

FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK
WO AMENDMENT 2209.13-92-1
EFFECTIVE 8/3/92

16 - CHANGES IN GRAZING PERMITS. Changes in grazing permits may be made for the following reasons:

1. To modify permits to achieve proper forage resource use by livestock.
2. To comply with Forest Plans, laws, regulations, and policy.
3. To suspend or cancel grazing permits as needed to insure permittee compliance with provisions and requirements of permit.

16.1 - Modification of Grazing Permit. Grazing permits may be modified at any time during the term period to:

1. Respond to permittee request.
2. Increase or decrease livestock numbers or period of use.
3. Change kind or class of livestock or area to be grazed.
4. Change or include Allotment Management Plan.
5. Modify other terms and conditions of the permit, including provision for construction or reconstruction, and/or maintenance of Range Improvements.
6. Comply with laws, regulations, executive orders, or other resource needs.
7. Devote lands to another public purpose when no change in permitted numbers or season of use are anticipated.

Modifications to existing permits should be signed by the permittee, the same as the original permits, if the modifications change permit term or conditions. However, necessary modifications can be made even though the permittee is not in agreement with the change. Ordinarily, do not schedule more than a 20 percent reduction in numbers or season in any 1 year to give the permittee ample time to make changes in their livestock operation.

16.11 - Modification After Issuance. Modify existing grazing permits with term status to make needed changes. The permittee should sign the modifications if the modifications changed clause provisions. However, as outlined in FSM 2231.6,

modification may be made in accordance with 36 CFR 222 even if the permittee does not agree with the change.

Permit modification for new and/or revised allotment management plans and construction of Range Improvements by permittees (FSM 2241.31) are not significant and may be made by letter.

Letter modification shall make reference to the permits being modified and should provide the permittee with the opportunity to accept the modification. The following statement may be used:

This modification is hereby made part of your grazing permit number _____ issued _____, 19__ by _____, Forest Supervisor. It should be attached to your permit as pages _____ through _____.

A copy of the letter should be furnished to the permittee and attached to each copy of the permit.

When a significant modification occurs, such as changing the basic permit clauses, include a statement in the letter of transmittal and Part I of the permit indicating:

This permit supersedes and cancels the grazing permit number _____, issued _____, 19__ by _____, Forest Supervisor.

16.12 - Modifications That Result in Increased Numbers or Period of Use. The number of livestock or period of use under a grazing permit may be increased to:

1. Restore previous reductions made for resource improvement purposes. Initial distribution of increased capacity resulting from previous resource improvement reductions shall be among current permittees on that allotment if the reduction occurred within the previous 10 years.

2. Increased grazing capacity resulting from improvement work or management improvement involving direct permittee participation shall be available to the permittee in relation to the extent of such participation.

16.13 - Modifications That Result in Reduced Numbers or Period of Use. Forest Supervisors may modify numbers permitted, periods of use or both as determined necessary because of resource conditions. Except in emergency, any such modification not agreed to by the permittee may be made only after the permittee has received written notification at least 1 full year in advance of the modification becoming effective. Such notice shall be by certified or registered letter (sec. 16.1).

If the permittee and the Forest Supervisor agree to a program for making changes in a permit, document such agreement. The 1 year advance notice may be waived by the provisions of the agreement.

Before formally announcing any required permit change, thoroughly discuss the need for such action with the permittee. Give the permittee an opportunity to inspect the range with local Forest officers. Reports of studies and other pertinent records on which range conditions were judged shall be made available for review by the permittee or the authorized representative. The Supervisor must use every reasonable method to assure that the permittee is fully informed concerning the action to be taken.

16.14 - Permittee Requested Modifications. Modifications of grazing permits, to include numbers, seasons of use, kind and class of livestock allowed on the allotment are permissible providing they meet the land management objectives prescribed for lands within the grazing allotment.

Record requests for such modification to show the modification was at the request of the permittee.

16.15 - Other Modifications. Grazing permits may be modified to change the kind or class of livestock, area to be grazed, the allotment management plan or to comply with the law, regulations, executive order or other resource needs.

In changes involving kind or class of livestock, a change in the numbers permitted to graze probably will be necessary. Make these changes in accordance with sections 16.12 or 16.13. Usually negotiate changes with the permittee. Concurrence is desirable, but not mandatory before modifying the permit.

Make any modifications necessary to change allotted range or allotment management plans to comply with laws, regulations, executive orders or other resource needs as required, but only after consulting with the permittee and providing that the permittee has opportunity to comment on the nature of the proposed change.

16.2 - Suspension or Cancellation of Grazing Permits. Grazing permits may be suspended or cancelled, in whole or in part, for various reasons. Circumstances and prevailing conditions must be considered in deciding the kind and extent of appropriate action.

Suspend a permit if a temporary change is necessary to accomplish a specific resource purpose. Suspensions may also be made as a penalty for violating terms and conditions of a grazing permit. Suspension of a grazing permit should be considered before cancellation. Small percentage suspensions, lasting 1 to a maximum of 5 years, are often effective in obtaining compliance with the grazing permit and allotment management plan. If violation persists, cancel the suspended portion of the permit. Do not issue a temporary permit to the permittee in lieu of the suspended term permit.

Approach permit cancellation with discretion. Cancellation applies if a permanent change in the permit is necessary. Total cancellation is seldom justified in first offense cases unless violation is flagrant and willful.

A permit should not be suspended or cancelled until the permittee has been notified in writing of the violation, and given an opportunity to "show cause" why the action should not be taken.

In addition to cancellation or suspension action, require the permittee to pay the unauthorized use rate for the additional use if more livestock than permitted were grazed, or livestock grazed longer than the permitted season. Bill for such use according to instructions in FSM 2238.

See FSM 2231.62 and 2231.62f concerning permit action resulting from information given on a permit application.

16.21 - For Nonuse Without Approval. Permits may be canceled in whole or in part if the term permit holder fails to use range without obtaining approval for nonuse (FSM 2231.7).

16.22 - For Failure to Conform With Base Property Requirements. When a permittee disposes of part or all of the base property on which the permit is based, the Forest Supervisor must provide written notice that the permittee has 1 year to acquire sufficient replacement base property. In the event of sale of base property or livestock during this 1 year period, only the number of livestock for which the permittee qualifies will be eligible for waiver action. If, after the lapse of a 1 year period, the permittee fails to fully meet qualification requirements, cancel the permit.

16.23 - For Violation of Terms and Conditions of Grazing Permits.

Carefully evaluate circumstances of each violation to determine whether suspension or cancellation is justified. Do not suspend or cancel a permit before notifying the permittee in writing and giving the permittee a chance to respond (2231.62).

Suspension or cancellation is warranted if permittee livestock graze (1) outside the permitted grazing season, (2) on lands outside the permitted area, (3) in greater numbers than permitted, or (4) livestock are under control of the permittee, but are owned by someone else, or (5) the permittee is not following the approved allotment management plan.

In addition to suspension or cancellation action, require the permittee to pay fees for the additional use if more livestock than permitted were grazed or livestock grazed longer than the permitted season. Bill for such use in accordance with instructions in FSM 2238.

16.24 - To Devote Lands to Other Public Purpose. Grazing permits on lands that are to be devoted to another public purpose may be canceled in whole or in part. Except in an emergency, do not cancel a permit without a 2-year notification (36 CFR 222.4(4)(1)). Provide such notification in all cases where reductions in permitted number and/or season of use is anticipated. Changes which do not

require reduction in permitted number or season of use are considered permit modifications (FSM 2231.61), and do not require the 2-year notification.

This provision applies to lands included in land exchanges or other disposal methods. Limit cancellation to those cases where the lands will be devoted to purposes which will exclude permitted livestock grazing use.

See chapter 70 concerning compensation for permittee interest in range improvements.

16.25 - For Other Action of the Permittee. Grazing permits may be canceled if the permittee fails to do what is required to obtain or maintain a valid permit.

Examples of permittee noncompliance include:

1. Permittee refuses to accept modifications of the terms and conditions of existing permits to comply with the laws, regulations, or instructions of a Forest Officer.
2. Permittee refuses or fails to comply with eligibility or qualifications requirements.
3. When full extent of approved personal convenience nonuse has been exhausted, the permittee does not stock the allotted range. The permit should be canceled to the extent of failure to stock the range.
4. The permittee fails to pay grazing fees within established time limits, or fails to pay a bill for collection assessed for violation of terms and conditions of the grazing permit.

Do not take final action until the permittee has had an opportunity to explain actions or inaction.

16.26 - For Making False Statement. If at any time after issuing a grazing permit, it is discovered that it was secured or maintained by deliberate misrepresentation or suppression of material facts, the permit may be suspended or cancelled.

When a term grazing permit was issued as a result of purchase of base property or livestock later found to be fraudulent or defective, and the new permittee had no knowledge of fraud or defect, a later discovery of defect shall not be cause for suspension or cancellation.

If at any time, a Forest Supervisor has reason to believe the information currently on record, in the form of grazing applications or amendments thereto, does not reflect the actual situation, it is appropriate to ask the permittee to submit an updated application or other information.

16.27 - For Conviction of Failure to Comply With Federal, State, or Local Laws. A grazing permit may be suspended or cancelled in whole or in part if the permittee is convicted of failure to comply with Federal laws or regulations or State or local laws relating to livestock control and to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit.

16.28 - To Conform With Upper or Special Limits. Notify the permittee in writing concerning the period of time allowed to adjust the livestock operation to conform with changes in the upper limit. See FSM 2231.621.0.

16.29 - Cancellation of Grazing Agreements or Association Permits for Noncompliance With Title VI of Civil Rights Act. Term grazing association permits or grazing agreements may be canceled for noncompliance with Title VI of the Civil Rights Act of 1964 and Department of Agriculture regulations promulgated thereunder.

16.3 - Changes Which Might Affect Lands Administered by Other Federal and State Agencies. If needed changes on National Forest System lands may affect grazing on ranges administered by the Bureau of Land Management, the Forest Supervisor shall consult the BLM representative about what is being planned or considered. Notice should be given well in advance of proposed changes. The representative of the Bureau of Land Management should be asked to notify the Forest Supervisor of similar prospective changes on lands the BLM administers. The same instruction applies in principle to lands administered by other Federal and State agencies.

16.4 - Status of Grazing Permits During Administrative Reviews. Procedures for Administrative Review of decisions made concerning grazing are covered in FSM 1570 and 36 CFR 211.18.

Each request for stay shall be considered on its merits. For example, if a stay would subject the forage and soil resources to unacceptable damage, it should generally be denied.

However, stays are usually granted in cases involving suspension or cancellations if permit violations are involved.

17 - NONUSE OF GRAZING PERMITS WITH TERM STATUS. General direction for nonuse is in FSM 2231.7. Specifics follow.

17.1 - Personal Convenience of Permittee. Application for nonuse of grazing permits with term status should be made in writing. Nonuse for personal convenience of term grazing permit holders may be approved on a year-to-year basis. See FSM 2204 for delegations. Do not automatically approve nonuse for personal convenience.

If nonuse is approved for a maximum period, and the permit is then used for 1 year, a subsequent application for additional nonuse for personal convenience shall not be approved unless circumstances are unusual.

Requests for nonuse must be submitted sufficiently in advance of the grazing season to allow the Forest Supervisor and District Ranger time to consider other use alternatives. Failure to place livestock on NFS lands without approved nonuse may result in suspension or cancellation of the permit to the extent of number of animals not grazed (sec. 16.21).

Approve the first year of partial or total nonuse by letter. Inform the permittee in the letter that nonuse must be approved annually. Include in the letter the unit's policy on the number of consecutive seasons of nonuse which may be taken, if approved. In this letter, inform the permittee of the requirement concerning sale of base property or permitted livestock if permit waivers are to be recognized.

For all but the first and last year of nonuse, show approved partial nonuse in the bill for collection. This serves as notice of approval. Approve total nonuse by letter.

Approval for the last successive year of either partial or total nonuse must be confirmed by letter with a notice that the permittee must run the livestock the next year to retain the permit.

The policy for granting nonuse is more liberal for permit holders who enter the Armed Forces. They may be granted nonuse during the period of first enlistment or obligated active duty. Following termination of first enlistment or obligated active duty, act on an application for nonuse in accordance with the regular policy.

17.2 - For Resource Protection or Development. Regional Foresters shall establish standards for nonuse for protection and development of the range resources.

Forest Supervisors may enter into agreements with term permittees to authorize nonuse for protection and development of the resource. The documents must specify the maximum period of nonuse and become a part of the term permit.

Total or partial nonuse for resource improvement shall not exceed 5 years except when long-term development programs requiring longer periods have been agreed upon. For such programs, nonuse may be approved to include the development and evaluation period, but shall not extend beyond the term of the grazing permit. With renewal of the grazing permit, additional nonuse can be approved. Nonuse periods may be extended when it is judged that the resources will continue to benefit from further nonuse, but shall not be approved to forestall making needed reductions in numbers permitted to graze because of resource condition.

See section 18 concerning policy of waiving a grazing permit when nonuse has been approved for resource protection and development purposes.

Nonuse agreements shall not be considered where it is clearly evident that the allotment has been stocked beyond safe capacity and permitted grazing needs to be changed.

17.3 - For Range Research. Occasionally, a fact-finding institution or organization uses an allotment as a study area and grazes it with livestock not owned by the permittee. This may be done with consent of the grazing permit holder under agreement with the Forest Service and other involved parties and under guidelines established by the Regional Forester.

Term permits in nonuse for research purposes may be waived in the same manner as permits that are in nonuse status for range protection or development.

17.4 - For Changes in Kind or Class of Livestock Grazed. Modify the existing term permit to allow for trial changes in kind or class of livestock to be grazed. Estimates of grazing capacities should be conservative and subject to adjustment during the trial. Do not approve nonuse in conjunction with requests for changes in kind or class of livestock to be grazed.

18 - WAIVER AND REISSUANCE OF GRAZING PERMITS WITH TERM STATUS BECAUSE OF CHANGE IN OWNERSHIP. General direction for waiver and reissuance of grazing permits with term status is in FSM 2231.8.

18.1 - Transactions With Permit Waiver.

18.11 - Sales With Waiver. Both the seller and the prospective purchaser of permitted livestock and/or base property shall receive all available information concerning the status or probable status of the permit. Before confirming a waiver and issuing a permit, the District Ranger or Forest Supervisor shall provide the seller and purchaser with a thorough explanation of the requirements for approval. The seller and purchaser should be told about range conditions including estimated grazing capacity and plans for foreseeable modifications or management requirements. The prospective purchaser must understand clearly that the permit, if issued, would be subject to any or all of the following:

1. Modifications previously planned.
2. Changes that planned range examinations might show are necessary.
3. Planned changes in grazing management systems.
4. Land management planning direction and requirements of the allotment management plan.

In cases of a sale consummated before the Forest Supervisor receives notification, the purchaser must be provided the above information before the Forest Supervisor issues the permit.

If reliable data about grazing capacity are not available, but the Forest Supervisor has reason to doubt the ability of the range to carry the full permit number, both the purchaser and the seller shall be informed in writing. If the seller or the purchaser requests the Supervisor's best estimate of probable extent of future changes, the Forest Supervisor will give such an estimate in writing. However, this estimate should include a clear statement that it is a tentative estimate and is subject to revision when more reliable information is obtained.

The Forest Supervisor shall determine whether the prospective purchaser meets base property ownership requirements. In addition, the Forest Supervisor must determine whether, and to what extent, the purchaser holds or has interest in other National Forest System grazing permits to assure compliance to upper limit restrictions (sec. 12.3).

18.12 - Sales Within Family. Minor children who purchase or otherwise acquire base property or permitted livestock from their father or mother may be issued a permit under the provisions described under section 12.13. To qualify, minor children must own both base property and livestock.

18.13 - Contracts to Purchase With Waiver. Issuance of permit in connection with contract to purchase base property or permitted livestock may be allowed as with a deed.

18.14 - Inheritance. Term grazing permits may be issued in connection with inheritance of base property or permitted livestock. Recognize such permits in the same manner as term grazing permits issued because of sale and purchase of base property or permitted livestock.

The Forest Supervisor need not require strict compliance with qualification requirements for up to 3 years allowed for settlement of the estate. After 3 years time for settlement, an estate will be required to meet fully all qualification requirements.

18.15 - Partnership Agreements. Holders of term grazing permits may pool their interests and form partnerships within upper limit restrictions. The holder of a term permit may enter into partnership with a person who is not a permittee. Formation of such a partnership will require issuance of a new permit. The partnership must own both base property and livestock. Formation and documentation of partnerships must be in accordance with individual state regulations.

18.16 - Division of Interests. Partnership or corporation permits may be dissolved by execution of a waiver. Individual term grazing permits may then be issued to each share-holder in proportion to the share of each in the partnership or corporation permit. Each individual permittee must meet ownership requirements for both base property and livestock.

18.17 - Changes in Ownership of Corporations and Companies. Transactions involving transfer of shares of stock are subject to upper limit restrictions as described in section 12.3.

When change in ownership involves actual sale or purchase of permitted livestock and/or base property, handle the transaction as a sale with waiver.

Reduce to the upper limit any corporation or individual term grazing permits that exceed upper or special limit restrictions because of interlocking ownership of shares of stock.

18.18 - Requirements and Conditions for Approval. When a document that purports to assign or transfer a grazing permit is received, write a letter to the seller, purchaser, lending agency, or other agent stating that:

Documents offered as evidence of the purchase of livestock or base property are unacceptable to the extent they purport to assign or transfer a grazing permit. The United States does not consider purported assignments of grazing permits to be of any legal consequence so far as the United States is concerned.

The proposed transaction must conform to the Regulations and all instructions thereunder. The Forest Supervisor must have satisfactory evidence that the transaction was in good faith before issuance of the permit on account of sale of permitted livestock or base property is considered. Applicant must present at least the following evidence:

1. A waiver of the grazing permit with term status to the United States on Form FS-2200-12, Waiver of Term Grazing Permit, signed by the current permittee.
2. A properly executed and recorded or notarized bill of sale, with canceled check or receipt to document sale of permitted livestock, and/or properly executed and recorded deed or contract to purchase base property. Multi-party transaction (3 or more entities) must be presented as a package.
3. Any additional documents needed as evidence of any purchase of the transaction.
4. Any information needed to show character, location, and amount of ranch property that is the basis for application for a grazing permit with term status and the relationship between such ranch property and livestock to be grazed.
5. Failure to comply with the following requirements, without prior approval of the Forest Supervisor, may result in disapproval of the grazing application or cancellation of the permit.
 - a. Within 30 days from date of execution of the waiver of term grazing permit, the purchaser must remove the purchased livestock from lands

owned by or under lease or permit to the vendor and take them to lands owned by or under lease or permit to the purchaser.

b. Livestock purchased in connection with the application for the issuance of a term grazing permit must be livestock that were permitted at the time of purchase. Permitted livestock are defined as:

(1) Those livestock grazing at the time of purchase.

(2) If the purchase took place outside the grazing season, those livestock which grazed under the term grazing permit during the season immediately preceding purchase, including any offspring retained for herd replacement. Yearlings grazed as a part of the normal livestock operation may be considered permitted livestock.

c. A new permittee may not desire to graze the purchased livestock on Forest Service administered range during the season following purchase. If so, the permittee must furnish the Forest Supervisor with valid reasons, such as the need for normal replacement, beef or lamb sales, culling, disease, or change in class of livestock.

d. The purchaser must actually use base property purchased in connection with issuance of a permit as base property during the year immediately following the purchase.

e. Within a 2-year period, livestock or base property purchased from a permittee in connection with issuance of a new permit must not reinvest in the original permittee or an agent, assignee, or anyone representing, or acting in concert with the original permittee in any capacity, except under foreclosure as provided for in section 18.3. Such action subjects the permit to cancellation.

f. Transactions involving transfer of base property or permitted livestock under contract to purchase, including deeds in escrow and mortgages of ranches and livestock, must be legitimate and the contract terms must be met progressively.

18.2 - Escrow Waivers. An escrow waiver is a document wherein a permittee who mortgages permitted livestock or base property waives all privileges to the United States except the privilege of continuing to graze livestock. Such waiver recognizes the mortgage holder as the lien holder. To be valid, originals of Form FS-2200-13, Escrow Waiver of Term Grazing Permit Privileges, must be filed in the Forest Supervisor's Office until released. The dates of placing the grazing permit in escrow on form 2200-13 and its release must be shown on Form 2200-8 or 2220-9, Paid Permit Card Record, Cattle and Horses or Sheep and Goats.

If Title III lands or National Forest lands are under a grazing agreement with a grazing association which issues permits to individual users, escrow waiver arrangements must be between the grazing association and the lender.

18.21 - Execution of Escrow Waiver. A Form 2200-13, Escrow Waiver of Term Grazing Permit Privileges may be executed in connection with the mortgage of land, livestock, or both if a lending agency or individual makes or discounts a loan. When the permittee has executed an escrow waiver in full and the original is filed with the Forest Supervisor, consider the permit or privileges as held in escrow. However, the permit is subject to the same administrative action as any other permit. During the period of escrow the permittee surrenders to the United States all privileges previously allowed except the privilege of continuing to graze livestock. Release the term grazing permit privileges from escrow upon receipt of proof of satisfaction of the mortgage or upon receipt of a written statement from the lending agency or individual that the escrow arrangement is no longer necessary.

It is desirable, before a loan is made to a National Forest grazing permittee, that the lending agency or individual ascertain from the Forest Supervisor the status of the term grazing permit and degree to which it is involved in any other transactions, waivers, and so forth.

Recognize only one escrow waiver against a grazing permit or specified portion of it at any one time. The Forest Supervisor shall recognize no other escrow waivers until release of any prior escrow waiver. Because of past actions, there may currently be more than one escrow waiver against a grazing permit or portion of a permit. If so, allow the multiple escrow waivers to continue to expiration. New escrow waivers must be in compliance with current instructions.

An escrow waiver may involve two parties if the second party is a Federal Government lending agency. Consider the second party a preferred applicant only after the first party is satisfied. Procedures for escrow waivers are in accordance with the Memorandum of Understanding (MOU) between the Department of Agriculture and the Farm Credit Administration, dated February 10, 1938 (sec. 18.32, ex. 01).

As a courtesy, the Forest Supervisor shall notify all lenders on the escrow in any case when, for any reason, it becomes necessary to reissue, discontinue, modify, cancel or suspend in whole or in part, a term grazing permit for which a permittee has executed an escrow waiver in connection with a loan. The Forest Supervisor shall notify lending agencies of cancellations or suspensions for noncompliance of permit requirements; however, it is not necessary to delay making such a change.

18.3 - Foreclosures in Connection With Grazing Permits.

18.31 - Foreclosure With Waiver Of Term Grazing Permit. A mortgagee at a forced sale who presents the Forest Supervisor a waiver of the grazing permit with term status on form 2200-12, Waiver of Term Grazing Permit, signed by the mortgagor, shall have use of the permit for one full grazing season after assuming control of the

livestock operation, regardless of the status of the mortgagee's other qualifications. Thereafter, the mortgagee must qualify fully in order to retain the permit.

18.32 - Foreclosure With Escrow Waiver. Procedures for all escrow waivers conform to the Memorandum of Understanding between the Department of Agriculture and the Farm Credit Administration dated February 10, 1938. A copy of that Memorandum of Understanding follows as exhibit 01. The word "preference" as used in exhibit 01 has the same meaning as term grazing permit with term status under present instructions. Form 2200-13, Escrow Waiver of Term Grazing Permit Privileges currently replaces Special Form 763(a). FSM 2200 contains the current direction for range management and replaces the National Forest Grazing Manual.

Cited in *Burkington v. Sec. of U.S. Dept. of Agriculture*,
No. 09-15893 archived on May 28, 2010

18.32 - Exhibit 01

THIS MEMORANDUM of understanding between the Secretary of Agriculture and the Governor of the Farm Credit Administration, dated February 10, 1938, is for the purpose of encouraging a maximum degree of cooperation and stating the policy regarding the limitation of the use of the grazing preference by a permittee when he secures a loan from, or whose loan is discounted by a credit agency under the supervision of the Farm Credit Administration, pledging as security therefor his livestock or ranch unit, or both.

In amending the instructions under the caption "Renewal in Case of Purchase at Forced Sale," page 296 of the National Forest Manual, permitting the execution of a special waiver of the preference to the United States to be held in escrow, it is with the distinct understanding that there shall be no limitation, restriction, or impairment of the authority of the Forest Service to dispose of the escrowed preference as circumstances justify.

This memorandum is further based upon the following stipulations:

1. It is mutually understood, agreed, and recognized that (a) the grazing preference is not a property right, and (b) no vested right may or shall be created by reason of this cooperative agreement.
2. It is recognized by the Farm Credit Administration that such a limitation as is proposed herein meets the "reasonable assurance" of continued use required under the Federal Farm Loan Act as amended where loans are made to livestockmen who rely upon outside grazing for part of the year.
3. Before a loan is made to a national forest grazing permittee, the loan agency shall definitely ascertain from the local Forest Supervisor the status of the grazing preference and the degree, if any, to which it is involved in any other transaction, waiver, etc. The Forest Service will state specifically the status of the preference and the probable effect on that preference of applying the provisions of the regulations and currently approved policies.
4. If the permittee elects to qualify temporarily his personal privilege by the execution of a waiver in negotiating a loan on his livestock or land, or both, he may do so by surrendering to the United States on special Form 763(a), all preference heretofore carried by his permit, except the privilege of continuing to graze his stock on National Forest range under the provisions of his grazing permit, pending satisfaction of the mortgage or a written statement by the credit agency that it no longer relies upon the escrow arrangement. When the waiver, thus executed on such a special form provided for the purpose, has been filed with the Forest Supervisor, no waiver subsequently presented will be recognized.

18.32 - Exhibit 01--Continued

5. If for any reason it should become necessary to discontinue, in whole or in part, further use of the range by a permittee-borrower, through his noncompliance with the regulations or otherwise, the matter will be discussed with the loan agency and at least one year allowed for possible adjustment before the stock are removed.

6. Should it become necessary for a Federal loan agency to liquidate a loan, in connection with which a preference has been waived to the government, the Forest Service will, subject to its regulations and general administrative policy, recognize the loan agency as the logical successor to the preference, and will accord the loan agency the same consideration with respect to cuts, renewals, and range allotment as would customarily be accorded individual local permittees, recognizing, however, that after obtaining possession of the commensurate ranch properties there may be some instances when disposition may require a longer period than to the beginning of the second season. The credit agency of the Farm Credit Administration mentioned in Form 763(a) or receiver or liquidator appointed under foreclosure of its mortgage may qualify for an active permit if any agency of the Farm Credit Administration owns or controls the commensurate property or the livestock that will be run on the Forest lands by virtue of this permit. It is recognized that the maximum limit allowed a permittee through the acquirement of mortgaged commensurate ranch properties will not be applicable to the accumulation of grazing preferences by a Federal Credit Agency where such accumulation is only incidental to the liquidation of mortgage loans through foreclosure or otherwise.

7. Questions pertaining to the handling of permittee-borrower cases, not specifically provided for in this agreement, will be governed by the regulations and instructions of the Secretary of Agriculture, as set forth in the National Forest Grazing Manual, and by currently approved policies.

8. This agreement shall continue in full force and effect for an indefinite period unless terminated by written notice by either party to the other. Provided, however, that it is understood and agreed that any renewal of a term or annual permit shall be in the discretion of the Forest Service and made subject to the current policy with respect to reductions and other conditions deemed necessary for the proper administration of the range on the part of the Forest Service; and provided further that in case the agreement is terminated, it is understood and agreed that any outstanding loans in connection with which the grazing preference has been escrowed with the United States will continue to be covered, and the arrangement shall continue in effect until the mortgage is satisfied or the lending agency formally indicates that it no longer relies upon the escrow arrangement.

18.32 - Exhibit 01--Continued

Approved by the Department of Agriculture on the day and date first above written and by the Farm Credit Administration this 15th day of February, 1938.

The United States
Department of Agriculture

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture,
No. 09-15893 archived on May 28, 2010

By /s/ H. A. Wallace, Secretary

The Farm Credit Administration

By /s/ F.F. Hill, Governor

18.33 - Foreclosure Without Escrow Waiver. An entity which acquires livestock or base property through foreclosure proceedings without a escrow waiver shall receive no special consideration over an ordinary purchaser.

Repossession by the seller through legal foreclosure is not considered a sale. Consequently, do not apply the provision that a purchaser of livestock or base property purchased in connection with issuance of a term grazing permit must not sell livestock or property back to the vendor within a 2-year period.

18.4 - Transactions Without Permit Waiver. A buyer who purchases ranch property or permitted livestock from a term permit holder who does not execute a waiver shall receive no special consideration over other applicants.

19 - GENERAL ADMINISTRATION OF GRAZING PERMITS. Administration of grazing and the permits involved consists mainly of communication between the Forest Officer in charge, the permittees, and other resource personnel.

Communication starts with the application for grazing permit. An applicant must be made fully aware of the terms and conditions of the application and the permit. This is best accomplished through personal communications to assure understanding. The permittee must also understand the Allotment Management Plan (AMP) and the annual operating plan (FSM 2214.2). Full understanding of responsibilities and authorities of the Service and the permittee is essential.

The AMP specifies objectives, problems involved on the allotment, and defines the actions and monitoring and evaluation responsibilities of the permittee and the Service. Annual operating plans give the specifics for the ensuing season and must be based on the AMP. Annual plans should specify dates and areas of use, utilization standards, maintenance and construction responsibilities for the year. The annual operating plan should be based on current discussions with the permittee and developed jointly, not solely by the Forest Officer. At the periodic discussions with the permittee, highlight important permit clauses or points concerning the billing of fees. Coordinate with other resources to ensure that the objectives and actions are compatible. Consult forest plans and applicable environmental assessment documents on an ongoing basis.

Forest Officers, preferably in company with permittees, must monitor the grazing use of the allotment. Permittees must be notified in advance that allowable use is being reached or will be reached by a specified or estimated date. While the objective is for permittees to recognize this themselves and move livestock before allowable use is reached, the Forest Officer must not abdicate final responsibility.

Notices of any problems or violations and any necessary action shall be by personal communication, if at all possible. A personal communication should be confirmed in writing. Important discussions should be documented by letter to the permittee and filed. The administrator must know what is happening on the allotment.

Follow known violations with communication and appropriate action. Small suspensions of the grazing permit can be used effectively to correct permit violations. In the case of repeated violations, take cancellation action (sec. 16). Administer grazing permits fairly and firmly for positive relations and permittee compliance.

*Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture,
No. 09-15893 archived on May 28, 2010*