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

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

Section 4120.3–3 Range Improvement Permits

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

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

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

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

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

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

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

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

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

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

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

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

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