements provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance.

§ 4130.7–2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease amount the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or postpone fee payment for as long as the emergency exists.

§ 4130.7–3 Service charge.

A service charge shall be assessed for each crossing permit, transfer of grazing preference and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a), calculation of the Bureau service charge assessed shall reflect processing costs and shall be adjusted periodically as costs change. Notice of changes shall be published periodically in the **Federal Register.**

§ 4140.1 [Amended]

36. Section 4140.1 is amended by:

a. Amending paragraph (a)(3) by removing the words "without authorization" and inserting the words "in violation of the terms and conditions of the lease or permit";

b. Amending paragraph (b)(1)(iv) by removing "§ 4120.4(d)" and replacing it with "§ 4130.5(c)";

c. Removing paragraph (b)(7) in its entirety; and

d. Removing paragraph (b)(8) in its entirety and redesignating paragraphs (9) through (11) as paragraphs (7) through (9) respectively; amending new paragraph (b)(7) by removing the word "of" where it appears and replacing it with the word "or"; and revising new paragraph (b)(8) by removing the word "certified" where it appears.

e. Revising paragraph (b) by inserting a paragraph (10) to read as follows:

"(10) Violating the Bald Eagle Protection Act or the Endangered Species Act."

§ 4150.2 [Amended]

37. Section 4150.2 is amended by:

a. Amending paragraph (b) by removing "§ 4150.5" and replacing it with "§ 4150.4"; and

b. Removing paragraph (c) in its entirety.

38. Section 4150.3 is revised to read:

§ 4150.3 Settlement.

The authorized officer shall determine if the violation is nonwillful, repeated nonwillful, willful, or repeated willful. Where violations are repeated nonwillful, the authorized officer may take action under § 4170.1–1(a) of this title. Where violations are repeated willful the authorized officer shall take action under § 4170.1–1(b) of this title. The amount due for all settlements shall include; the full value for all damages to the public lands and other property of the United States; all expenses incurred by the United States including those incurred in gathering, impounding, caring for, and disposing of livestock in cases which necessitate impoundment under § 4150.4; and shall include the amount due the United States for unauthorized grazing use as described in paragraphs (a), (b) or (c) of this section.

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate for pasturing livestock on privately owned land (excluding irrigated land) for the 11 Western States as published annually by the Department of Agriculture.

(b) For repeated nonwillful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For willful and repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section."; and

(d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.

(e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under § 4160.1–2 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.

§ 4150.4–1 [Amended]

39. Section 4150.4–1 is amended by removing paragraph (c) in its entirety.

§ 4150.4–2 [Amended]

40. Section 4150.4–2 is amended by removing "§ 4150.4–1(c)" where it appears.

§ 4150.4–3 [Amended]

41. Section 4150.4–3 is amended by removing the second, third, and fourth sentences.

§ 4160.1–1 [Amended]

42. Section 4160.1–1 is amended by deleting the word "The" at the beginning of the first sentence and replacing it with the phrase "In the absence of a documented agreement between the authorized officer and the permittee(s) or lessee(s), the"; inserting the following sentence after the first sentence in the opening paragraph to read:

"The authorized officer shall also send copies to other affected interests.";

and by removing paragraphs (a), (b) and (c) in their entirety.

§ 4160.1-2 [Amended]

43. Section 4160.1-2 is amended by removing "§ 4130.5-1" where it appears and replacing it with "§ 4130.7-1".

§ 4160.2 [Amended]

44. Section 4160.2 is amended by removing the word "adversely" from the first sentence.

§ 4160.3 [Amended]

45. Section 4160.3 is amended by:

a. Amending paragraph (b) by placing a comma after the word "both" and inserting the words "and on other affected interests" in the second sentence and deleting the remainder of the sentence;

b. Amending paragraph (c) by removing the last sentence in the paragraph and replacing it with the sentence "The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal."; and

c. Removing paragraphs (d) and (e) in their entirety.

§ 4160.4 [Amended]

46. Section 4160.4 is amended by removing the phrase "applicant, permittee, or any other".

47. Section 4170.1-2 is revised to read as follows:

§ 4170.1-2 Failure to use.

After consultation, coordination, and cooperation, the authorized officer may cancel a grazing preference to the extent of failure to use when a permittee or lessee has failed to make substantial grazing use as authorized for 2 consecutive years. (See § 4140.1(a)(2)).

48. Section 4170.1-3 is revised to read as follows:

§ 4170.1-3 Bald Eagle Protection Act and Endangered Species Act.

Violation of the Bald Eagle Protection Act or the Endangered Species Act may result in penalty under § 4170.1-1 where:

(a) Public land administered by the Bureau of Land Management is involved or affected;

(b) Such violation is related to grazing use authorized by permit or lease;

(c) The permittee or lessee has been convicted or otherwise found to be in violation of the law or regulations by a court or by final determination of any agency charged with the administration of the law where no further appeals are outstanding.

49. Section 4170.1-4 is inserted to read as follows:

§ 4170.1-4 Cooperative management agreement.

Violation of the terms and conditions of a cooperative management agreement may result in the cancellation of the agreement. Where violation of Subpart 4140 Prohibited Acts occurs, the authorized officer may take appropriate action under § 4170.1-1 of this title.

[FR Doc. 84-4491 Filed 2-17-84; 8:45 am]
BILLING CODE 4310-84-M

federal register

Tuesday
February 21, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Metallic Mineral Processing Plants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2435-5]

Standards of Performance for New Stationary Sources; Metallic Mineral Processing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for metallic mineral processing plants were proposed in the Federal Register on August 24, 1982 (47 FR 36859). This action promulgates standards of performance for metallic mineral processing plants. These standards implement Section 111 of the Clean Air Act and are based on the Administration's determination that metallic mineral processing plants cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed metallic mineral processing facilities to control emissions to the level achievable through use of the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: February 21, 1984.

Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard (NSPS) is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Metallic Mineral Processing Plants—Background Information for Promulgated Standards" (EPA-450/3-81-009c). The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement that summarizes the impacts of the standards.

Docket A docket, number A-81-03, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene W. Smith, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone (919) 541-5624.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, or reconstructed metallic mineral processing facilities for which construction was commenced after August 24, 1982. For the purpose of these standards, a metallic mineral plant processes metallic ores into metallic concentrates containing one or more of the following metals: Aluminum, copper, gold, iron, lead, molybdenum, silver, titanium, tungsten, uranium, zinc, and zirconium. Existing facilities are not subject to the regulation unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15, respectively.

The promulgated standards will limit emissions of particulate matter from affected facilities at metallic mineral processing plants. "Affected facilities" at a metallic mineral processing plant are defined as each crusher and screen at an open-pit mine and each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator. All facilities located in underground mines are exempted from the standards. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempt from the provisions of these standards. All conveyor belt transfer points between crushers located in an open-pit mine and between the mine and milling, storage or waste rock disposal areas, are exempted from the provisions of the standard.

The promulgated standards limit the concentration of particulate matter in stack emissions to 0.05 gram per dry standard cubic meter. This stack emission limit is based on the use of high-energy wet scrubbers under worst case conditions; although, under less stringent conditions, baghouses or low-energy wet scrubbers could also meet the standards. Stack emissions from all affected facilities except those controlled by wet scrubbers are also limited to 7 percent opacity. The promulgated standards limit process fugitive emissions to 10 percent opacity. "Process fugitive emissions" are defined as those emissions from an affected facility that escape collection by a capture system (i.e., a hood or enclosure).

The promulgated standards require the owner or operator of an affected facility using a wet scrubber for controlling emissions to install a monitoring device to continuously measure the liquid flow rate to the wet scrubber and a device to measure the pressure drop across the wet scrubber. The operator of the wet scrubber is also required to record the pressure drop and flow rate at least once a week and to report semiannually the occasions when the measurements of these parameters differ by more than ±30 percent from those measurements recorded during the last performance test.

Reference Methods 1, 2, 3, and 5 or 17 will be used to determine compliance with the stack mass emission standards. Reference Method 9 will be used to measure the opacity of stack emissions and the opacity of process fugitive emissions. Method 9 is amended concurrently with the promulgation of this standard in order to provide more detail on the use of this method to determine the opacity of process fugitive emissions.

Summary of Environmental, Energy, and Economic Impacts

Environmental Impact

The metallic mineral processing industry is composed of approximately 200 plants processing a wide variety of ores and minerals. Metallic mineral processing plants are located throughout the country, although the largest numbers of existing or new plants are or will be located in the western states. Prior to the proposal of the NSPS, emissions from new and existing sources in the industry were controlled to varying degrees by State standards under the State implementation plans (SIP's). In comparing emission levels achieved with control devices currently used in the industry with emission levels allowed under these standards, it is estimated that the promulgated standards will reduce the total amount of particulate emissions from 25 new plants built by 1985 by as much as 11,800 megagrams per year [(11,800 Mg/yr) (13,000 tons/yr)] below emission levels that would occur if no new standards were set. This reduction would range from 65 Mg/yr (72 ton/yr) for a 23 Mg/hour (25 ton/hour) uranium plant to 2,300 Mg/yr (2,500 ton/yr) for a 2,200 Mg/hour (2,400 ton/hour) iron ore processing plant.

Because these particulate emissions could contain trace amounts of metals and radioactive compounds, depending on the type of ore processed, there would also be a simultaneous reduction in the release of these compounds into the atmosphere.

There would be no significant adverse water pollution or solid waste impacts from the standards. If dry collectors are used to meet the standards, collected emissions could be recycled to the milling process because the collected particles are primarily the ore or the concentrated product of processing plants. Thus the solid waste impact from using dry collectors to meet the standards should be nonexistent. Because no water discharge is generated by dry collectors, there would be no adverse water pollution impact.

If wet scrubbers are used to meet the standards, the slurries recovered from the scrubbers could be added to the wet size-reduction operations or wet concentration steps in the process. Alternatively, the slurries could be combined with tailings from the plant's beneficiation process, which are typically discharged to a tailings pond from which the water is recycled. The material generated from wet scrubbers under worst-case conditions would represent less than 1 percent of the waste material generated in the beneficiation of any metallic mineral covered by the standard.

The only source of noise that would result from the standards would be the exhaust fans used in control systems. When compared with the noise from crushing process equipment, any additional noise from control system exhaust fans would be insignificant.

Energy Impact

The estimated incremental energy requirements of the standards were calculated by comparing the energy requirements of baghouses and high-energy wet scrubbers (pressure drop of 30 inches of water) with the energy requirements of low-energy wet scrubbers (pressure drop of 6 inches of water), which are the most widely used equipment for current emission control. Because a fabric filter baghouse uses a more efficient fan than a low-energy wet scrubber while operating at the same pressure drop and air flow rate, energy consumption would be lower with the installation of baghouses to meet the requirements of the standards.

Assuming worst-case conditions from an energy perspective (i.e., if all new facilities installed only high-energy wet scrubbers), the industry energy use would increase by 317 terajoules (317 TJ) [300×10^9 British Thermal Units (300×10^9 Btu's)] in 1985 over that required if only low-energy wet scrubbers were installed. This increase represents less than 0.5 percent of the energy that would be consumed by these new plants as represented by their projected use of natural gas, liquid fuels, and electrical energy. The energy impacts were determined by comparing the amount of energy consumed by the entire plant complex including the mine and beneficiation process (except iron ore pelletizing and alumina calcining). The maximum incremental increase in energy use at any individual new plant due to compliance with the standards with 30-inch pressure drop wet scrubbers would range from 0.04 percent for aluminum plants to 7 percent for titanium/zirconium plants. These impacts are worst-case projections because it is likely that most installations will not find it necessary to use 30-inch pressure drop wet scrubbers on all affected facilities. In many cases, baghouses or wet scrubbers with less than 30-inch pressure drop would be adequate to achieve the standards.

Economic Impact

The incremental cost and economic impacts associated with the standards are considered to be reasonable. The economic impacts are based on a comparison of 30-inch pressure drop wet scrubbers, the most expensive control option on an annualized cost basis, with a 6-inch pressure drop wet scrubber, the control device most widely used to meet current standards. Less expensive control devices, such as baghouses and lower energy wet scrubbers, are expected in most cases to meet the proposed standards. Thus, the actual economic impact of the standard would be less than the estimates summarized below.

The incremental capital costs associated with the standards were calculated as the difference between the cost of 6-inch pressure drop wet scrubbers and 30-inch pressure drop wet scrubbers. The incremental capital costs ranged from $29,000 for a 23 Mg/h (25 ton/h) uranium plant to $940,000 for a 2,200 Mg/h (2,400 ton/h) iron ore plant for the application of 30-inch pressure drop wet scrubbers to all affected facilities in a plant. The corresponding incremental annualized cost ranged from $28,000 to $870,000 per year. The close correspondence of incremental capital and incremental annualized costs for 30-inch pressure drop scrubbers reflects the high operating cost of 30-inch pressure drop scrubbers. As a percentage of capital cost requirements for new plants, the costs of 30-inch pressure drop scrubbers range from a 0.9 percent increase for uranium plants to a 0.1 percent increase for iron ore plants. The capital costs for new plants include the costs of an entire milling and mining operation.

The total incremental capital cost to install 30-inch pressure drop wet scrubbers on all new plants would be about $5 million for the first 5 years that the standards would be in effect. The total incremental annualized cost would increase by $4,600,000 in the fifth year.

The percentage increase in the cost of producing the metal due to the annualized cost of installing and operating 30-inch pressure drop wet scrubbers at all affected facilities in a plant ranged from less than 0.1 percent for aluminum plants to 1.7 percent for a 140 Mg/h (150 ton/h) copper plant. This size copper plant was the only projected new plant where the impact exceeded 1 percent. In addition, it is likely that the impact on small copper plants is overstated. In calculating the impact of these standards on small copper plants, a very low ore grade was used and the value of coproduced minerals was not considered. For these reasons, the actual increase in production cost for small copper plants will likely be closer to 0.17 percent than 1.7 percent.

The environmental, energy, and economic impacts are discussed in greater detail in the background information document for the proposed standards, "Metallic Mineral Processing Plants—Background Information for Proposed Standards" (EPA–450/3–82–009a).

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** of the meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the standards recommended for proposal. The NAPCTAC meeting was held on April 29, 1981. The meeting was open to the public, and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed and published in the **Federal Register** on August 24, 1982 (47 FR 36859). The preamble to the proposed standards discussed the availability of the background information document (BID), "Metallic Mineral Processing Plants—Background Information for Proposed Standards" (EPA–450/3–82–009a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on October 7, 1982, at Reseach Triangle Park, North Carolina. The public comment period was from August 24, 1982 to November 8, 1982.

Nineteen comment letters were received during the comment period relative to the proposed standards. The comments have been carefully considered; and, where determined to be appropriate by the Administrator, changes have been made in the final standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, trade associations, one State air pollution control agency, and a private citizen. A detailed discussion of these comments and responses can be found in the BID for the promulgated standards, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble.

In response to the public comments and as a result of EPA reevaluation, certain changes have been made in the proposed standards. Section 60.380 has been modified to clarify that at open-pit mines only crushers and screens are affected facilities. In Section 60.381, the definition of "metallic mineral processing plant" has been modified, and a definition of "metallic mineral concentrate" has been added in order to clarify what is meant by a metallic mineral processing plant. In Section 60.383, the list of ore-contact surfaces whose repairs are exempt from reconstruction provisions has been expanded to include surfaces on pan feeders. Section 60.384 has been expanded to clarify that the owner or operator of a wet scrubber is required to record the scrubber liquid flow rate to the scrubber and the pressure drop across the scrubber during the initial performance test and at least weekly thereafter. Reporting of the results of the initial performance tests is required by the General Provisions, while reporting of subsequent readings is not required. Section 60.385 (Test methods and procedures) has been modified to indicate that Method 9, Visual Determination of the Opacity of Emissions from Stationary Source (Appendix A, 40 CFR Part 60), is to be used for determining opacity for stack and process fugitive emissions. Method 9 has been amended to provide additional instructions for determining opacity from fugitive sources.

Most of the comment letters contained multiple comments. The major comments have been divided into the following areas: General, Emission Control Technology, Economic Impacts, Environmental Impacts, and Test Methods and Monitoring.

General

Opacity Standards for Stack and Process Fugitive Emissions

A number of commenters objected to a process fugitive standard. One of these commenters felt that it had not been justified in terms of its air quality benefits. Two other commenters stated that the lack of difference between a 10 percent process fugitive emission standard and a 7 percent stack standard seemed to imply that the EPA was requiring uncontrolled emissions to be as low as controlled emissions from a stack. One commenter noted that EPA data showed that all facilities tested were meeting the process fugitive standard and that there is no reason to expect that practices would change. This commenter felt that the additional monitoring, performance tests, and recordkeeping resulting from the standard were not justified in view of the insignificance of the emissions. Therefore, he felt the standard can be eliminated. On the other hand, one commenter stated that the standard should be raised from 10 to 20 percent opacity.

The process fugitive emission standard serves at least two purposes. First, the standard ensures that emission from facilities that use control devices such as wet scrubbers or baghouses are in fact collecting these emissions at the point of generation and ducting them to the control device. Demonstrations of control device efficiency in meeting the stack emission standard would do little good if emissions were not being properly ducted to the device. Thus, where control devices are used, the process fugitive emission standard is designed to prevent short-circuiting of emissions and to ensure that the air quality benefits that accrue to the control of stack emissions are achieved.

Second, the process fugitive emission standard allows the facility to use alternative methods of emission control. For example, if the operator of a facility can keep the process fugitive emissions below 10 percent by using enclosures and/or wet suppression, then the operator would not be required to duct emissions to a control device such as a wet scrubber.

As noted by one commenter, the EPA test data do indeed demonstrate the achievability of the standard. Although the EPA's experience shows that a poorly designed capture system could cause emissions in excess of the standard, EPA test data show that properly designed systems can meet the standard. These test data justify a process fugitive opacity standard of 10 percent. In addition, as discussed above, eliminating the standard would make it impossible to judge the effectiveness of alternative control systems such as wet suppression.

Neither the General Provisions nor these standards require preformance tests, monitoring, or recordkeeping with regard to compliance with the process fugitive opacity standard. Thus, the ongoing costs of monitoring and demonstrating compliance with the standard are minimal. However, it is emphasized that the opacity standard is a separate enforceable requirement and that the industry will be evaluated on their ability to comply.

For the above reasons, the Administrator has determined that the process fugitive emission standard is necessary and justified.

Emission Control Technology

One commenter stated that it would be very difficult to achieve the process fugitive emission standard at a reasonable cost at ore dumps (truck unloading stations) and conveyor belt transfer points in open-pit mines and requested that the standard be withdrawn. This commenter provided data on the cost to control fugitive emissions at ore dumps and conveyor belt transfer points at in-pit crushing systems. This commenter stated that the cost to control emissions at these facilities was high enough to forestall a changeover to in-pit crushing and conveyorized transport. This changeover was being considered at an existing mine as a means to reduce energy and labor costs associated with truck hauling. The commenter also noted that the use of in-pit crushing and conveyorized transport would reduce plant fugitive emissions by 40 to 50 percent because truck hauling would be reduced.

Because these new in-pit crushing and conveying systems were not in use during the development of the NSPS, the EPA has limited information regarding the industry-wide impacts of the NSPS upon these systems. Due to the lack of sufficient emission test data and data on the cost and design of effective in-pit control systems, the EPA is unable to identify the best demonstrated technology (BDT) for these facilities at this time and is, therefore, excluding truck and railcar unloading stations (ore dumps) and conveyor belt transfer points located in open-pit mines and conveyor belt transfer points located in open-pit mines and conveyor belt transfer points located between the mine and the mill, storage, or waste disposal areas from coverage under the NSPS for metallic mineral processing at this time.

However, as a result of the comment, the EPA conducted an evaluation of the impacts associated with the control of emissions from ore dumps at in-pit crushing operations and from overland conveyor systems at one plant for which information was available. This evaluation was based on the process information supplied by the commenter for an open-pit mining operation that involves the excavation of greater than 100,000 tons of ore and 150,000 tons of waste rock per day.

Potential emissions from these ore dumps and conveyor belt transfer points at this plant are significant based on the number of facilities and the amount of material transferred through these points. The EPA calculated that the uncontrolled emissions from the ore dumps at the one facility for which data were available would likely range from 2,000 to 6,000 tons per year. Uncontrolled emissions from conveyor belt transfer points on overland conveyors could be in the range of 2,000 to 23,000 tons per year depending on the actual ore and waste-rock moisture levels.

The cost to control the emissions from these ore dumps and conveyor belt transfer points at this plant also appears significant. Although the EPA believes that some of the costs provided by the commenter are based on process designs that do not allow for the most economical use of control equipment, even the EPA's calculations for less costly designs indicate a potential economic impact on the production costs of copper of as much as 1 percent from the control of emissions from these sources alone.

The EPA notes that the preliminary emission and cost information gathered from this plant suggests that the impact of controlling ore dumps and conveyor belt transfer points is potentially so great as to delay or discourage decisions to replace truck hauling systems with conveyor transport systems. This effect, if it were to occur, would be counterproductive from an environmental standpoint. The uncontrolled emissions from truck hauling are typically much greater than uncontrolled emissions from conveyor belt systems. Viewed in the broad perspective of controlling emissions from the transport of ore and waste rock, the replacement of truck hauling with conveyor belts thus represents a very effective method for reducing emissions from the truck transport of rock, emissions that otherwise in the past have proven difficult to control. Thus, the EPA would seek to encourage this shift in process technology from the use of truck hauling to conveyor transfer.

The EPA will review the development of this transport technology and the impacts of possible control techniques for these facilities during its periodic review of this NSPS.

Economic Impacts

A number of commenters discussed various aspects of the economic impacts of the proposed standards. One commenter stated that the proposed standards have lost sight of the primary purpose of the Clean Air Act, which is to promote "the public health and welfare and the productive capacity of its population." This commenter questioned the necessity of additional regulation of an industry that is struggling under the competition of the world market. Four commenters noted that the economic analyses were performed with 1979 cost and price data that are out of date. Production prices have risen since then while in many cases product prices have fallen. For example, one commenter noted that cost of producing copper increased 44 percent from 1978 to 1981. The cost of copper on the other hand fell from a dollar per pound in 1979 to 65¢ to 75¢ per pound in 1982. The impact of these standards would be correspondingly more severe at these lower prices. An increase in price cannot be passed on because of world-wide competition in the copper market. A similar situation was presented for the aluminum industry. These commenters generally requested that the economic impacts of the standards be reevaluated in light of the weaker economic conditions of the industry today.

The Agency recognizes that since the original economic analyses were performed in developing these standards many segments of the metallic mineral processing industry have experienced severe economic disruptions. The demand for many metals has fallen significantly with a corresponding drop in price. Even at the price figures quoted in 1979 and 1980 for some metals, it was questionable that new processing plants could be profitably built unless there was a reasonable prospect for an increase in demand and price. Nonetheless, the Agency believes that, because of the central role the metallic mineral processing industry plays in the American economy, the long-term prospects for growth in the industry are good. This belief is obviously shared by others outside the Government as the acquisition of several metallic mineral and metal processing firms by still larger natural resource-based companies would attest.

Long-term optimism does not completely redress the short-term difficulties in the industry, yet it is the severe drop in the demand and price for metals—and not environmental regulations—that makes the new construction unlikely at present. When the demand for metals increases with a corresponding increase in price to levels more comparable to 1979 prices (in constant dollars), then new construction will be more likely. Thus, it is reasonable to calculate the impact of these standards for new facilities by using the price of the commodity that is a minimum requisite for the construction of a new facility.

The EPA recognizes that the costs of constructing a new metallic mineral processing plant have likely increased in the past several years. The cost of control equipment has also increased in a proportionate manner. Thus, the costs of control equipment as a percentage of processing equipment cost remained relatively constant. A large manufacturer of crushers has quoted price increases of 21 to 24 pecent between January 1, 1980, and January 1, 1983 (docket item IV–E–6). During the same period, a manufacturer of control devices has quoted price increases of 20 to 22 percent for multi-vane and venturi wet scrubbers (docket item IV–E–7). At the point at which the rise in the price of metals makes it reasonable to invest in new plants, the cost of meeting the standards will have the same relatively insignificant impacts shown in the analyses based on 1979 dollars.

In addition, the possible economic impacts of the standards are based on several assumptions that tend to exaggerate the impacts, particularly at copper plants. As noted elsewhere in these responses, the economic analysis assumes the universal use of high energy scrubbers when in fact less costly low-energy scrubbers or baghouses can meet the standards at many locations. In addition the concentration of copper in ore at small copper mines was assumed to be 0.45 percent. This figure is more typical of large deposits of larger copper mines, which, because of their economies of scale, can operate at these lower concentrations. One recently expanded mine and mill in Arizona has the capacity to process about 1,700 tons per hour of ore containing 0.49 percent copper and 0.02 percent molybdenum. On the other hand, smaller copper facilities require higher mineral concentrations. New information developed since the original economic analyses were performed indicates that a facility in the planning stage in New Mexico would process about 100 tons of ore per hour containing about 2 percent copper and 3 percent zinc instead of the 0.45 percent copper concentration assumed in the economic analysis for small copper plants. With a higher copper concentration and the consequent higher production of concentrates and the concurrent processing of by-products, the impact of the proposed standards on the production price of metals would be greatly reduced at these smaller plants. Even assuming the universal use of high-energy scrubbers, the economic impact of the standards on copper prices at this planned plant in New Mexico would be closer to 0.17 percent than the 1.7 percent figure quoted for 150 tons per hour copper plants in the preamble and the BID for the proposed standards.

The EPA is very sensitive to the possible adverse economic impacts of the NSPS. For that reason, the Agency has examined very carefully the capital costs of controls, the ability of firms to finance these costs, the potential price increases, and the cost per ton of emissions reduced, which addresses the issue of control costs relative to other industries. As discussed in the proposal preamble, none of these projected impacts appear unreasonable. More specifically, with the one exception discussed above, the projected price increases were all less than 1 percent and typically less than 0.5 percent. In balancing the protection of public health and welfare against the productive capacity of this industry, these costs appear reasonable and, in fact, are small compared to other factors that affect costs and prices.

The EPA has been extremely conservative in calculating the economic impacts of the standards. As demonstrated by our original analyses and the discussion above, the standards will not deter new construction when the demand for metals provides the economic conditions conducive to the development of new plants. Therefore, an extensive reevalution of the economic impacts of the standards will not be performed.

Environmental Impacts

Several commenters stated that the air quality benefits attributable to the proposed standards were overstated because the emission reduction attributable to the proposed standards was overestimated. These commenters gave several reasons why the emission reduction was overestimated. They reiterate that the Agency assumed that the entire industry would be operating under worst-case conditions when calculating the emissions that would occur if the NSPS were not promulgated and if current State standards were allowed to continue. They pointed out that the EPA's own testing indicates that facilities operating under State standards with low-energy wet scrubbers or baghouses are achieving much lower emission rates than EPA's worst-case estimates. One commenter calculated that the true emission reductions with the promulgation of an NSPS would be closer to a 1,000 tons per year as opposed to the EPA's estimate of 14,000 tons per year. These commenters also note that the number of new metallic mineral plants predicted by the EPA is overestimated, particularly in the copper and iron ore industry. Thus, the increase in industry emissions that would occur from new plants if the NSPS were not promulgated is overestimated. Finally, one commenter noted that new plants often replace old plants; these old plant emissions should be subtracted from the industry's emissions when calculating an increase in industry-wide emissions if the NSPS were not promulgated.

Because the technology that must be employed to meet other Clean Air Act requirements will reduce new source particulate emissions to insignificant levels and because of the bleak outlook for future growth in this industry, three of these commenters requested that the NSPS be withdrawn and that the industry be deleted from the NSPS priority list.

The EPA's estimates of the impacts of various regulatory alternatives must be seen as estimates made at a point in time with the best information at hand. In predicting the likelihood of new facilities in the industry, the EPA consulted the best sources available, including the U.S. Bureau of Mines, industry representatives, technical journals, and State agencies. Typically, these sources do not specify particular new plant developments in their forecasts because of various constraints. However, these sources do make various industry forecasts in terms of long-range demand, sources of supply, and growth in the industry. On this basis, the EPA developed models of new plants on which to base its predictions of the costs and environmental impacts of new standards.

Since the time the EPA first developed these predictions, the metallic mineral industry has experienced severe economic difficulties. Numerous plants have suspended or reduced operations, and some new plant construction has been postponed. Nonetheless, the EPA believes that, because of the central role the metallic mineral processing industry plays in the American economy, the long-term prospects for growth in the industry are good and the current difficulties experienced by industry are only temporary.

In predicting the environmental impacts of various regulatory alternatives, several methods could be used. The EPA could have chosen to estimate the emissions that would occur if the State standards were applied at new plants assuming that these emissions would be the maximum allowed by the States. There are several problems with this approach. State regulation of metallic mineral facilities was not consistent from State to State or even within a State as to type of facilities at a plant that might be required to meet State standards. Much of this difficulty arose from the application of the term "unit process" to plants when applying process weighted emission limitations. In addition, some affected facilities under the proposed standards might not be covered at some locations if State standards continued. On the other hand, the Agency's survey of the industry indicated that many plant facilities covered by State standards were doing better than State standards and that a percentage of the new plants might be expected to do likewise.

Alternately, the Agency could assume the average emission level measured at facilities that the EPA actually tested. There are also problems with this approach. The Agency could not perform an exhaustive test survey of all types of facilities in the industry to determine what the current emission levels are in the industry. Such a test program would not have been a wise use of tax dollars and would not have fulfilled the primary purpose of the EPA's test program. The EPA selects and tests well-designed and well-maintained types of control devices to determine the levels of performance. Some facilities that the EPA inspected, but did not test, were operating with control system designs, devices, or maintenance programs that were not best systems although they were meeting State standards. For example, some facilities are able to use dry cyclones to meet State standards. These control devices were not tested because they are not examples of best systems of continuous emission reduction.

Therefore, the Agency decided to use the so-called "worst-case" approach in calculating emission impacts of the various regulatory alternatives. This approach assumes a baseline emission level equivalent to the emissions from a low-pressure drop scrubber operating under worst-case conditions. The EPA agrees that this approach will not predict the true impact of the proposed standard at each and every new plant that might be built. However, compared to the results of other predictive methods, the Agency feels this method gives a valid overall indication of the impact of the standard. Although the "worst-case" method will overestimate the impact at some facilities, it will not do so as greatly as using the maximum emissions allowed by the States as a basis for calculating the impacts. On the other hand, the "worst-case" approach presumes the use of wet scrubber that may provide better control than a dry cyclone. The "worst-case" approach also presumes coverage of all affected facilities at a plant by the State standards even though State standards may not consistently require control devices on all of these facilities. Uncontrolled emissions from these facilities could easily be higher than "worst-case" baseline emissions of 0.15 gr/dscf. Also, the EPA did not specifically enumerate the reconstruction of facilities at existing plants in estimating emission reductions. The "worst-case" approach used to calculate the environmental benefit of the standard also corresponds to the approach used to calculate the control cost of the standard.

Although the estimates of environmental impacts are approximations, they indicate significant emission reductions such that the NSPS will not result in unnecessary regulation as claimed by some commenters. Because of the expected long-term growth in the industry arising from the construction of new facilities and the reconstruction of existing facilities, this source category will remain listed as a significant source on the priority list for which standards of performance will be promulgated.

Test Methods and Monitoring

A number of commenters noted that no method is specified in the proposal for the determination of the opacity of process fugitive emissions or stated that Method 9, which is specified in the General Provisions, is not appropriate for this measurement. These commenters note that Method 9 was developed for reading opacity at stacks and that the diffuse nature of process fugitive emissions will render Method 9 readings highly variable and subjective. Further, the data used in setting the standard are inappropriately based on Method 9 results in that no procedures for measuring opacity of process fugitive emissions are provided in Method 9. The commenters recommended that the process fugitive emission standard be deleted until an appropriate method is developed.

As stated in the General Provisions (40 CFR 60.11), Method 9 is the method specified for the determination of opacity. The Agency agrees that Method 9, as written, does not provide sufficient guidance for the measurement of opacity levels from process fugitive sources. During the data collection in support of the metallic minerals processing regulation, observers trained in the use of Method 9 followed the guidelines of the method with some modifications in recording visible process fugitive emission data. Method 9 has been amended to incorporate these modifications, which explain in more detail how the opacity of visible process fugitive emissions is determined. The amendment emphasizes the correct positioning of observers and the location within the visible fugitive emissions where opacity reading are to be made.

Information Requirements Impacts

The reporting and recordkeeping requirements of the regulation are assessed in Standard Form 83 and supporting statement, which is included in the docket for public review. This documentation contains: (1) A description of the reporting and recordkeeping required by the regulation and the General Provisions, (2) the reasons for the requirements, and (3) an evaluation of the major alternatives considered (including the use of existing sources of information).

The General Provisions, 40 CFR 60.8, contain notification requirements that enable the Agency to keep abreast of facilities subject to the regulation and also contain requirements for the conduct and reporting of initial performance tests. In addition, the regulation requires semiannual reporting of the occasions when the measurements of scrubber liquid flow rate and the change in pressure across the scrubber differ from the readings of the most recent performance test by more than ±30 percent. Analysis of these reporting requirements indicates that they are both necessary and reasonable considering the savings in Agency time and resources required for effective enforcement.

The resources needed by the industry to maintain records and to collect, prepare, and use the reports for the first 2 years would be about 5.5 person-years per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 2 years would be about 0.74 person-years per year.

Information collection requirements associated with this regulation (40 CFR 60.7, 40 CFR 60.8, and 40 CFR 60.384) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2060–0016.

Regulatory Flexibility Analysis

During the development of the background information document for this standard, the economic impacts for representative small model plants were examined, and there were no significant impacts on these plants.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for certain inter-Agency review materials, will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is February 21, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (August 24, 1982).

As prescribed by section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. For the purposes of the economic impact assessment, three regulatory alternatives were identified. Regulatory Alternatives 1, 2, and 3 are based on the performance of low-, medium-, and high-energy scrubbers, respectively, under worst-case operating conditions. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT. The economic impact assessment is included in the background information document for the proposed standards.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to the EPA and any EPA response to those comments are included in docket number A-81-03. The docket is available for public inspection at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper pr oducts industry, Petroleum, Phosphate, Sewage disposal, Waste treatment and disposal, Zinc, Tires, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators.

Dated: February 9, 1984.

Alvin L. Alm,

Acting Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new subpart and by adding paragraph 2.3.3 to Method 9, Appendix A as follows:

1. A new Subpart LL is added as follows:

Subpart LL—Standards of Performance for Metallic Mineral Processing Plants

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart LL—Standards of Performance for Metallic Mineral Processing plants

§ 60.380 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in metallic mineral processing plants: Each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart.

(b) An affected facility under paragraph (a) of this section that commences construction or modification after August 24, 1982, is subject to the requirements of this part.

§ 60.381 Definitions.

All terms used in this subpart, but not specifically defined in this section, shall have the meaning given them in the Act and in Subpart A of this part.

"Bucket elevator" means a conveying device for metallic minerals consisting of a head and foot assembly that supports and drives an endless single or double strand chain or belt to which buckets are attached.

"Capture system" means the equipment used to capture and transport particulate matter generated by one or more affected facilities to a control device.

"Control device" means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one or more affected facilities at a metallic mineral processing plant.

"Conveyor belt transfer point" means a point in the conveying operation where the metallic mineral or metallic mineral concentrate is transferred to or from a conveyor belt except where the metallic mineral is being transferred to a stockpile.

"Crusher" means a machine used to crush any metallic mineral and includes feeders or conveyors located immediately below the crushing surfaces. Crushers include, but are not limited to, the following types: jaw, gyratory, cone, and hammermill.

"Enclosed storage area" means any area covered by a roof under which metallic minerals are stored prior to further processing or loading.

"Metallic mineral concentrate" means a material containing metallic compounds in concentrations higher than naturally occurring in ore but requiring additional processing if pure metal is to be isolated. A metallic mineral concentrate contains at least one of the following metals in any of its oxidation states and at a concentration that contributes to the concentrate's commercial value: Aluminum, copper, gold, iron, lead, molybdenum, silver, titanium, tungsten, uranium, zinc, and zirconium. This definition shall not be construed as requiring that material containing metallic compounds be refined to a pure metal in order for the material to be considered a metallic mineral concentrate to be covered by the standards.

"Metallic mineral processing plant" means any combination of equipment that produces metallic mineral concentrates from ore. Metallic mineral processing commences with the mining of ore and includes all operations either up to and including the loading of wet or dry concentrates or solutions of metallic minerals for transfer to facilities at non-adjacent locations that will subsequently process metallic concentrates into purified metals (or other products), or up to and including all material transfer and storage operations that precede the operations that produce refined metals (or other products) from metallic mineral concentrates at facilities adjacent to the metallic mineral processing plant. This definition shall not be construed as requiring that mining of ore be conducted in order for the combination of equipment to be considered a metallic mineral processing plant. (See also the definition of "metallic mineral concentrate.")

"Process fugitive emissions" means particulate matter emissions from an affected facility that are not collected by a capture system.

"Product packaging station" means the equipment used to fill containers with metallic compounds or metallic mineral concentrates.

"Railcar loading station" means that portion of a metallic mineral processing plant where metallic minerals or metallic mineral concentrates are loaded by a conveying system into railcars.

"Railcar unloading station" means that portion of a metallic mineral processing plant where metallic ore is unloaded from a railcar into a hopper, screen, or crusher.

"Screen" means a device for separating material according to size by passing undersize material through one or more mesh surfaces (screens) in series and retaining oversize material on the mesh surfaces (screens).

"Stack emissions" means the particulate matter captured and released to the atmosphere through a stack, chimney, or flue.

"Storage bin" means a facility for storage (including surge bins and hoppers) or metallic minerals prior to further processing or loading.

"Surface moisture" means water that is not chemically bound to a metallic mineral or metallic mineral concentrate.

"Thermal dryer" means a unit in which the surface moisture content of a metallic mineral or a metallic mineral concentrate is reduced by direct or indirect contact with a heated gas stream.

"Truck loading station" means that portion of a metallic mineral processing plant where metallic minerals or metallic mineral concentrates are loaded by a conveying system into trucks.

"Truck unloading station" means that portion of a metallic mineral processing plant where metallic ore is unloaded from a truck into a hopper, screen, or crusher.

§ 60.382 Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from an affected facility any stack emissions that:

(1) Contain particulate matter in excess of 0.05 grams per dry standard cubic meter.

(2) Exhibit greater than 7 percent opacity, unless the stack emissions are discharged from an affected facility using a wet scrubbing emission control device.

(b) On and after the sixtieth day after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from an affected facility any process fugitive emissions that exhibit greater than 10 percent opacity.

§ 60.383 Reconstruction.

(a) The cost of replacement of ore-contact surfaces on processing equipment shall not be considered in calculating either the "fixed capital cost of the new components" or the "fixed capital cost that would be required to construct a comparable new facility" under § 60.15. Ore-contact surfaces are: Crushing surfaces; screen meshes, bars, and plates; conveyor belts; elevator buckets; and pan feeders.

(b) Under § 60.15, the "fixed capital cost of the new components" includes the fixed capital cost of all depreciable components (except components specified in paragraph (a) of this section) that are or will be replaced pursuant to all continuous programs of component replacement commenced within any 2-year period following August 24, 1982.

§ 60.384 Monitoring of operations.

(a) The owner or operator subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the change in pressure of the gas stream through the scrubber for any affected facility using a wet scrubbing emission control device. The monitoring device must be certified by the manufacturer to be accurate within ± 250 pascals (± 1 inch water) gauge pressure and must be calibrated on an annual basis in accordance with manufacturer's instructions.

(b) The owner or operator subject to the provisions of this subpart shall install, calibrate, maintain, and operate a monitoring device for the continuous measurement of the scrubbing liquid flow rate to a wet scrubber for any affected facility using any type of wet scrubbing emission control device. The monitoring device must be certified by the manufacturer to be accurate within ± 5 percent of design scrubbing liquid flow rate and must be calibrated on at least an annual basis in accordance with manufacturer's instructions.

§ 60.385 Recordkeeping and reporting requirements.

(a) The owner or operator subject to the provisions of this subpart shall conduct a performance test and submit to the Administrator a written report of the results of the test as specified in § 60.8(a).

(b) During the initial performance test of a wet scrubber, and at least weekly thereafter, the owner or operator shall record the measurements of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flow rate.

(c) After the initial performance test of a wet scrubber, the owner or operator shall submit semiannual reports to the Administrator of occurrences when the measurements of the scrubber pressure loss (or gain) and liquid flow rate differ by more than ±30 percent from those measurements recorded during the most recent performance test.

(d) The reports required under paragraph (c) shall be postmarked within 30 days following the end of the second and fourth calendar quarters.

(e) The requirements of this subsection remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with requirements established by the State.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under the control number 2060-0016.)

§ 60.386 Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with the standards prescribed under § 60.382 as follows:

(1) Method 5 or Method 17 for concentration of particulate matter and associated moisture content;

(2) Method 1 for sample and velocity traverses;

(3) Method 2 for velocity and volumetric flow rate;

(4) Method 3 for gas analysis;

(5) Method 9 for measuring opacity from stack emissions and process fugitive emissions.

(b) For method 5, the following stipulations shall apply:

(1) The sampling probe and filter holder may be operated without heaters if the gas stream being sampled is at ambient temperature;

(2) For gas streams above ambient temperature, the sampling train shall be operated with a probe and filter temperature slightly above the effluent temperature (up to a maximum filter temperature of 121°C (250°F)) in order to prevent water condensation on the filter;

(3) The minimum sample volume shall be 1.7 dscm (60 dscf).

(c) For method 9, the following stipulation shall apply: the observer shall read opacity only when emissions are clearly identified as emanating solely from the affected facility being observed.

(Sec. 114, Clean Air Act, as amended (42 U.S.C. 7414))

2. Appendix A is amended by adding paragraph 2.3.3 in Method 9 as follows:

Appendix A—Reference Methods

* * * * *

Method 9—Visual Determination of the Opacity of Emissions From Stationary Sources

* * * * *

2. *Procedures*

* * * * *

2.3 * * *

2.3.3 Fugitive emissions. The guidelines for positioning of the observer in relation to the stack found in paragraph 2.1 can be applied to determination of visible opacity from fugitive emission sources. That is, the observer should have a clear view of the source and the potential emissions with the sun or other light source at his back. A position at least 15 feet from the source, but permitting a clear, unobstructed view of the source, is recommended. To the extent feasible, the line of sight should be approximately perpendicular to the flow of potential fugitive emissions, and, also, to the longer axis to the potential fugitive emissions. Readings of opacity should be made for the point(s) of highest opacity within the visible fugitive emission. The highest opacity usually occurs immediately above or immediately downwind of the source, so observers should concentrate on the area(s) close to the source.

* * * * *

[FR Doc. 84-4508 Filed 2-17-84; 8:45 am]

BILLING CODE 6560-26-M