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

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

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

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

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

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

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

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

Subpart 4140—Prohibited Acts

Section 4140.1 Prohibited Acts on Public Lands

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

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

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

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

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