FOREST SERVICE HANDBOOK
NORTHERN REGION (REGION 1)
MISSOULA, MT

FSH 2209.13 – GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 10 – PERMITS WITH TERM STATUS

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

Interim Directive No.: 2209.13-2009-1

Effective Date: March 06, 2009

Duration: This interim directive expires on 09/06/2010.

Approved: THOMAS L. TIDWELL
Regional Forester

Date Approved: 03/06/2009

Posting Instructions: Interim directives are numbered consecutively by Handbook number and calendar year. Post by document at the end of the chapter. Retain this transmittal as the first page(s) of this document. The last interim directive was 2209.13-2007-8 to chapter 90 (expired 12/04/2008).

New Document	2209.13-2009-1	74 Pages
Superseded Document(s) (Interim Directive Number and Effective Date)	id_2209.13-2007-1, 06/04/2007	71 Pages

Digest:

This Interim Directive (ID) reinstates, with minor corrections, direction previously issued in ID 2209.13-2007-1 including Memorandum of Understanding (MOU) with the Farm Credit Council, dated December 21, 1990, as an exhibit to section 18.6. In accordance with the Deputy Chief, National Forest System letter to Regional Foresters dated September 9, 2005 (file code 2200); field units who issued supplemental direction to the July 19, 2005, amendments and July 19, 2005, and August 16, 2005, interim directives must remove those supplements and may reinstate any supplemental direction that corresponds to the Washington Office amendments being reinstated.

12 – Clarifies determination of an entity in terms of eligibility and qualifications to hold a term grazing permit.

Digest—Continued:

12.21 – Further defines base property.

12.22 – Provides clarification regarding definition of permitted livestock, especially as it pertains to waivers based on sale of permitted during or following approved nonuse.

Adds clarification and consistency regarding the use of leased breeding sires (see sec. 31.24).

13.22 – Adds emphasis to guidance for grant process with regard to authorized officer consideration of applicants owning and operating a ranch as the sole source of livelihood.

13.31 – Clarifies appropriate situations whereby a forage reserve may be established.

15.1 – Clarifies appropriate length of time that an applicant may be considered to be a preferred applicant.

15.6 – Defines permit expiration in those instances where year-round grazing occurs on National Forest System Lands.

15.91 – Adds clarifying example regarding appropriate use of on-off provisions.

16.11 – Adds clarifying direction regarding modification of a term permit in a manner that will ensure consistency with appropriate National Environmental Policy Act (NEPA) based decisions.

16.21 – Moved from section 18.4, item 2, and clarified to provide added emphasis and to make it easier to locate and reference.

17.1 – Adds clarifying guidance regarding waiver of a term permit during or following a period of approved nonuse for permittee convenience.

17.2 – Adds clarifying guidance regarding waiver of a term permit during or following a period of approved nonuse for resource protection and development.

18.25 – Adds clarifying language to indicate that other legal entities besides corporations or partnerships may be established and may qualify to hold a term grazing permit.

18.28 – Provides guidance with regard to waivers of term permit privileges back to the government with no preferred applicant.

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18.5 – Much of the language formerly contained here with regard to waivers while in nonuse has been moved and referenced to sections 17.1 and 17.2.

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11 - GRAZING PERMITS WITH TERM STATUS

Grazing permits with term status, also known as "term grazing permits" authorize the use of National Forest System lands and lands under Forest Service control for commercial livestock production purposes. Objectives and policy for issuing grazing permits with term status are set forth in FSM 2230.2 and 2230.3.

In managing permitted livestock use over time, inevitable changes in the term grazing permit terms and conditions based on changes in laws, regulations, policies, Endangered Species Act (ESA) consultation requirements, and Land and Resource Management Plans (LRMP), as well as decisions from Federal Courts will result. In addition, analysis of monitoring results constantly provides information to the authorized officer regarding status of management in terms of meeting or moving toward established objectives and points out the need for the adjustment in livestock grazing to achieve the objectives. These types of changes to the grazing authorization can be made administratively through modification of the term grazing permit (sec. 16). Examples of actions that can be taken administratively through modification of the term grazing permit include annual adjustments of numbers and dates for grazing, class of livestock to be grazed, changes in grazing system or livestock numbers based on evaluation of monitoring results. These types of changes do not require analysis and disclosure through the National Environmental Policy Act (NEPA) process, but they may be appealable under provisions of Title 36, Code of Federal Regulations, section 251.81.

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If such changes are based on current- or previous-year monitoring results, part 2 clause 8(c) of the term grazing permit states the authorized officer may require the permittee to defer placing livestock on the allotment at the beginning of the use season or may require early removal if available forage has been consumed. In these two cases, the decision of the authorizing officer is not appealable.

11.1 - Term Grazing Permit as Privilege, Not Right

It is well settled in both statutory and case law that a term grazing permit represents a privilege, not a right, to use National Forest System lands and resources. Accordingly, the Forest Service is not required to pay compensation to the term permit holder if the privilege is discontinued, withdrawn, or reduced except in limited situations involving compensation for permittee's investment in rangeland improvements. See FSM 2240.

11.2 - Duration of Term Grazing Permit

Term grazing permits are generally issued for a term of 10 years unless: (a) the land is pending disposal; (b) the land will be devoted to another public purpose that precludes livestock grazing prior to the end of 10 years; or (c) it is in the best interest of sound land management to specify a shorter term.

11.3 - Permits with Multiple Allotments

The authorized officer may, in his or her discretion, issue one term grazing permit that lists multiple allotments in part 1 or issue multiple term grazing permits each of which lists only one allotment in part 1. Where the former practice is employed for reasons of administrative efficiency, the authorized officer shall still treat each listed allotment as a separate authorization.

Refer to section 15.42 regarding permit actions taken when more than one allotment is shown on part 1 of the term grazing permit.

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11.4 - Issuance of New Term Grazing Permit Upon Expiration of Previous Term Grazing Permit

If the permittee has fully complied with the terms and conditions of an expiring permit, and if no resource problems exist on the allotment(s) attributable to the permittee's grazing management, the permittee has first priority for receipt of a new permit at the end of the term.

If the permittee has not fully complied with the terms and conditions of the expiring permit, the authorized officer should take timely action to correct any cases of non-compliance according to the uniform suspension and cancellation guidelines set forth in section 16.3.

If the permittee's grazing management is resulting in resource problems on the allotment, the authorized officer should immediately work with the permittee and his or her management operations to correct the unacceptable conditions, including taking timely permit action, if necessary, according to section 16.3.

While term grazing permits are a privilege, and term permits can not be issued for a term longer than 10 years, the authorized officer should not use the occasion of the expiring permit to effect needed reductions for resource protection or improvement.

If forest/grassland plan decisions, and resultant allotment planning decisions, result in a change of land allocation or grazing use that requires a change in the existing term grazing permit, the authorized officer should proceed to modify the permit according to direction set forth in section 16.1.

11.5 - Kinds of Grazing Permits With Term Status

There are four kinds of permits that provide term status – term grazing permit, term grazing permit with on and off provisions, term private land grazing permit, and grazing agreements. With the exception of grazing agreements, grazing permits with term status generally contain many of the same terms and conditions.

The use of term livestock association permits shall be discontinued (formerly discussed in chapter 40 of previous editions of FSH 2209.13). Existing term livestock association permits shall be allowed to expire, but new term livestock association permits shall no longer be issued. Where a decision is made to authorize grazing following the expiration of a term livestock association permit, the authorized officer shall determine whether to issue new term grazing permits to the individual association members or to issue one new grazing agreement to the association. The authorized officer should make this determination in consultation with the members of the livestock association and regional range management specialists.

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11.51 - Term Grazing Permit

This permit (Form FS-2200-10) authorizes livestock grazing on National Forest System lands or lands under Forest Service control and may be issued to individuals who meet the eligibility and qualification requirements (sec. 12).

11.52 - Term Grazing Permit With On-and-Off Provisions

This permit (Form FS-2200-10, 10e) may be issued to a qualified applicant when a logical grazing area contains both National Forest System lands or other lands under Forest Service control and lands owned or controlled by the applicant. See section 15.9 for issuance procedures related to term grazing permits with on-and-off provisions.

11.53 - Term Private Land Grazing Permit

This permit (Form FS-2200-11) may be issued to a qualified applicant who owns or controls land in an allotment under Forest Service control. To receive this permit, the applicant must waive exclusive grazing management of the private land involved to the United States for the full term of the permit. In return, the applicant is authorized to graze livestock on the allotment containing the waived private land and the adjacent National Forest System land. See section 15.8 for issuance procedures related to term private land grazing permits.

11.54 - Grazing Agreement

This permit assigns responsibility to grazing associations or grazing districts, established under State law and recognized by the Forest Service, the authority to administer livestock grazing on National Forest System lands. Grazing agreements are used principally on National Grasslands but are also used on National Forests to authorize grazing use by recognized grazing associations. See chapter 20 for a detailed description of the policies and procedures pertaining to grazing agreements.

12 - ELIGIBILITY AND QUALIFICATION REQUIREMENTS FOR PERMITS WITH TERM STATUS

Grazing permits with term status may only be issued to and held by certain types of legal entities. To be issued a term grazing permit and to continue to hold said permit, all documents provided as proof of qualifications must be in the name of the same precise legal entity. The term grazing permit, documents proving purchase and ownership of the base property, documents proving purchase and ownership of permitted livestock, the State brand registration certificate, as well as any supporting documents, must all be in the name of the same legal entity. An entity may consist of certain types of individuals, partnerships, corporations, or certain other business organizations, trusts, estates, or at times tribal governments. See section 18.25 for the exception to this requirement with certain corporations

Grazing permits may not be issued to Federal, State and local governments or subdivisions thereof. Forest Service employees, their spouses, children, and parents may only hold grazing permits in accordance with code of conduct requirements set forth at FSM 6174.1.

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12.1 - Eligibility Requirements

Except as expressly set forth below, only the following are eligible to hold term grazing permits:

1. A citizen of the United States who has reached the age of majority except when:

   a. A parent, guardian, or trustee cosigns the permit and agrees to assume the privileges, responsibilities and obligations thereof for individuals who have not reached the age of majority; or

   b. A citizen of a foreign country has filed a petition for naturalization in the United States.

2. An established corporation, partnership, trust, estate, or other legal entity (including, but not limited to, grazing associations and districts) that is authorized to conduct business in the State(s) where the permitted grazing activity would occur.

3. Tribal entities (sec. 51.1).

In order to resolve questions about the eligibility of a business organization to hold a grazing permit, it may be necessary to consult with the regional range management specialist or an attorney in the Office of the General Counsel.

12.2 - Qualification Requirements

To qualify for a grazing permit with term status, an eligible applicant must own both the base property and the livestock to be grazed on National Forest System allotment(s) except as expressly set forth in sections 12.21, 18.25 and 23.1. Ownership of both the base property and permitted livestock must be in the name of the permit applicant and can be verified through

deeds or contracts to purchase, assessment records, and taxes paid on both real property and livestock.

The qualification requirements apply both at the time of permit application and throughout the term of the permit. It is the ongoing obligation of the permit holder to timely notify the authorized officer of any changes in ownership during the permit term and submit an amended application to the authorized officer. Failure to notify the authorized officer of such changes may result in cancellation or suspension of the permit (sec. 16.2).

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12.21 - Base Property Ownership Requirements

Base property includes the land and basic livestock management facilities, structures, and improvements owned and used by the permittee that comprise a farm or ranch operation. As a minimum, this will include water and corrals for the handling and sorting of livestock. It may include headquarters and other structures, but these are not required. Unless specifically authorized, permit applicants must own base property. Leasing base property where not specifically authorized will not satisfy the base property ownership requirement and will result in the rejection of a term grazing permit application.

Where base property is jointly owned, all of the owners must apply for the term permit. In other words, an individual's permit application will be rejected if the base property identified therein is jointly owned and the other owners are not listed as applicants for the permit.

Forest or Grassland Supervisors may, in consultation with local livestock organizations, revise base property ownership requirements for National Forest System lands within limits established by the Regional Forester. See FSM 2204.2, item 2, and FSM 2204.3, item 21. The authorized officer may approve modifications of or substitutions to base property proposed by the permittee if they fall within the established base property requirements.

Base property ownership requirements apply to term grazing permits and the "on" portion of on-and-off permits. Base property ownership is not required for term private land permits or the "off" portion of on-and-off permits.

Base property ownership requirements also apply to members under permit by grazing associations issued grazing agreements. Requirements can vary by individual grazing association and are stated in the grazing agreement and rules of management for each association. Refer to chapter 20 for additional information.

12.22 - Livestock Ownership Requirements

Except as set forth below and in chapter 20, the permit applicant must own the mature livestock to be grazed on National Forest System lands under a term grazing permit and the "on" portion

of on-and-off permits. See FSM 2205 for definition of "mature livestock." Livestock ownership is not required for term private land grazing permits or for the "off" portion of on-and-off permits.

Livestock shall be considered to be permitted livestock if they were authorized and actually grazed on the assigned allotment during the current grazing season or the immediately past grazing season.

Waivers of term grazing permits (sec. 18) based on sale of permitted livestock have special restrictions if the permit is in nonuse for personal convenience (see sec. 17.1) or nonuse for resource protection and development, including drought (see sec. 17.2).

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The livestock ownership requirement is not intended to interfere with routine marketing of livestock. Annual sale and purchase of a portion of the base herd, offspring, or yearlings are acceptable as long as there is a bona fide transaction as evidenced by the transfer of funds or the presence of other good and valuable consideration by and between the parties. Resale agreements and the return of notes or checks upon the return of livestock do not constitute a bona fide transaction.

Exceptions to the livestock ownership requirement may be recognized by the authorized officer when:

1. The permit holder's children are in the process of acquiring their parents' ranching operation or are participating in a farm youth program under the auspices of the Future Farmers of America, 4-H, or similar organization, in which case the authorized officer may waive the ownership requirement with respect to 50 percent of the permitted livestock that may be owned by the permit holder's children. The term grazing permit holder may waive the entire permit to his or her children in order to encourage continuation of family operations recognizing that person's livestock as a portion of the permitted livestock in the waiver if the animals were grazed during the last grazing season under the parents' term permit. The permittee may not waive the permit to anyone other than their children under this provision.

2. Chapter 20 specifies exceptions that relate to grazing associations on National Grasslands.

3. All or some of the breeding animals (sires) which service permitted livestock are sometimes leased from another individual or entity (see sec. 31.24). Leased breeding animals may be authorized as a part of the total term permit numbers. However, the permittee must annually declare the number of leased sires, and to whom they belong. Do not issue as a temporary permit.

12.3 - Livestock Branding

Mature livestock including yearlings to be placed on National Forest System lands under a term grazing permit must be branded with a brand registered to the permit holder. Brand registrations from other States may be recognized but leased or shared brands are not acceptable. The brand must be recorded with the State brands department and the permittee must hold the valid certificate of brand and must provide a copy of the certificate to the authorized officer. Some States do not require registration of sheep brands. Branding is done with paint on the sheep's wool. Contact the State and the local woolgrowers' association representative to determine branding requirements and brand ownership.

If mature livestock placed on National Forest System lands or other lands under Forest Service control do not bear the brand shown on the permit application, require the permit holder to produce a valid certificate of brand and to submit an amended permit application within 10 days. If the permittee fails to provide the proper certificate within the required time, instruct the permit holder to remove the livestock and notify the permit holder that action may be taken against the permit (sec. 18.2).

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Only the permitted animals must be branded with the permittee's registered brand. Offspring may be branded with other brands to facilitate marketing. The permittee must advise the authorized officer that offspring will bear other brands prior to their placement on National Forest System land.

12.4 - Agreements Between Permit Holders and Ranch Managers

A permit holder may enter into an agreement with a third party, that is, ranch manager, to manage the day-to-day business affairs of the ranch operation. Where such an agreement exists, official correspondence concerning the permitted grazing activity shall be sent from the authorized officer to the permittee with a copy to the ranch manager.

The authorized officer shall recognize permittee-ranch manager agreements provided that the following requirements are met:

1. The permittee must retain ownership of base property and mature livestock and shall not lease or otherwise convey an interest in either to the ranch manager unless the ranch manager is the permittee's child who is in the process of acquiring the ranch operation (sec. 12.22).

2. Only mature livestock owned by the permittee and branded or marked accordingly may be placed by the ranch manager on the National Forest System lands specified in the permit (sec. 12.3). Any animals that might be owned by the ranch manager cannot be placed on National Forest System lands at any time in lieu of or in addition to the mature livestock owned by the permittee. All or a portion of the offspring may carry a brand different than that of the permittee.

3. The permittee remains fully responsible for compliance with all laws and regulations applicable to grazing on National Forest System lands and the permit terms and conditions.

4. The permittee must delegate in writing full authority to the ranch manager to take whatever action is necessary to comply with all laws and regulations applicable to grazing on National Forest System lands and the permit terms and conditions.

5. A copy of the permittee-ranch manager agreement must be provided to the authorized officer.

6. The permittee must timely notify the authorized officer of changes regarding the status of the ranch manager and provide the authorized officer with new or amended permittee-ranch manager agreements.

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12.5 - Upper, Special, and Lower Limits

There are no upper or special limits governing the total number of livestock which an entity is entitled to hold under a term grazing permit. Lower limits are established for the Region according to authority delegated in FSM 2204.3.

Lower limits are 25 head of cattle or 175 head of sheep. The lower limit applies to all numbers permitted on a term grazing permit (the on numbers plus the off numbers), not just those authorized and billed in a given year. Allow term grazing permit holders who are currently below these numbers to continue to hold a term grazing permit, including issuance following expiration (grandfathered). However, these term permit holders are normally only allowed to waive their term grazing permit to another existing term grazing permit holder who will, as a result of the acquisition, still be below, at, or above the lower limit number.

Forest Supervisors may set lower limits for their forests that are equal to or higher than those established by the Regional Forester.

This direction on lower limits does not apply to situations where the National Forest System lands consist of scattered and isolated parcels where issuance of a grazing permit, regardless of numbers permitted, is the best potential means of managing the resource, and where the alternative action would consist of incurring trespass situations.

13 - ACQUIRING GRAZING PERMITS WITH TERM STATUS

Grazing permits with term status may be acquired as shown in sections 13.1 through 13.4.

13.1 - Changes in Ownership

A term grazing permit may be issued to an applicant who has recently acquired the base property and/or permitted livestock on which a grazing permit is based under the following circumstances:

1. The current permittee has executed a Waiver of Term Grazing Permit (Form FS-2200-12) to the United States in favor of the applicant who has purchased:

a. The permitted livestock, including any replacement animals retained, that are currently grazing on the allotment or which grazed on the allotment the previous grazing season; or

b. The designated base property; or

c. Both a and b above.

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2. The applicant is a lender holding an escrow waiver who has acquired the permittee's base property, livestock, or both through completed foreclosure proceedings (including a sheriff's sale), the authorized officer has confirmed an escrow waiver identifying the applicant as the lender, and the time for the permittee to redeem the property under State law has expired (sec. 18).

3. The applicant has inherited the permittee's permitted livestock and base property.

4. The applicant is the permittee who desires to change the status of the entity conducting the livestock operation, for example, from individual to corporation, from partnership to sole proprietorship, and so forth.

5. The applicant was a shareholder in a corporation (or a partner in a partnership) that formerly held a permit but now has been dissolved.

See section 18 for requirements and procedures for issuing permits because of changes in ownership.

13.2 - Grant

The authorized officer may modify existing term permits or issue new permits to authorize permitted use of capacity that is not obligated.

13.21 - Grazing Capacity Determination

Grazing capacity that is not obligated on vacant allotments is only available for grant after the following conditions have been met:

1. The needs of other resources and values have been considered and the grazing activity is consistent with direction in the applicable LRMP.

2. A current NEPA analysis and decision has been made which meets LRMP direction and includes:

a. Determination of forage availability based on monitoring and/or inventories completed within the past 5 years where available, and

b. Resolution of any conflicts between allocation of surplus forage and habitat requirements for wildlife species and watershed needs.

3. Rangeland improvements necessary for proper livestock management are in place.

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13.22 - Grant Priority

When a decision to grant allocated grazing capacity that is not obligated to an existing permittee is made, the authorized officer shall consider the permittee's record of compliance over the previous 10 years and only make grants to those who have complied with the terms and conditions of their permit and consistently demonstrated good livestock management and accountability practices. Existing permittees with unsatisfactory permit compliance records over the previous 10 years shall not be considered for grants of capacity that is not obligated.

Where appropriate, grants shall be made by the authorized officer based on the following factors in descending order of priority:

1. To existing permittees on the allotment for their proportionate share of any increased grazing capacity resulting from range improvement or development programs to which they have contributed.

2. To existing permittees on the allotment for reductions they sustained during the previous 10 years that resulted in the improvement of rangeland resource conditions.

3. To permittees on other Forest Service-administered allotments.

4. To new applicants who are eligible and qualified.

In addition, the authorized officer may give consideration to eligible applicants owning and operating a ranch as the sole source of their livelihood over applicants engaged in some other business and operating the ranch as a sideline.

The authorized officer shall file a brief statement with the new or modified term grazing permit explaining the basis for the increased authorization. A grant to an existing permittee will be

made through modification of their existing grazing permit. A grant to a new permit applicant will be made through the application and issuance procedures set forth in section 14 below.

13.3 - Forage Reserve Allotments

Forage Reserve allotments are a designation for allotments on which there is no current term permit obligation for some or all of the estimated livestock grazing capacity and where there has been a determination made to use the available forage on the allotment to enhance management flexibility for authorized livestock use.

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

Forage reserve allotments may be use in conjunction with authorized livestock use when there is a loss of forage availability from a variety of factors such as:

1. Drought,
2. Fire – either prescribed or wild,
3. Rangeland restoration activities, or
4. Litigation or consultation needs.

13.31 - Designation of a Forage Reserve Allotment

Most cattle and some sheep allotments that become vacant should be evaluated for designation as a forage reserve allotment. Consider the following when evaluating:

1. There must be an appropriate level of NEPA analysis and decision to allow for authorization of livestock use on the allotment, except in situations such as fire, drought, or other emergency displacement of permittees from normally assigned allotments. The site-specific NEPA decision must tier to and be consistent with direction from the forest or grassland land and resource management plan, where capability and suitability will have been determined. Forage reserve allotments should be included with the NEPA analysis conducted for other allotments in a watershed or landscape scale analysis and decision.

2. The Forest Service will be responsible for maintenance of structural or nonstructural range improvements that had previously been assigned to the allotment permittee. This maintenance will be assigned to any permittee(s) authorized to use the forage reserve allotment.

3. In the case of an individual allotment the designation as a forage reserve will be relatively simple. However, the designation of forage reserve capacity within a community allotment increases the complexity due to circumstances associated with other term grazing permit holders authorized to use the allotment. The designation must be within the NEPA analysis and decision for livestock grazing which has been done for the allotment.

4. If there is a third party memorandum of understanding (MOU) to operate a forage reserve, that third party will be responsible for maintenance of all structural improvements assigned to the previous permittee, except when another permittee is authorized to use the forage reserve allotment. In this instance the authorized permittee will be assigned the maintenance for these structural range improvements.

13.4 - Prior Use on Lands Added to the National Forest System

When land is added to the National Forest System through purchase, donation, or exchange, the authorized officer may issue term grazing permits for the grazing capacity of the added lands in accordance with the written provisions in the deed and contract of sale. In the absence of such written provisions in the deed and contract of sale, the authorized officer shall determine whether to make the land available for grant (sec. 13.2) in accordance with applicable law, regulation, and forest or grassland plan direction.

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

For lands added to the National Forest System through other actions such as proclamation, legislation, administrative order, transfer, or interchange the authorized officer shall issue term grazing permits in accordance with the procedures expressly set forth in the document which resulted in the addition of the land to the National Forest System. Where the document does not address grazing, the authorized officer shall determine whether to make the land available for grant (sec. 13.2) or designate as a forage reserve allotment in accordance with applicable law, regulation, and forest or grassland plan direction.

If the documents do not specifically address livestock grazing, but livestock grazing was an on-going use at the time of the change in ownership, the current grazing user should be given priority consideration for issuance of a Forest Service term grazing permit.

14 - APPLICATION FOR GRAZING PERMITS WITH TERM STATUS

The authorized officer shall require the submission of a written application prior to the issuance of a term grazing permit (see Form FS-2200-16). The authorized officer may also require the applicant to submit additional documentation to ensure that the relevant eligibility and qualification requirements are satisfied (sec.12). Upon the expiration of a term grazing permit, the permittee must submit a new application in order to be considered for the issuance of a new term grazing permit.

14.1 - Notice to Current Permit Holders of Upcoming Permit Expiration

The authorized officer shall notify the term grazing permit holder of the need to file an application for a new permit sufficiently in advance of the expiration of the existing permit. Such notice should provide the permit holder with sufficient time to prepare and submit the necessary application forms and identify the corresponding documentation, if any, to be

submitted with the application form. It should also provide the authorized officer with sufficient time to process the application.

14.2 - Applications for Grazing Permits with Term Status

Application for grazing permits with term status shall be on the form specified below:

1. Term Grazing Permit - Form FS-2200-16, Application for Term Grazing Permit.

2. Term Grazing Permit with On-and-Off Provisions - Form FS-2200-16, Application for Term Grazing Permit.

3. Term Private Land Grazing Permit - Form FS-2200-17, Application for Term Private Land Grazing Permit.

4. Grazing Agreement. No official application form exists (see ch. 20).

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14.21 - Number, Kind and Class of Livestock, Period of Use, and Location of Use

Applications for a grazing permit with term status will identify the number, kind, and class of livestock, period of use, and location of use; that is, allotments desired by the applicant. Show the major composition of the herd on the grazing applications, for example, cattle-cow/calf, cattle-yearling, sheep-dry ewes, and so forth.

14.22 - Livestock To Be Purchased

An application for a term grazing permit associated with a permit waiver, submitted by the previous permit holder, may be accepted by the authorized officer even though the applicant does not yet own the livestock. However, the applicant must provide satisfactory proof of ownership of the livestock prior to issuance of a grazing permit by the authorized officer. Until proof of livestock ownership is supplied, the applicant will be classified as a preferred applicant. See section 15.1.

14.23 - On-and-Off Provision

Only the number of livestock to be grazed “on” National Forest System lands should be listed in section A of the permit application form. The total number of animals the applicant desires to graze “on” and “off” National Forest System lands is shown in section A-9 of the application.

14.3 - Supporting Documents

The authorized officer shall require an applicant to furnish any type or manner of supplementary documentation he or she considers necessary in order to determine whether eligibility and

qualification requirements have been satisfied. These documents will normally be retained in the official files and may be subject to disclosure under the Freedom of Information Act.

14.31 - Corporations

When a corporation submits an application for a term grazing permit, the authorized officer shall require a list of officers and directors, a copy of the articles of incorporation, a list of the shareholders, and the agent(s) authorized to act on the corporation's behalf with respect to the grazing activities described in the application.

14.32 – Partnerships

When a partnership submits an application for a term grazing permit, it must include a list of all partners, their relative interest in the partnership, and the documentation authorizing the establishment of the partnership.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15895 archived on May 28, 2010

14.33 - Trusts and Estates

When a trust or an estate submits an application for a term grazing permit, it must designate the authorized legal representative for the trust or estate and include a certified copy of the will, deed, court order, or other appropriate legal instrument establishing the trust or estate.

14.34 - Certificates of Brand

An application for a term grazing permit must contain a copy of the certificate of brand registration from the State Brand Division or other appropriate State agency. In the case of sheep where brand registration may not be required by law, obtain information from State or local Woolgrowers representatives to confirm that the applicant's brand is shown on the application.

14.35 - Records

In order to verify livestock ownership qualification requirements, the authorized officer may at any time require an applicant or permittee to provide copies of books, papers, or other records pertaining to purchase, sale, or ownership of livestock.

14.36 - Certified or Sworn Statements

The authorized officer may require the applicant to submit a sworn statement with the application, setting forth all material facts associated with the application for a term grazing permit.

14.37 - Document Examination

Documents submitted as part of an application for a term grazing permit shall be examined carefully by the authorized officer to ensure their accuracy and authenticity.

14.38 - Information Revision and Updating

It is the permit applicant's ongoing obligations to ensure that the information contained in documents submitted as part of an application for a term grazing permit remain current and valid. It is also the permit applicant's responsibility to timely notify the authorized officer of any changes to the information set forth in these documents. Failure to do so may result in permit action by the authorized officer (sec. 16.2).

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15898 archived on May 28, 2010

14.4 - Action on Applications

If all information in the application is found to be correct and complete and the applicant is qualified, the authorized officer may issue a term grazing permit to the applicant in accordance with all laws, regulations, policies, and procedures applicable to grazing on National Forest System lands. If an application is rejected and a term grazing permit is not issued, the authorized officer shall document the reasons for the rejection in a letter to the applicant. The applicant has no right of appeal of the authorized officer's decision to reject or deny the application (36 CFR 251.86(a)).

15 - ISSUANCE OF GRAZING PERMITS WITH TERM STATUS

Permits with term status may be issued on Forms FS-2200-10 (Term Grazing Permit), FS-2200-10 with attached 10e (Term Grazing Permit with On and Off Provisions), and FS-2200-11 (Term Private Land Grazing Permit). See chapter 20 regarding grazing agreements. Authorizations for temporary grazing or livestock use should be dealt with separately on Form FS-2200-05 and should not appear on the term grazing permit.

The permit is not valid until signed by both the permittee and the authorized officer. The authorized officer shall not sign any permit until the applicant signs and dates the permit. A permit shall not be issued if the permittee deletes, alters, or otherwise indicates in writing that any term or condition is unacceptable. After both the permittee and the authorized officer sign the permit, a copy shall be sent to the permittee, and the original shall be retained in the official files.

If the permit covers allotments on more than one Ranger District, National Forest or Grassland, the authorized officers should determine among themselves who will be responsible for issuance and administration of the permit. The officer selected should provide copies of the permit and related correspondence to the other authorized officers.

Each permit shall have a unique identification number consistent with information databases maintained by the Forest Service. The identification number shall appear on every page of the

term grazing permit. To ensure consistency, the numbering system will be developed by each forest or grassland unit.

15.1 - Preferred Applicant Status

The authorized officer shall not issue a term grazing permit to a permit applicant until all qualification requirements are satisfied (see sec. 12.2). Following the permit holder's submission of a Waiver of Term Grazing Permit (FS-2200-12) in favor of a third party that purchased the permit holder's base property or permitted livestock and that party's submission of an Application for Term Grazing Permit (FS-2200-16), the authorized officer shall place the third party in preferred applicant status if the base property or livestock ownership qualification requirements are not met.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15853 archived on May 28, 2010

Following consultation with the applicant, the authorized officer shall determine the appropriate duration of the "preferred applicant" status. This period will generally not exceed one year and should end with the beginning of the next authorized grazing season. If the preferred applicant shows that extenuating circumstances still exist at the end of that time, the authorized officer may consider allowing a second time period of perhaps one additional year for fully meeting requirements. The preferred applicant must satisfy the qualification requirements within the prescribed time period or the authorized officer will terminate the "preferred applicant" status in a non-appealable decision. The grazing capacity will then be made available for grant to other qualified applicants (sec. 13.2).

A preferred applicant cannot execute a waiver of a term grazing privilege until they meet the qualification requirements, are issued a term grazing permit, and validate the term grazing permit. A preferred applicant may graze under a temporary grazing permit prior to the satisfaction of the qualification requirements and issuance of a term grazing permit. The preferred applicant is responsible for maintaining the range improvements that would be assigned in the term grazing permit unless another entity is authorized to graze and has been assigned the improvement maintenance responsibility by the authorized officer.

Preferred applicant status may be cancelled at any time if the preferred applicant fails to comply with the requirements established such as maintenance of improvements. Cancellation of preferred applicant status in these circumstances is not appealable under 36 Code of Federal Regulations 251, Subpart C, since no authorization to occupy or use National Forest System lands is involved (36 CFR 251.80 and 36 CFR 251.82(a)(3)).

15.2 - Validation

Validation is accomplished by the issuance of a Bill for Collection (Form FS-6500-89), payment of the bill, and placement of at least 90 percent of the permitted number of livestock on the designated allotments not later than the first full grazing season following permit issuance (except as provided for in sec. 15.1) . Until it has been validated, the permittee may neither

waive a permit nor apply for personal convenience nonuse (sec. 17). A permittee may not validate a permit with livestock that are permitted on another allotment unless the intent is for the same livestock to normally move from one allotment to another during a grazing season. In other words, each permit must be validated with the livestock intended to graze on that allotment. Failure to comply with the validation requirement may result in permit cancellation (sec. 16).

A permittee is only required to validate a term permit once. Thus, when a new term permit is issued to the same permittee to replace an expiring permit, validation is unnecessary. Validation is required when a term permit is issued to a new entity.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15853 archived on May 28, 2010

15.21 - Postponement Due to Required Nonuse for Resource Protection

The validation requirement may be postponed by the authorized officer based upon a determination that the designated allotment(s) is not available for grazing by the permitted livestock due to resource concerns such as during periods of severe or prolonged drought. The authorized officer shall make this determination in writing and shall describe the resource concerns that form the basis for the postponement. Once the resource management concerns are resolved to the satisfaction of the authorized officer, the validation requirement is reinstated. A permit may not be waived until validation has occurred.

15.3 - Range Allotment Description

Every term grazing permit shall include a map which clearly delineates the National Forest System lands and other lands under Forest Service control which comprise the designated allotment(s) where grazing is authorized. Closed rangelands and private lands (including the "off" portion of on-and-off permits and private lands not waived) should also be shown on the map. The statement shown in exhibit 01 shall be affixed to each map:

15.3 – Exhibit 01

Statement

This map shows the XYZ Allotment designated for use in the grazing permit issued to: Johnson Ranches Inc. By J. S. Hicks, (Name of Authorized Officer) District Ranger on January 10, 2000

15.4 - Number, Kind and Class of Livestock, Period of Use, and Grazing Allotment

The term grazing permit shall expressly identify the number, kind and class of livestock, period of use, and allotment(s) where grazing is permitted. This information should be displayed on the term permit as shown in exhibit 01.

15.4 – Exhibit 01

Display of Permitted Use in the Permit

No. of Livestock	Kind of Livestock	Class of Livestock	Period of Use From	To	Grazing Allotment
100	Cattle	Cow-calf	6/1	9/30	Elm Spring
60	Cattle	Yearlings	6/1	9/30	Elm Spring
1000	Sheep	Ewe-lamb	7/1	9/30	White Bear

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The number of livestock shown on the face of the permit is the total number that will be allowed to graze under the permit. If a permittee chooses to run male animals with cow-calf or ewe-lamb pairs, the total number of animals billed for and allowed to enter the allotment will be the number shown on the face of the permit in part 1, section 2. For example, to run 4 bulls with the cattle authorized in line 1 of the above example, then only 96 cattle (cow-calf) would be allowed to be grazed. There is no need to differentiate between male and female animals in the number shown on each line, unless there is a question about the total number to be authorized, in which case two line entries - one for 96 cattle cow-calf and one for 4 cattle – bulls – can be made.

15.41 - Temporary or Annual Changes in Number, Kind or Class of Livestock, or Areas Grazed

The authorized officer may use a Bill for Collection to identify temporary or annual adjustments in the number, kind or class of livestock, or areas authorized to graze in the term permit. Permanent changes in the kind or class of livestock authorized to graze in the term permit should be made by permit modification (see sec. 16.1).

15.42 - Permits with Multiple Allotments

Even though part 1 of a term grazing permit may list more than one allotment, the authorized officer shall administer the grazing activity on each allotment as if it were the subject of a separate authorization. See section 11.3. This is particularly important if the authorized officer determines that violations of permit terms and conditions have occurred. In these cases, permit action may only be taken with respect to the allotment(s) where the violation occurred (excess use, failure to follow management instructions, or failure to maintain improvements are

examples that might be allotment-specific). Action against the entire permit may only be taken where the violation is general in nature and cannot be tied to a specific allotment (see sec. 16).

15.43 - Variable Numbers, Seasons, and Areas To Be Grazed

A livestock operation in which the number of livestock to be grazed, the season of use, or the areas to be grazed fluctuates over time may be approved pursuant to a written plan of management documented in part 3 of the term grazing permit. Some variable management systems may even call for a year long rest period, in which case the authorized officer shall not consider it to be nonuse for personal convenience.

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

Where variable management systems have been approved, the statement shown in exhibit 01 shall be written in part 1, paragraph 2 of the term grazing permit in lieu of actual numbers of permitted livestock and periods of use.

15.43 – Exhibit 01

Variable Numbers, Seasons, and Areas To Be Grazed

Variable numbers, seasons of use, and/or areas to be grazed are specified in the allotment management plan or annual operating instructions which are incorporated into this permit. The average use under this permit is equivalent to_ 100_Cattle (Cow/Calf)__ for a July 1 to September 30 period of use.

Billing, however, shall be for each year's authorized use and not the average use.

15.5 - Grazing Permit Terms and Conditions

15.51 - Standard Terms and Conditions

Standard terms and conditions in Form FS-2200-10 Parts 1 and 2 shall not be altered in any way by the permittee. If the permittee has altered any of these standard terms and conditions, the authorized officer shall not sign the permit and the permittee will be prohibited from placing livestock on the designated allotments. See section 15.

15.52 - Special Terms and Conditions

Part 3 of the term grazing permit should be used for special terms and conditions which may not be generally applicable to all permits. Part 3 is also where the authorized officer shall include standards, guidelines, and other provisions that specify requirements related to the management of vegetation, soil, water, and other resources affected by livestock grazing that may be found in, among others, forest and grassland plans, allotment management plans, and annual operating

instructions. Include special terms and conditions on Forms 2200-10a through 10e as appropriate.

All the special terms and conditions may be contained in the Allotment Management Plan (AMP) which is incorporated into the permit by reference by the authorized officer by including the language in exhibit 01 in part 3 of the term grazing permit:

15.52 – Exhibit 01

Inclusion of the Allotment Management Plan into the Permit

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

The Allotment Management Plan for the Last Chance Allotment, approved by J.S. Hicks, District Ranger, on the _15th_ day of _March, 2000, is hereby made a part of this permit.

A copy of the AMP should be provided to the permit holder, the permit modified to include the AMP in whole or by reference, and the original placed in the official 2210 file.

The Regional Forester may prescribe special terms and conditions for Region-wide use. Authorized officers may include any additional terms and conditions necessary to comply with applicable laws and regulations and to secure proper management of livestock.

15.6 - Duration

The standard duration for a term grazing permit is 10 years. Permits may be issued for less than 10 years only if: (a) the land is pending disposal; (b) the land will be devoted to uses which preclude livestock grazing prior to the end of 10 years; or (c) it is in the best interest of sound land management to specify a shorter term. Under no circumstances may a permit be issued for more than 10 years. Exercise care to insure that no grazing permit is issued for more than 10 years. For example, the expiration date for a 10 year permit issued on January 1, 2000, would be December 31, 2009, not December 31, 2010.

December 31 should be used as the expiration date for all term grazing permits regardless of whether they are issued on January 1, June 1, or December 1. This will mean that the duration of permits issued after January 1 will be slightly less than 10 years. However, for reasons of administrative convenience and efficiency it is in the “best interest of sound land management” for all permits to expire on the same date in any given year. Except where year-round grazing occurs, a December 31 expiration date provides time after the grazing season to ensure that decisions to issue new permits can be made before the beginning of the next grazing season and can be made in compliance with applicable laws, regulations, policies and procedures.

In all circumstances where a decision has been made to continue livestock grazing, every effort should be made to issue a new permit prior to the expiration of the existing permit. If a permit is

issued in December 2009 it would expire December 31, 2018, but if it is issued January 2010 it would expire December 31, 2019.

For those few National Forests where year-round grazing occurs, and the several National Grasslands where it is commonplace, the expiration dates of the permits issued by the Forest Service or an Association should be February 28 rather than December 31. This conforms to the grazing fee year that begins March 1 of each year and greatly reduces the workloads of refunds, credits, or modified billings if the grazing fee changes from one year to the next. In these cases, the 10 year permits would be issued on or after March 1 and would expire on February 28 of the appropriate year. Annual permits/authorizations would then approve all use beginning on or after March 1 of the current year and extending up to February 28 of the following calendar year.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 08-15893 archived on May 28, 2010

15.7 - Monitoring

The authorized officer may require the permittee to provide monitoring information as a condition of permit issuance. The authorized officer may require the permittee to provide monitoring information related to the permitted grazing activities including, but not limited to, actual livestock numbers grazed, time of grazing, livestock distribution, structural and nonstructural improvement condition, maintenance activities conducted, vegetation use, and other standards in the permit. These requirements shall be fully discussed with the permittee prior to initiation and any training necessary to achieve desired permittee performance should be offered.

15.8 - Issuance of Term Private Land Grazing Permits

The Forest Service has no obligation to issue term private land grazing permits solely for the convenience of the applicant. Issuance is justified only if it is in the best interest of the United States taking into account, among other things, the management of National Forest System lands and resources within the allotment, costs of administration, and potential conflicts with other uses of or activities occurring on National Forest System lands. Deny applications where:

1. The National Forest System lands and the waived State or private lands do not form a logical grazing area best managed as a single unit.

2. The National Forest System lands and the waived State or private land are not suited to the kind or class of livestock grazing for which authorization is sought.

3. The authorization of livestock grazing would interfere with the administration of National Forest System lands and resources; or

4. The authorized officer has suspended or cancelled a term permit held by the applicant within the last five years for violation of permit terms and conditions.

15.81 - General Guidelines

Issue term private land grazing permits on Form FS-2200-11, Term Private Land Grazing Permit. A term private land grazing permit may be issued to a qualified applicant who owns or controls State or private land located within a Forest Service allotment. To receive this permit, the applicant must waive to the Forest Service the right to administer livestock grazing activities on the affected State or private land for the full term of the permit. In return, the applicant is authorized to graze livestock on National Forest System lands within the allotment in which the waived land is located. Permit issuance will be based on, and shall not exceed, the estimated grazing capacity of the waived private lands, as determined by the authorized officer.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15803 archived on May 28, 2010

Term private land grazing permits may be issued to owners or lessees of private or State land within National Forest or Grassland grazing allotments. Where leases are concerned, a lessee will be required to provide written proof of grazing authorization from the landowner on an annual basis. Where the lessee fails to provide the necessary written proof of authorization from the landowner, the term private land grazing permit shall be cancelled.

The authorized officer cannot require a landowner or lessee to waive the grazing use of private land to the United States. If an applicant chooses to apply for a term grazing permit with on-and-off provisions (sec. 15.9) rather than a term private land grazing permit, the authorized officer must determine if issuing the on-and-off permit is in the best interest of the United States. If the authorized officer determines that issuing a term grazing permit with on-and-off provisions is not in the best interest of the United States, and the applicant declines to apply for a term private land grazing permit, then no permit shall be issued for the grazing capacity of the private land.

15.82 - Qualification Requirements

Holders of term private land grazing permits are not required to own base property, permitted livestock, or the waived land (sec. 12.2). The holder must have the right to use the waived land for grazing. The holder will provide the Forest Service with appropriate documentation like contracts or lease agreements to substantiate the claimed right of use.

15.83 - Grazing Capacity of Private Lands

Estimate the grazing capacity of private lands identified in the application for a term private land grazing permit. Permit numbers authorized will be based on and shall not exceed the estimated grazing capacity of the waived private lands as determined by the authorized officer. The estimated grazing capacity as well as advantages or disadvantages of issuing the permit must be determined by field examination.

See exhibit 01 for a comparison of term private land grazing permit and term grazing permit with on-and-off provisions.

15.83 - Exhibit 01

Comparison of Term Private Land Grazing Permit and Term Grazing Permit With On-and-Off Provisions

Term Private Land Grazing Permit (FS-2200-11)	Term Grazing Permit with On-and-Off Provision (FS-2200-10, 10e)
Permittee owns or controls State or private land which contains two-thirds or less of the carrying capacity of the combined Federal and private land.	Permittee owns or controls "off" State or private land that contains more than two-thirds of the carrying capacity of the combined "on" Federal and "off" non-Federal land.
Right to administer State or private lands for livestock grazing purposes is waived to the Forest Service for the term of the permit.	Right to administer livestock grazing activities on "off" non-Federal lands is not waived to the Forest Service but the Forest Service specifies season of use, numbers, and grazing area of combined "on" and "off" lands.
Waived lands will not be grazed outside the designated season.	"Off" lands will not be grazed outside the designated season.
Forest Service determines private land carrying capacity.	Forest Service concurs with permittee's estimate of "off" lands carrying capacity.
Forest Service administers livestock grazing activities on waived State or private lands in conjunction with National Forest System lands as logical grazing area and single unit.	Permittee administers livestock grazing activities on "off" lands and Forest Service administers livestock grazing activities on "on" lands as logical grazing area and single unit.

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15.83 - Exhibit 01--Continued

Term of permit is 10 years shall be subject to proof of lease renewal where lease term is less than 10 years.	Term of permit is 10 years shall be subject to proof of lease renewal where lease term is less than 10 years.
Improvement maintenance required in proportion to amount of permitted use occurring on National Forest System land within the allotment. Improvements on waived State or private lands to be maintained to standard by permittee.	Improvement maintenance required in proportion to amount of permitted use occurring on National Forest System land within the allotment. Forest Service does not control management of improvements on "off" land but may cancel permit if National Forest System lands or resources are adversely affected by permittee failure to develop or maintain improvements on "off" lands.
Applicant must own or control waived State or private lands.	Applicant must own or control "off" lands.
Applicant need not own waived State or private lands.	Applicant need not own "off" land.
Applicant need not own livestock to be grazed under permit.	Applicant need not own livestock authorized for "off" lands but must own livestock for "on" lands.
Permitted animals are run in conjunction with other livestock authorized on the allotment.	"Off" livestock are run in conjunction with "on" livestock.
Waived lands cannot be claimed as base property for a term grazing permit.	"Off" lands cannot be claimed as base property for a term grazing permit.
No base property required.	Base property required for "on" portion.

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15.9 - Issuance of Term Grazing Permits With On-and-Off Provisions

As with term private land grazing permits, the Forest Service has no obligation to issue term grazing permits with on-and-off provisions for the convenience of the applicant. Issuance is justified only if it is in the best interest of the United States taking into account, among other things, the management of National Forest System lands and resources within the allotment. Deny applications where:

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1. The National Forest System lands and the affected State or private lands do not form a logical grazing area best managed as a single unit;

2. The authorization of livestock grazing would interfere with the administration of National Forest System lands and resources;

3. The authorized officer has suspended or cancelled a term permit held by the applicant within the last five years for violation of grazing permit terms and conditions;

4. The affected State or private land does not comprise at least two-thirds of the estimated carrying capacity of the logical grazing area that would be managed as a single unit; or

5. Livestock use would be concentrated on National Forest System lands.

An application for a term grazing permit with on-and-off provision must be reviewed carefully to determine if the land offered can and should be managed as a logical grazing unit with the adjacent National Forest System land. The total number of livestock approved must not exceed what the area can support.

15.91 - General Guidelines

The objective of term permits with provisions for grazing on-and-off National Forest System land is to promote the efficient grazing use of lands under different ownerships, while at the same time achieving desired conditions on National Forest System lands.

An on/off permit may be issued to a qualified applicant when a logical grazing area contains both National Forest System lands and State or private lands owned or controlled by the applicant. Permits with on/off provisions are issued when the National Forest System lands comprise a relatively small percentage (usually less than one-third) of the estimated grazing capacity of the designated grazing area. Issue a private land permit rather than an on/off permit where it is practical and possible. (See section 15.8, ex. 01 for a comparison of term private land permits and term on/off permits.)

On/off permits are the same as any other term permit with respect to the "on" numbers shown. Issue the permit on Form FS-2200-10, Term Grazing Permit. Show only the "on" number in part

1 of the permit. Show the total "on" and "off" number on Form FS-2200-10e, Grazing Permit, Part 3.

For example, if the authorized officer decides to issue an on/off permit for 100 head of cattle in an area where 30 percent of the grazing capacity is on National Forest System land and 70 percent of the grazing capacity is on land owned or controlled by the permittee, 30 head would be shown in part 1 of the permit and 100 head would be shown in part 3 of the permit.

For another example, a relatively few units of the National Forest System contain allotments where only a very small percentage (less than 5 percent) of the included lands are National Forest System lands. In an even smaller percentage of those allotments, the grazing capacity of the National Forest System lands may be located on steep, unsuitable terrain, resulting in an unusual circumstance where 100 percent of the available capacity is on the private/other ownerships and no suitable capacity is on National Forest System lands. In these rare situations, and if other options such as land exchange are not available, it is appropriate to issue a 10 year term permit with on-off provisions because 1) the private landowner needs to have written authority to use and occupy the allotment, and 2) permitted animals may occasionally be on the National Forest System lands in the allotment while grazing the other land ownerships. In such rare cases, the permit would show 0 percent National Forest System capacity and 100 percent capacity on private/other land ownerships, and there is obviously no annual Bill for Collection to prepare. But the permittee needs to have authority to use the area, there does need to be a management plan prepared for the allotment, and we have a responsibility to assure the National Forest System lands are meeting or moving toward desired conditions.

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

15.92 - Qualification Requirements

The permittee must meet base property and livestock ownership requirements for the "on" numbers (sec. 12.2). The permittee must either own the "off" land or have the right to use it for livestock grazing. The permittee will provide the Forest Service with contracts, leases, or other appropriate documents to substantiate the claimed ownership or use right.

15.93 - Grazing Capacity of "Off" Lands

The grazing capacity of the "off" lands is determined by the permittee, subject to concurrence by the authorized officer. The permit should not be issued if the permittee and authorized officer cannot reach agreement regarding the grazing capacity.

16 - CHANGES IN GRAZING PERMITS

Changes in grazing permit terms and conditions may be made by modification, suspension, or cancellation. Such changes are most commonly made in order to:

1. Achieve resource management objectives.

2. Comply with requirements of or changes to applicable laws, regulations, forest or grassland plans, NEPA decisions, AMPs, agency policies and procedures, and other legally binding documents.

3. Adapt to changed rangeland resource conditions.

4. Enhance permittee compliance with permit terms and conditions.

5. Authorize construction of rangeland improvements.

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

16.1 - Modification of Grazing Permit to Conform to Law or to Address Rangeland Resource Conditions

A permit "modification" is the revision of one or more grazing permit terms and conditions made in accordance with 36 CFR 222.4(a)(7) or (a)(8). Under these regulations, modifications are made most frequently to the permitted seasons of use, numbers, kind and class of livestock, or areas to be grazed. The authorized officer should discuss proposals to modify a term grazing permit with a permittee prior to implementation. However, while the authorized officer should strive to obtain the permittee's agreement with the modification through these discussions, such agreement is not required.

Under 36 CFR 222.4(a)(7), the authorized officer may modify the permit immediately if the purpose of the modification is to bring the livestock grazing activity into conformance with current situations brought about by changes in law, regulation, executive order, forest or grassland plan, allotment management plan, or other management needs.

Where the modification is the result of concerns about the condition of rangeland resources, 36 CFR 222.4(a)(8) requires the authorized officer to provide the permittee with one year's advance notice prior to implementation of the modification. This one year advance notice requirement can; however, be waived in "emergency" situations.

Permit holders shall receive written notification of any decisions resulting in the modification of term grazing permits and these decisions may be appealed by the permit holder under regulations at 36 CFR 251.

16.11 - Modification Procedure

Except as otherwise provided by law, regulation, or policy, livestock grazing is authorized by an appropriate level NEPA analysis and decision. Once the decision has been made that authorization of livestock is an appropriate action and a term grazing permit has been issued, that permit may be modified at any time by the authorized officer, based on monitoring information and a documented rationale. The guiding document in most instances will be the project level NEPA decision which will normally set sideboards (design criteria) on stocking level decisions.

If the decision to be made is within the bounds of the NEPA analysis and decision, the authorized officer may use appropriate monitoring information to make an administrative decision to increase or decrease permitted numbers and/or seasons, applying guidance in sections 16.12 through 16.15. If there is no current and sufficient project level NEPA analysis and decision, the authorized officer may still make an administrative decision to increase or decrease permitted numbers and/or seasons, provided appropriate and sufficient monitoring information indicates such action is warranted. The authorized officer will follow guidance in sections 16.12 through 16.15.

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

Term grazing permits are modified by the authorized officer through the issuance of a letter with appropriate attachments, if any. The letter shall make reference to the permit being modified and explain the rationale for the modification. The permittee shall be provided with the opportunity to accept the modification, although acceptance is not necessary. The statement shown in exhibit 01 shall be used in the letter modification.

16.11 – Exhibit 01

Modification Statement

This modification is hereby made part of Grazing Permit Number 000122 issued to you on the 10th day of January, 2000 by J.S. Hicks, District Ranger. It is hereby attached to and incorporated in the permit as pages 3 through 4.

The letter modification shall be sent to the permittee via certified delivery—return receipt requested. A copy of the letter modification will be sent to the holder of escrow waiver(s), if any, and a copy will be retained in the official permit file maintained by the authorized officer. The letter will notify the permittee of the right to appeal the modification under 36 CFR 251.

16.12 - Modifications That Result in Increased Numbers or Season of Use

The number of livestock or season of use authorized by a grazing permit may be permanently increased under certain circumstances in order to:

1. Take advantage of additional grazing capacity resulting from the permittee's direct involvement in improvement work or more intensive management. The amount of the increase will be in proportion to the permittee's role in the improvement work or intensive management.

2. Restore reductions made for rangeland resource management or protection purposes when the objectives for which the reductions were made have been accomplished and documented. Allocation of this increased capacity shall be among those permittees (or their successors in interest) in proportion to the amount of the reduction sustained within the previous 10 years.

See section 13.2 for relative priorities of other parties that might be entitled to modifications resulting in an increase in permitted livestock numbers or seasons of use.

Temporary increases in numbers or seasons of use are addressed through the issuance of a Bill for Collection and letter modification

16.13 - Modifications That Result in Reduced Numbers or Season of Use

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

Authorized officers may modify a term grazing permit by reducing the permitted numbers, seasons of use, or allotments to be grazed as necessary to protect, restore, or improve rangeland resource conditions. Decisions to modify term grazing permits by reducing livestock numbers or seasons of use will be made in writing by the authorized officer exercising professional judgment and utilizing the best information available at the time of the decision.

Before implementing any modification, the authorized officer should thoroughly discuss the need for such action with the permittee and document this discussion in a letter to the permittee. The permittee should be provided with an opportunity to inspect the rangeland resource conditions on the affected allotment(s) with the authorized officer. Reports, studies, and other pertinent information on which the permit modification decision was based shall be made available for review by the permittee. The authorized officer should assure that the permittee is aware of and informed about the permit modification before it is implemented. In those instances where the permittee recognizes and agrees that a modification in permit numbers or seasons of use is necessary, the authorized officer should document the agreement in writing, obtain the permittee's signature, and implement the modification immediately where practicable.

Where the permittee objects to the modification, the authorized officer shall provide one year's written notice before the modification takes effect, except in emergency situations (36 CFR 222.4(8)). Such notice shall be in writing and sent by certified delivery—return receipt requested or hand delivered depending on circumstances. If the authorized officer and permittee cannot agree on the need for a modification or on the scope and extent of a modification, the authorized officer should proceed with the modification. Decisions to modify a term grazing permit are subject to administrative appeal and mediation, if a USDA certified mediation program exists in the State, by the permittee under 36 C.F.R. part 251, subpart C.

16.14 - Modifications Based on Monitoring Data

When sufficient monitoring data has been collected by the authorized officer who indicates that permit modification is warranted, action should be initiated. Make the changes in permitted livestock numbers and/or season of use based on the data that has been collected. Attempts should be made to negotiate the adjustments with the permittee, however, if a negotiated agreement cannot be reached, permittee concurrence is not necessary. Adjustments must be made

when documented data indicates they are necessary and must not be deferred until expiration or waiver of the term grazing permit. These adjustments are appealable as noted in section 16.13.

16.15 - Permittee Requests to Convert Kind or Class of Livestock or to Make Other Modifications

The authorized officer may approve written requests by permittees to modify term grazing permits if they meet the LRMP objectives prescribed for lands within the permitted grazing allotment(s), are consistent with the AMP and annual operating or other instructions issued by the authorized officer, and comply with applicable law and regulations.

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

Permittee-requested modifications to convert the kind or class of livestock must be approved by the authorized officer and must be in conformance with applicable law and regulations. The AMP must be updated to reflect any conversion in kind or class of livestock. Adjustments to rangeland improvements necessitated by a conversion shall be funded and built entirely by the permittee.

Where a request for conversion of kind or class of livestock is made by a permittee who grazes on a community allotment, the authorized officer shall consult with other permittees on the allotment before approving conversion. Conversions should generally not be approved if other permittees on the community allotment provide valid objections to the conversion.

Conversions in the kind or class of livestock may result in a corresponding change in permitted numbers. Authorized officers may develop local conversion factors to express differences in kind of livestock and their forage consumption. Conversion factors that are locally derived should reflect information developed from historic data or specific livestock breed forage consumption intake rates.

Term grazing permits may be modified to allow for trial changes in kind or class of livestock to be grazed. Changes in kind of livestock will trigger a NEPA sufficiency determination. Estimates of grazing capacities should be conservative and subject to adjustment during the trial period.

16.2 - Suspension or Cancellation of Grazing Permits Due to Noncompliance with Permit Terms and Conditions

Grazing permits are subject to administrative actions such as partial or total suspension or cancellation for violations of terms and conditions of the permit, which are found in parts 1, 2 and 3 of the grazing permit with term status and set forth at 36 CFR 222.4. Suspensions are the temporary withholding of some or all of a permit holder's grazing privileges. Cancellations are the permanent invalidation of some or all of a permit holder's grazing privileges. Suspensions and cancellations can apply to permitted livestock numbers, seasons of use, or grazing allotments.

Where permittee actions violate permit terms and conditions, a suspension of grazing permit privileges may be an appropriate tool that is intended to improve the permittee's future compliance with permit terms and conditions. However, it is not necessary for a term grazing permit to be suspended first before it can be cancelled. Under no circumstances should a temporary permit be issued to restore reductions resulting from suspensions or cancellations.

Since a term grazing permit with multiple allotments represents a consolidation of multiple permits for administrative efficiency, suspensions or cancellations resulting from the noncompliance with permit terms and conditions should only apply to the allotments where the noncompliance occurred. Sanctions should only be applied "across-the-board" in those instances where the violation cannot be isolated to a particular allotment or allotments.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 08-15893 archived on May 28, 2010

16.21 – Rejection of Term Permit Application or Subsequent Cancellation of Term Grazing Permit

A permit application submitted by a purchaser of permitted livestock, base property, or both may be rejected or a term grazing permit issued to such a purchaser may be canceled if:

1. Livestock identified in the application for the term grazing permit were not the same livestock, or offspring retained for herd replacement, that were grazing on the affected National Forest System lands at the time of purchase, or the immediately preceding grazing season if the purchase occurred outside the designated grazing season, (see also sec. 12.22);

2. The purchaser does not graze the purchased livestock on the designated allotment(s) during the permitted season following purchase, fails to document the reasons in a letter to the authorized officer, and does not receive written approval from the authorized officer to not stock the allotment. Reasons might include, among others, the need for greater than normal replacement, culling, disease, or change in class of livestock. If the applicant will not have sufficient livestock to validate the term grazing permit, a term grazing permit shall not be issued and the applicant shall be notified of their preferred applicant status in a letter (sec. 15.1);

3. The purchaser does not use base property purchased in connection with issuance of a grazing permit with term status as base property during the year immediately following the purchase; or

4. The ownership of livestock or base property reverts from the buyer back to the seller within two years of the date of sale except under foreclosure proceedings (sec. 18.7).

16.3 - Notice of Non-Compliance

Where noncompliance with permit terms and conditions has occurred that may warrant administrative action, such as partial or total suspension or cancellation of grazing privileges, the

authorized officer must issue a Notice of Noncompliance (NONC) to the permittee before initiating proceedings, except where the permittee's conduct was willful or where immediate action is necessary to protect public health, interest, or safety. Show cause letters shall no longer to be issued for this purpose.

When infrequent, minor, or first time offenses have been detected that can be easily remedied by a telephone call to or personal contact with the permittee, and the violation is one that would not ordinarily justify suspension or cancellation action, issuance of a NONC is not necessary. However, the authorized officer should make contact with the permittee, describe the noncompliance incident, the corrective action required, the timeframe, and the consequences associated with failure to act. The noncompliance incident and the follow-up discussion with the permittee should be documented in the allotment inspection notes or a memorandum and placed in the permittee's official case file.

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

16.31 – Contents of Notice of Noncompliance (NONC)

A NONC must include the following:

1. A specific description of the permit violation(s);

2. The corrective action that must be taken by the permittee to demonstrate or achieve compliance with the grazing permit, including specifications for satisfactory accomplishment;

3. The timeframe within which the permittee must take the corrective action; and

4. A warning that administrative actions may be initiated against their term grazing privilege if the permittee fails to take the specified corrective action within the prescribed timeframe.

As a courtesy, the NONC should also include a statement that encourages the permittee to contact the authorized officer at their earliest convenience if they believe that the NONC has been sent in error.

Because this is a "notice" rather than a "decision" regarding the administration of a term grazing permit, it is not appealable under 36 CFR 251, and appeal rights language must not be included in the NONC. However, the NONC may include a statement of the authorized officer's willingness to meet and discuss the NONC if the permittee believes that an error has been made. In the event the permittee and the authorized officer cannot work out their differences after a meeting, and the permittee refuses to take the corrective action outlined in the NONC, the authorized officer would issue a decision to initiate suspension or cancellation proceedings. This decision would be subject to appeal under 36 CFR part 251, Subpart C. See exhibit 01 for examples of both Notice of Non-Compliance and Decision Letter formats.

16.31 – Exhibit 01

Notice of Non-compliance for Excess Use/Failure to Maintain Improvements

May 21, 2002

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

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED
HAND-DELIVERED ON MAY 21, 2002

Mr. Ben Jones
P. O. Box ABC
Someplace, Utah 84123

Dear Mr. Jones:

NOTICE OF NON-COMPLIANCE

This letter is in regard to Term Grazing Permit No. 12345, issued in the name of Ben Jones on March 15, 1996. This permit authorizes the grazing of 160 cow-calf pairs during the season of June 6 through September 30 on the Rock Creek C&H Allotment.

Inspection of the Allotment on May 20, 2002 noted the following management situations, which were discussed with you by telephone on the evening of May 20th, that are not in compliance with the terms and conditions of your term grazing permit: 23 of your cattle were observed grazing in the Sweetwater Gulch Unit on that day, 17 days prior to your entry date. This is a violation of part 2, section 8(d) of your term grazing permit.

1. The water gap section of fence where the cattle came onto the allotment has not been repaired to standard in accordance with your assigned maintenance responsibilities. This is a violation of part 2, section 8(i) of your term grazing permit.

The following actions and timeframes for accomplishment are required of you to remedy the non-compliance:

1. All livestock must be removed from National Forest System lands by May 23, 2002 (policy requires complete removal within 72 hours of notification) and controlled to prevent re-entry prior to June 6, 2002.
2. The Sweetwater Gulch water gap fence must be maintained to standard (with 4 strands of barbed wire, wooden stays spaced 10 feet apart, sufficient weights attached to maintain a

16.31 – Exhibit 01—Continued

bottom-wire height of no more than 18 inches, and appropriate break-away ties at each end) by May 30, 2002.

If the required fence maintenance is not completed according to the specifications attached to your term grazing permit, and within the timeframe specified in your Annual Operating Instructions for Pasture A, you will not be allowed to enter the Allotment as scheduled on June 6, 2002, until maintenance is completed to standard.

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

Failure to correct these violations within the prescribed timeframes may result in the initiation of permit suspension or cancellation procedures in whole or in part.

I am willing to discuss any issues or concerns related to this notice of non-compliance and to reach a common understanding and agreement where possible, prior to issuance of a written decision, should one be necessary. I can be contacted at (801-826-5400).

Sincerely,

J. S. Hicks
District Ranger

cc: Forest Supervisor

16.31 – Exhibit 01--Continued

Suspension or Cancellation Letter

Reply to: 2200

Date: August 27, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Ben Jones
P. O. Box ABC
Someplace, Utah 84123

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

Dear Mr. Jones:

SUSPENSION OF A PORTION OF TERM GRAZING PERMIT

This letter is in regard to Term Grazing Permit No. 12345, issued in the name of Ben Jones on March 15, 1996. This permit authorizes the grazing of 160 cow-calf pairs during the season of June 6 through September 30 on the Rock Creek C&H Allotment.

On August 19, 2002, I notified you by a certified letter, hand delivered by Chuck Wilson and LEO Janet Smith, in regard to management situations that were not in compliance with the terms and conditions of your term grazing permit and provided you with the corrective action and timeframe within which you were required to become compliant: All livestock were to be removed from all National Forest System lands by August 22, 2002.

In my August 19 letter, I informed you that failure to correct these violations within the prescribed timeframes might result in the initiation of permit suspension or cancellation procedures.

On August 24, Range Specialist Chuck Wilson inspected the Mud Flat Allotment and found 15 pairs of cattle still on that allotment and the fence had not been repaired. On the same day, Chuck counted a total of 24 pairs of your cattle still on the Rock Creek Allotment. He observed cattle in Sweetwater Gulch, Cow Camp Canyon, Bull Run Canyon, Pinyon Draw, and Boullion Basin.

You have not removed 100 percent of your cattle as I requested, and have provided me with no justification for your continued non-compliance.

Therefore, it is my decision to suspend 25 percent of your term grazing privilege for the 2003 and 2004 grazing seasons on the Rock Creek C&H Allotment.

16.31 – Exhibit 01--Continued

I am willing to discuss with you whether this suspension will be totally in numbers of livestock authorized, deferred entry, or a combination of reduced numbers and reduced season.

This decision is subject to appeal pursuant to Department of Agriculture regulations 36 CFR 251, subpart C. Any appeal of this decision must include the information required by 36 CFR 251.90, including the reasons for appeal. An appellant or intervenor may request a stay of a decision at any time while an appeal is pending, if the harmful effects alleged pursuant to 36 CFR 251.91 (c)(3) would occur during the pendency of the appeal. The reviewing officer shall not accept any request to stay implementation of a decision that is not scheduled to begin during pendency of the appeal. If you appeal this decision, a Notice of Appeal must be filed with the Forest Supervisor, Big Mountain National Forest, 1200 Federal Way, Goodnews, UT, 84123, within 45 days of the date of this letter (By July 15, 2002). A copy must be sent simultaneously to the District Ranger, Little Rock Ranger District, Box 1234, Somewhere, UT, 84123.

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

In accordance with 36 CFR section 251.103, this decision is subject to mediation in accordance with the United States Department of Agriculture certified mediation program for the State of Utah. Law requires that all negotiations are confidential and private. Request for mediation must be made concurrently with the filing of an appeal. Once an appeal is filed, with a copy simultaneously sent to the Utah Deputy Commissioner of Agriculture, the State mediation program manager will provide you with the information necessary and will arrange to proceed with mediation. If you request mediation as part of your filing of an appeal, please ensure that your appeal letter clearly indicates that you are requesting mediation. This will allow the reviewing officer to stop the clock on the appeal review period for up to 45 days to allow for mediation to proceed in accordance with existing regulations and all parties to the appeal can be notified.

If no further violations of the terms and conditions of your grazing permit occur, the 25 percent suspension will be restored in the year 2005. However, if additional violations occur, the 25 percent suspension shall be reviewed for cancellation and additional administrative action may also be considered.

Sincerely,

J. S. Hicks
District Ranger

cc: Forest Supervisor

16.32 - Time to Demonstrate or Achieve Compliance

The time to demonstrate or achieve compliance must be reasonable and must be determined by the authorized officer on a case-by-case basis. In many instances, what is deemed "reasonable" may depend upon the nature of the noncompliance, the location of the noncompliance, and, even perhaps, the time of year when the noncompliance was detected.

16.33 - Permittee Actions to Demonstrate or Achieve Compliance

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

In situations where the noncompliance is ongoing, the corrective action is straightforward—the noncompliance must cease within the prescribed timeframe. For example, if a permittee is currently grazing more livestock than authorized by the permit, the notice letter would direct the permittee to remove the excess livestock within a defined timeframe (normally not to exceed 72 hours).

However, where permit noncompliance has ceased, for example, monitoring at the end of the grazing season following the removal of livestock indicates forage utilization standards have been exceeded; the corrective action is more complicated. In this case, the Notice should describe the particular permit provision that was violated, and explain that strict compliance with that provision will be required during the upcoming grazing season or suspension or cancellation proceedings will be initiated.

16.34 - Forest Service Verification and Documentation of Compliance

As soon as reasonably practicable after the time period specified in the NONC has expired, the authorized officer must inspect or otherwise determine whether: (1) the permittee has taken the appropriate corrective action necessary to demonstrate or achieve compliance, or (2) the permittee has failed in this regard. This determination shall be sent to the permittee, preferably using certified mail. In the instance that the permittee will not accept certified mail, send using regular mail or hand delivered.

In those instances where the permittee has failed to take the required corrective action within the prescribed timeframe, the letter will state that administrative action, such as suspension or cancellation of a portion or the entire permit is being initiated. The letter should describe the type and extent of the permit action being taken and should notify the permittee of his/her right to seek mediation in those States where mediation is available (sec. 16.4) and administrative appeal of the decision under 36 CFR 251.80.

16.35 - Willfulness and Public Health, Interest, and Safety Exceptions

A NONC is not required in cases involving willful conduct by the permittee, which might include intentional concealment or misrepresentation of pertinent information, for example, ownership of base property or livestock.

A NONC is not required where the violation has an immediate and adverse affect on public health, interest, or safety, and prompt action is necessary to avert the threat.

In those instances when a determination is made to institute permit suspension or cancellation proceedings without first sending a NONC, the authorized officer must document the rationale for this decision in the letter instituting the proceedings. It may be advisable to consult with the regional range management specialist or with an attorney in the Office of the General Counsel before making a determination regarding issuance of a notice of non-compliance letter. Though not required under these circumstances, nothing precludes the issuance of a NONC either. This may be a reasonable course of action particularly in those instances where determinations of willfulness or threats to public health, interest, or safety are not clear-cut.

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

16.36 - Repeated Incidents of Noncompliance

The purpose of the NONC is to provide a permittee with notice of problems associated with permitted livestock grazing activities and a reasonable opportunity to fix the problems before administrative actions such as suspension or cancellation are undertaken. In other words, except in situations involving willfulness or public health, interest, or safety (sec. 16.35), permittees are given a “second chance” to correct a violation of permit terms and conditions.

While they may be entitled to a “second chance,” permittees are not entitled to unlimited chances to correct repeated incidents of noncompliance regarding the same or a closely related permit terms or conditions. Such an approach could lead to a never-ending cycle of permittee violation, Forest Service issuance of NONC, permittee corrective action, Forest Service verification, followed by another violation of the same term or condition by the permittee, and so forth. Rather than issuing multiple Notices for repeated violations of the same permit term or condition in the same season or at the end of an authorized grazing season, the authorized officer should issue one notice for the current and subsequent grazing season and then initiate suspension or cancellation proceedings if the same violation arises at a later date.

However, in cases involving the violation of different, that is, unrelated permit terms in different grazing seasons, the authorized officer should issue a new NONC letter for the second violation rather than relying on a previous notice of non-compliance letter for an earlier violation unrelated to the most recent violation. In other words, if the permittee violates a different term and condition than the one referenced in the first Notice, the authorized officer should issue another Notice to address this new violation.

16.4 - Suspension and Cancellation Sanction Guidelines

Forests may not supplement the following guidance for consistent actions in grazing permit administration for the categories listed. The objectives are:

1. To obtain consistency on administrative actions taken on non-conformance with the terms and conditions of the term grazing permit.

2. To ensure consistency with recent court decisions (*Anchustegui v. U.S. Department of Agriculture*) and guidance;

3. To provide a firm but fair approach.

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

If non-conformance with the permit terms and conditions occurs, these guidelines provide recommended actions deemed appropriate, while recognizing that situations and circumstances can vary. These guidelines are not all inclusive of potential situations. Direct questions to regional rangeland management specialists.

Non-compliance with the term grazing permit terms and conditions are generally cumulative. This means that any and all recent prior occurrences of non-compliance with permit terms and conditions should be considered in determining second and third offenses. Permit non-compliance instances in year 1 should be considered in actions taken on non-compliance situations occurring in year 2 or 3. However, do not consider an isolated non-compliance situation that occurred a number of years previous as evidence of a recurrent history of violations.

In addition to cancellation or suspension action, require the permittee to pay the unauthorized use rate for excess use where appropriate. Excess use is grazing livestock in greater numbers or at times or places other than authorized by the permit or the Bill for Collection.

For many situations of non-compliance, the letter of non-compliance should contain an offer from the authorized officer to hear the permittee's viewpoint. This opportunity for the permittee to be heard may take the form of a written letter or a personal meeting between the permittee and the authorized officer.

Follow guidelines below for determining the extent of suspensions and cancellations, unless the authorized officer determines a different action is appropriate due to the specific circumstances of the violation.

1. Excess Use: Any livestock owned by the holder of a National Forest System grazing permit, but grazing on National Forest System lands in greater numbers, at times or in places other than permitted in part 1 of the grazing permit or authorized on the annual Bill for Collection, including any modifications made by the authorized officer, constitutes excess use. Failure to remove livestock at the end of the grazing season or when instructed by the authorized officer is excess use. (Grazing Permit, Part 2, Section 8(c), 8(d), and 8(e).)

a. Notice of Noncompliance and Opportunity to Remedy: Contact the permittee by phone or in person to notify them of the non-compliance, specifying what parts of the term permit, AMP and/or Annual Operating Instructions (AOI) are in non-compliance; and, require livestock removal in full within 72 hours. Send a letter documenting the verbal discussion, including what parts of the term permit, AMP and/or AOI are in noncompliance, what action is expected of the permittee to remedy the situation, to what standard, and by when. Bill for excess use at the unauthorized use rate.

b. Permit Action Decision Letter for Noncompliance: When documented inspection indicates that excess use has occurred for a second time, or if the initial non-compliance has not been remedied as specified, notify the permittee with a notice of permit action in a decision letter, by certified mail—return receipt requested, suspending 25 percent or more of the permitted numbers or seasons for a period of at least 2 years. Bill for excess use at the unauthorized use rate.

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

c. Repeat Offenses: When documented inspection indicates that excess use has occurred under repeat situations and/or the previous situations have not been remedied as specified, send a notice of permit action for noncompliance letter, certified mail—return receipt requested, documenting the repeat noncompliance and indicating that the permit is being canceled in whole or in part as appropriate to the circumstances. Bill for excess use at the unauthorized use rate.

2. Failure to Follow Management Instructions: The allotment management plan, annual operating instructions, or other management instructions for the land described on page 1, part 1, are part of the permit. The permittee must carry out the permit provisions, other instructions, or both, as issued by the authorized officer for the area under permit, and require employees, agents, contractors, and subcontractors to do likewise. (Grazing Permit, Part 1, Section 3, Part 2, Section 8 (a-h).)

a. Notice of Noncompliance and Opportunity to Remedy: Contact the permittee by phone or in person to notify them of the noncompliance, including what provisions of the AMP and/or AOI are in non-compliance, and require correction of the problems associated with the situation within 72 hours. Specify precisely what action is required to bring the permit back into compliance. Follow-up with a NONC documenting the verbal discussion including what parts of the term permit, AMP, and/or AOI are in noncompliance, what action is expected of the permittee to remedy the situation, to what standard, and by when.

b. Permit Action Decision Letter for Noncompliance: When documented inspection indicates that the initial noncompliance has not been remedied as specified, or if a second situation of noncompliance has occurred, contact the permittee by phone or in person describing the specific non-compliance and require correction within 72 hours

or less. Follow-up with a notice of permit action decision letter, certified delivery—return receipt requested, to the permittee indicating that a specified part of the permitted numbers or seasons is being suspended for a period of at least two years.

c. Repeated Offenses: When a documented inspection indicates repeated non-compliance with the AMP and/or AOI, send a notice of permit action for non-compliance letter, certified delivery—return receipt requested, documenting the repeat non-compliance finding and canceling the permit in full.

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3. Failure to Maintain Improvements: The term grazing permit is issued and accepted with the provision that the permittee will maintain range improvements, whether private or Government owned, that are assigned to them for maintenance in the grazing permit. (Grazing Permit, Part 2, Section 8(i) and Part 3.)

a. Notice of Noncompliance and Opportunity to Remedy: When a documented inspection indicates non-compliance with requirements to maintain improvements to standard within specified timeframes, contact the permittee in person or by phone and describe the results of the inspection, and the provisions in the term permit, AMP and/or AOI that are in noncompliance. Specify what action is required to remedy the noncompliance, to what standard, and within what timeframe. Follow-up the personal contact with a letter indicating the specific instances of noncompliance, the provisions of the term permit, AMP and/or AOI which are in noncompliance, and specify what actions are required, to what standards and what timeframes. Document the inspection, with photographs if possible.

If maintenance is not completed according to specifications and within specified timeframes, require the permittee to keep their livestock off, or remove their livestock from, the allotment until maintenance is completed to standard.

b. Permit Action Decision Letter for Noncompliance: When a documented inspection indicates that the initial noncompliance has not been remedied as specified, or if a second offense has occurred, send the permittee a notice of permit action for non-compliance letter, certified delivery—return receipt requested, documenting the inspection and suspending 25 percent or more of the permitted numbers or season for a minimum of 2 years. Do not permit livestock on the allotment until improvement maintenance is completed to standard.

c. Repeated Failure to Maintain Improvements: Send a notice of permit action for noncompliance letter, certified delivery—return receipt requested, canceling the permit in full.

4. Nonuse without Approval: Permits may be canceled, in whole or part, if the term permit holder fails to graze at least 90 percent of permitted numbers without obtaining approval for nonuse. (Grazing Permit, Part 2, Section 9.)

a. Notice of Noncompliance and Opportunity to Remedy: In the AOI, and during each year where permittee convenience nonuse is requested and approved, document in writing to the permittee the requirements for stocking the allotment in the absence of approved nonuse. This constitutes the opportunity to remedy. Where a documented inspection indicates that a permittee has failed to stock without first receiving approval of nonuse, send a certified delivery—return receipt requested notice of non-compliance, suspending for one year or more, the number equal to the authorized number not placed on the permitted area. Do not allow credit or refund of grazing fees paid.

b. Permit Action Decision Letter for Noncompliance: When documented inspection indicates that a repeat offense has occurred, or when the permittee fails to stock the permitted area after personal convenience nonuse has been exhausted, send a notice of permit action for noncompliance letter, certified delivery—return receipt requested, canceling the permit to the extent of un-approved nonuse. Do not allow credit or refund of grazing fees paid.

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5. Failure to Notify Authorized Officer of Change in Qualifications to Hold Term Grazing Permit within a Reasonable Time (30 Days): (Grazing Permit, Part 2, Section 11 (c).) If the change involves base property, see paragraph 7 below.

a. Notice of Noncompliance and Opportunity to Remedy: Send a certified letter documenting the non-compliance, indicating specific terms and conditions of the permit that were violated. Request the permittee to remedy the situation by providing the required documentation within a specified timeframe, normally 30 days.

b. Send the permittee a notice of permit action for non-compliance letter, certified delivery—return receipt requested, canceling the permit.

6. Conviction for Failure to Comply with Federal, State, or Local Laws: In cases where the permittee or the permittee's agents or affiliates are convicted for violation of Federal laws or regulations or State laws concerning animal control, protection of air, water, soil, vegetation, fish, wildlife, or other environmental values related to the grazing use authorized by the permit. (Grazing Permit, Part 1, Section 3.)

a. Notice of Noncompliance and Opportunity to Remedy: When documentation indicates that a conviction for failure to comply with appropriate Federal, State or local laws has occurred, send a Notice of Noncompliance by certified delivery letter to the permittee, documenting the specific noncompliance. Offer the permittee the opportunity to provide rationale as to why administrative action should not be taken.

b. Notice of Permit Action for Noncompliance: Where the conviction is directly related to, and has a negative impact on, management of the area or resources under term permit, send a permit action decision letter, certified delivery—return receipt

requested, to the permittee documenting the specific facts regarding the non-compliance situation and cancel the permit.

7. Failure to Conform With Base Property Requirements: The permittee must notify the authorized officer if they dispose of the base property on which the permit is based. (Grazing Permit Part 2, Section 7(b) and 11(c).)

a. Notice of Noncompliance and Opportunity to Remedy: If the authorized officer finds that the permittee has failed to conform to base property requirements, the authorized officer shall provide written notice to the permittee that they have one year from the receipt of the NONC to acquire replacement base property.

b. Permit Action Decision Letter for Noncompliance: If the permittee fails to provide the required documentation to prove ownership of suitable replacement base property after the specified one-year period, send the permittee a notice of permit action for non-compliance letter, certified delivery—return receipt requested, canceling the permit.

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8. Failure to Validate the Grazing Permit: The issuance of a Bill for Collection, payment of fees, and actual turning on at least 90 percent of permitted livestock the first grazing season after the permit is issued will validate the permit for the number, kind, and class of livestock, grazing allotment, and period of use for the particular year. (Grazing Permit, Part 2, Section 1.)

a. Notice of Permit Action for Noncompliance: Unless specific circumstances indicated otherwise, this violation is considered to be willful and no opportunity for remedy is provided. When documented inspection indicates that validation has not occurred, notify the permittee with a notice of permit action for noncompliance decision letter, sent certified delivery—return receipt requested, explaining the noncompliance and stating that the term grazing permit is being cancelled to the extent that validation did not occur.

9. Grazing Livestock Not Owned by Permittee: Only livestock owned by the permittee are authorized to graze under the permit. Leased brands are not recognized as proof of ownership. Livestock purchased and subsequently sold back to the original owner, within a 24-month period, is not considered evidence of valid ownership of the livestock. (Grazing Permit, Part 2, Clause 7 (a).)

a. Notice of Permit Action for Non-Compliance: Unless specific circumstances indicate otherwise, this violation is considered to be willful and no opportunity for remedy is provided. When documented inspection indicates that grazing of livestock not owned by the permittee has occurred, call or meet with the permittee in person to explain the non-compliance. Indicate what parts of the term permit are in non-compliance and require full removal of the livestock from National Forest System lands, and/or submission of positive proof of ownership, within 72 hours.

b. Permit Action Decision Letter for Noncompliance: If acceptable proof of ownership is not provided within established timeframe, notify the permittee by notice of permit action for non-compliance letter, certified delivery—return receipt requested, that the permit is being cancelled.

10. Making False Statements: If at any time after issuing a grazing permit, it is discovered that the permit was secured or maintained by deliberate misrepresentation or suppression of material facts, the permit may be canceled (Grazing Permit, Part 1, Section 3). 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.

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a. Notice of Permit Action for Non-Compliance: Unless specific circumstances indicate otherwise, this violation is considered to be willful and no opportunity for remedy is provided. During the issuance of the term permit, inform the permittee of the permit terms and conditions regarding false statements and what actions will follow if such occurs. If at any time an authorized officer has reason to believe the information currently on record, in the form of grazing applications or supporting information supplied, does not reflect the actual situation, it is appropriate to ask the permittee to submit an updated application and supporting documentation. Establish a reasonable timeframe for furnishing of this information.

b. Permit Action Decision Letter for Noncompliance: If updated information provided by the permittee conflicts with previously furnished or other known information to the extent that the documentation shows a deliberate misrepresentation has occurred, send a notice of permit action for non-compliance letter, certified delivery—return receipt requested, canceling the permit in whole.

11. Failure to Pay Grazing Fees - Allowing Livestock to Enter National Forest System Lands Before Paying Grazing Fees: The permittee must not allow owned or controlled livestock to be on Forest Service-administered lands unless the fees specified in the Bill for Collection are paid prior to livestock entry. Charge interest, penalties, and administrative costs on any payment not made in accordance with 31 U.S.C. 3716; 7 CFR part 3, Subpart B; and Grazing Permit, Part 2, Sections 4 and 5. Charge unauthorized use fees for any time where livestock are on Forest Service administered lands without a paid Bill for Collection.

a. Notice of Non-Compliance and Opportunity to Remedy: Notify the permit holder in person or by telephone regarding the apparent lack of payment. If the permit holder is unable to provide satisfactory evidence that a legitimate attempt was made to timely pay the Bill for Collection, issue a Notice of Non-Compliance requiring: removal of all livestock not currently authorized under a paid Bill for Collection within 72 hours; payment of all current fees; and approval from the authorized officer prior to placing livestock onto lands administered by the Forest Service. Inform the

permit holder that continued non-compliance will result in action being taken against the permit. Notify the permit holder that additional fees will become due based on unauthorized use billing for the period of time the livestock were on Forest Service administered lands prior to removal and/or payment of the Bill for Collection. Also, charge interest and penalties as specified above.

b. Notice of Action for Non-Compliance: If there is continued failure to pay the Bill for Collection and to remove livestock from Forest Service administered lands within the specified timeframe, send the permit holder a notice of permit action for non-compliance letter, certified delivery—return receipt requested, imposing a minimum of a 25 percent suspension for 2 years. Also, charge interest and penalties and unauthorized use fees as specified above.

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c. Continued non-compliance in the current season, or non-compliance with this item repeated in subsequent years, may be considered to be willful and may result in cancellation of the permit in whole.

12. Leasing the Permit: The permittee may not transfer, assign, lease, or sublet the permit in whole or in part, including the lease of base property or permitted livestock to someone else to allow the lessee to use the National Forest System grazing privilege. (Grazing Permit, Part 2, Section 11(e).)

a. Notice of Permit Action for Non-Compliance: Unless specific circumstances indicate otherwise, this violation is considered to be willful, and no opportunity for remedy is provided. When there is documented evidence that the permittee has leased or sublet the permit as specified above, send a notice of permit action for non-compliance letter, certified delivery—return receipt requested, to the permittee. Offer the permittee the opportunity to provide information to prove that the leasing has not occurred.

b. Permit Action Decision Letter for Noncompliance: If satisfactory evidence is not presented within the established timeframe to indicate that non-compliance has not occurred, cancel the permit.

16.5 - Mediation

Disputes regarding “grazing on National Forest System lands” are eligible for mediation under State mediation programs certified by the Secretary of Agriculture.

In order to participate in the mediation program, the dispute must have originated in a State whose mediation program has been certified by the Secretary of Agriculture. In addition, under the Secretary’s regulations at 36 CFR part 251, Subpart C, mediation is available only for decisions which result in the suspension or cancellation of term grazing permits, in whole or in part, based on:

1. The permittee's refusal to accept modifications to permit terms and conditions (36 CFR 222.4(a)(2)(i));

2. The permittee's refusal or failure to comply with eligibility or qualification requirements (36 CFR 222.4(a)(2)(ii));

3. The permittee's failure to restock the allotment following the exhaustion of permittee convenience nonuse (36 CFR 222.4 (a)(2)(iv));

4. The permittee's failure to pay grazing fees within established time limits (36 CFR 222.4(a)(2)(v) and (a)(3));

5. The permittee's failure to comply with applicable Forest Service regulations or grazing permit terms and conditions (36 CFR 222.4(a)(4));

6. The permittee's knowing or willful false statement in the grazing permit application (36 CFR 222.4(a)(5)); and

7. The permittee's conviction for violation of Federal or State laws pertaining to "protection of air, water, soil and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by this permit (36 CFR 222.4(a)(6)).

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When eligible, permit holders must request mediation in the notice of appeal filed with the reviewing officer. If mediation is requested, implementation of the agency decision is stayed pending the completion of the mediation. Mediation should be completed within 45 days, but an additional 15 days can be added to the process if it appears to the authorized officer that there is a potential to resolve the dispute by proceeding with the mediation process.

For additional information regarding the mediation procedure, see 36 CFR part 251, Subpart C; 64 Federal Register 37843 (July 14, 1999); and 63 Federal Register 9987 (February 27, 1998).

16.6 - Cancellation to Devote the Lands to Another Public Purpose

Grazing permits may be cancelled in whole or in part where a decision has been made to devote certain National Forest System lands to another public purpose that precludes grazing by the permitted livestock. Except in an emergency, do not cancel a permit without a two-year notification (36 CFR 222.4(a)(1)). The permittee may waive the two-year notice requirement if he or she so chooses. Under the Federal Land Policy and Management Act (FLPMA) of 1976, permittees are entitled to reasonable compensation for the adjusted value of their interest in authorized permanent improvements on National Forest System lands which are to be devoted to another public purpose that precludes livestock grazing. See FSM 2240.

"Devote[ing] lands to another public purpose" includes projects that result in the transfer of lands out of the National Forest System as part of a land exchange. Where land exchanges are being considered, the authorized officer should notify the affected permittees in writing of the potential exchange as soon as reasonably practicable once the exchange appears likely. Scoping for the proposed land exchange may be an appropriate time to provide the permit holder with this notice. This early notice should provide the permittee with sufficient time to make alternative arrangements in the event that the exchange occurs. Since land exchanges may take several months or longer to complete, the authorized officer should periodically advise the permit holder of the status of the negotiations. For more information regarding land exchanges, see FSH 5409.13.

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16.7 - Administrative Appeal of Decisions Involving Grazing Permits

Procedures for administrative review of grazing permit decisions are covered in 36 CFR part 251, Subpart C and FSM 1570.

17 - NONUSE OF GRAZING PERMITS WITH TERM STATUS

17.1 - Nonuse for Permittee Convenience

Requests for nonuse of term grazing permits for permittee convenience must be made annually by the permittee in writing. The permittee must submit such requests for personal convenience nonuse sufficiently in advance of the start of the permitted grazing season (normally 30 days) to allow the authorized officer time to consider alternative uses including, but not limited to, the issuance of a temporary grazing or livestock use permit to a third party. Failure to place livestock on National Forest System lands within 10 days after the permitted on date without approved nonuse (or without written approval from the authorized officer for a delayed turn on date) may result in suspension or cancellation of the permit (sec. 16.3). Nonuse is measured in numbers of animals.

Approval of requests for permittee convenience nonuse is not automatic and the authorized officer should discuss the reasons for the nonuse request with the permittee. Approval of a request for permittee convenience nonuse must be in writing by the authorized officer.

Full or partial permittee convenience nonuse may be approved by the authorized officer for no more than three consecutive years and not more than four years in any 10-year period. Note that these restrictions apply to 10-year periods, not to the term of the permit. This restriction applies to the specific permittee, regardless of the number of allotments under permit. This means that partial or total nonuse of one allotment found in part 1, section 2, of the permit will be considered as nonuse for the entire permit in application of this direction.

In approving requests for permittee convenience nonuse, the authorized officer should include a statement in the approval letter that reminds the permittee of the nonuse restrictions regarding

three consecutive years and four in a 10-year period. In addition, the letter should explain that the term permit holder remains responsible for the maintenance on all assigned improvements on the permitted allotments during the nonuse period unless the term permit holder and a third party (for example, the holder of a temporary grazing or livestock use permit filling in behind the nonuse) negotiate an alternative arrangement for range improvement maintenance.

Approved partial nonuse should be reflected in the Bill for Collection. The letter approving the final year of permittee convenience nonuse shall advise the permittee that at least 90 percent of the permitted livestock numbers must be grazed during the next season to avoid permit suspension or cancellation.

Copies of authorized officer responses to permittee convenience nonuse requests should be sent to holders of escrow waivers, if any.

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Approval of nonuse for permittee convenience will normally preclude a waiver based on sale of livestock because there were no permitted livestock for the last one to three years. If the permittee is unable or unwilling to execute a waiver based upon sale of base property, and wants to waive only upon sale of permitted livestock, he/she must have or acquire livestock and place them on the allotment for at least some portion of the permitted use season in order for the authorized officer to receive and confirm a waiver based upon sale of permitted livestock. (Partial nonuse would require restocking of the approved nonuse numbers in order for the waiver to be confirmed for full permitted numbers.) Purchase of new livestock cannot be from the potential preferred applicant. See section 16.21 for restrictions on repurchase of livestock.

17.2 - Nonuse for Resource Protection or Development

Nonuse may be implemented by the authorized officer if necessary to facilitate the protection or development of National Forest System lands and resources. Nonuse may be on an allotment, watershed, or landscape scale depending on the scale of the rangeland resource needing protection or development. A decision to implement resource protection nonuse shall be made in writing to the permittee(s) affected by the protection or development activities and escrow waiver holders, if any. The modification shall explain the rationale for the nonuse, shall specify the period of nonuse (not to exceed the term of the permit), shall describe the objective to be accomplished by the nonuse, and shall include monitoring requirements in order to determine whether the nonuse is effective in accomplishing its objectives. The decision shall be incorporated as a modification to the term permit and is an appealable decision under 36 CFR 251, Subpart C.

Additional resource protection nonuse for the affected area may be implemented upon issuance of a new term grazing permit. Nonuse periods may be extended if the authorized officer determines that further improvement of rangeland resources is necessary. However, the authorized officer should make adjustments in permitted livestock grazing, either numbers or

seasons of use, if resource protection or development nonuse is determined by the monitoring to be ineffective in restoring rangeland resources to their desired condition.

Term grazing permits in nonuse for resource protection or development may be waived based on the sale of base property. Waivers executed on the sale of base property will follow standard procedures specified in section 18.2 and 18.4 of this chapter.

Term grazing permits in nonuse for resource protection or development may, under very limited circumstances, be waived based on sale of permitted livestock. Such waivers must be based on permitted livestock as defined in section 12.22. Approval and implementation of a resource protection or development nonuse agreement will preclude most waivers based on sale of livestock because permitted livestock, by definition, no longer exist at the end of the protection period.

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Nonuse for resource protection can be approved as a result of ongoing drought conditions. Requests by permittees to downsize or de-stock because of extreme or prolonged drought are in the interest of sound rangeland management, should be approved on a case-by-case allotment basis, and should not count against the permittee's period of nonuse for personal convenience.

The permittee needs to request drought nonuse on the annual application or other written means. The authorized officer should approve the nonuse in writing, either on the application or by memo. When drought conditions begin to improve, the permittee should propose, in writing, how he/she plans to restock following the end of the drought in order for the authorized officer to approve adequate time to rebuild the herd while the resource recovers. Resource recovery is highly variable based upon the nature/extent of the drought and the plant communities involved.

Approval of resource protection nonuse because of drought will normally preclude a waiver based on sale of livestock because all or most of the herd has been sold and permitted livestock no longer exist. If the permittee is unable or unwilling to execute a waiver based upon sale of base property, and wants to waive only upon sale of permitted livestock, he/she must have or acquire owned livestock and place them on the allotment for at least some portion of the permitted use season in order for the authorized officer to receive and confirm a waiver based upon sale of permitted livestock.

17.3 - Nonuse for Range Research

Occasionally, a research institution may desire to use an allotment as a study area and graze it with livestock not owned by the permittee. This may be done with the consent of the permittee under written agreement or memorandum of understanding between the Forest Service, the permittee, and the research institution 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 resource protection or development.

18 - WAIVER AND ISSUANCE OF GRAZING PERMITS WITH TERM STATUS BECAUSE OF CHANGE IN OWNERSHIP

18.1 - Forest Service Disclosures Associated with Sale of Permitted Livestock, Base Property, or Both

Upon notification by a permittee or a prospective purchaser of permitted livestock, base property, or both, that a sale or waiver is in progress the authorized officer shall offer to provide both parties with information concerning the status of the term grazing permit. Before accepting a waiver from the seller and issuing a new permit to the buyer, the authorized officer shall provide both parties with a thorough explanation of the requirements for waiver of the existing permit and issuance of a new permit. As part of this disclosure, the authorized officer should advise the seller and buyer about the current condition of rangeland resources and anticipated changes to the grazing capacity or management systems that may be reasonably foreseeable in the near future. Where applicable, the authorized officer should notify the prospective purchaser that the permit, if issued, may be subject to the following:

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1. Planned modifications to permitted livestock numbers, seasons of use, or grazing management systems.

2. Changes that allotment monitoring indicate are necessary.

3. Applicable direction in land and resource management plans and allotment management plans.

4. Existing resource protection nonuse agreements.

5. Other changes that may become necessary as the result of changes in law, regulation, LRMPs, AMPs, NEPA analysis and project decisions, or other similar and legally binding requirements.

In cases of a sale consummated before the authorized officer receives notification, the authorized officer shall provide the purchaser with the above information before issuing the permit.

18.2 - Transactions with Permit Waiver

Subject to applicable eligibility and qualification requirements (and upper and lower limit restrictions, where applicable, sec. 12.5), the following briefly describes some of the transactions that may be the basis for the waiver of term grazing permits from the permit holder to the Forest Service and for the authorized officer's issuance of a new permit to a permit applicant.

18.21 - Sales

The most common type of transaction typically involves a contract reflecting an "arms length" agreement between a seller and a buyer under which the former transfers title to the base ranch property, permitted livestock, or both to the latter based upon the latter's payment of money or other "good and valuable consideration" either as a one time payment or by payments over time.

18.22 - Intra-Family Transfers

Children who purchase or otherwise acquire base property or permitted livestock from their parents who are permittees may be issued a permit. In order to encourage continuation of family operations, parent permittees may directly waive term grazing permits to their children recognizing the children's livestock as a portion of the permitted livestock in the waiver if the animals were grazed during the last grazing season under the parents' term grazing permit.

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18.23 - Contracts to Purchase

Issuance of a term grazing permit in connection with a contract to purchase base property or permitted livestock may be allowed in the same manner as term grazing permits issued because of sale and purchase of base property or permitted livestock. However, terms of the contract should be examined to ensure it is a bona fide transaction. Full or partial payment for the livestock and/or base property should be made under the contract prior to the issuance of a new term grazing permit.

18.24 - Inheritance

Term grazing permits may be issued to parties who inherit base property or permitted livestock and who are otherwise eligible and qualified to hold a term grazing permit. Recognize such permits in the same manner as term grazing permits issued because of sale and purchase of base property or permitted livestock.

Strict compliance with the qualification requirements may not be appropriate during settlement of an estate. An estate shall be required to meet all qualification requirements within three years unless the administrator of the estate can document why it would be inequitable to do so.

18.25 - Corporation or Partnership Formation

Permittees may enter into partnership agreements among themselves or establish corporations or other legal entities. Alternatively, permittees may enter into a partnership agreement or establish corporations or other legal entities with individuals who are not permittees. In either case, arrangements which result in a change in the status of a permittee will require the waiver of the old permit to the Forest Service and the issuance of a new permit by the authorized officer to the new entity, assuming it meets base property and livestock ownership qualification requirements.

In order to qualify for the new permit, ownership of both the base property and livestock must be in the name of the same entity. Thus, the qualification requirements will not be satisfied, for example, if one entity owns the base property while another entity owns the permitted livestock unless for estate planning purposes two separate entities comprised of the same individuals are formed – one to hold the base property and one to hold the livestock. While the individuals comprising each entity must be the same, their ownership percentages in the entities may be different. Formation and documentation of partnerships, corporations and other legal entities must be in accordance with applicable State law and regulations.

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18.26 - Corporation or Partnership Dissolution

Permits held by partnerships, corporations, or other legal entities may be waived to the Forest Service upon the dissolution of the partnership, corporation, or other legal entity. In this situation, the authorized officer may issue term grazing permits to the former partners or shareholders in proportion to their ownership interest in the dissolved partnership, corporation, or other legal entity or in accordance with the terms of the dissolution agreement. However, each former partner or shareholder seeking a permit must meet the requisite eligibility and qualification requirements for term grazing permits.

18.27 - Changes in Corporation, Partnership or Other Legal Entity Ownership

When change in ownership involves actual sale or purchase of permitted livestock and/or base property, handle the transaction as a sale with waiver. For changes involving simply a change in partners or stockholders or the relative partnership interest or number of shares owned by the shareholders, waiver of the existing permit is unnecessary as there is no change in the actual permittee. Waiver would be appropriate only when the partnership, corporation, or other legal entity merges with or is acquired by a separate entity and thereby loses its identity.

18.28 - Permit Waiver With No Preferred Applicant

Occasionally, a permittee may elect to waive his/her permit back to the government without sale of base property and/or permitted livestock – “in favor” of no other entity.

In such cases, FS-2200-12 should be filled out as to the date the permit was acquired (and numbers, and so forth) and the date waived, but the section on date sold and number sold should be entered as “N/A”.

This allotment then becomes vacant, or if this is a community allotment, the capacity becomes vacant and potentially subject to permit issuance through the grant process. It can also be maintained as a forage reserve or retained in vacant status but available for occasional use as a swing pasture(s) as needed for drought, wildfire, prescribed fire, etc. The guiding document will be the project-level NEPA analysis and decision.

18.3 - Prohibition on Direct Permit Transfers from Sellers to Buyers of Base Property and/or Permitted Livestock

When a document that purports to assign or transfer a grazing permit from the seller of base property and/or livestock to the purchaser is received, the authorized officer should notify the seller, purchaser, lending agency, and any other agent(s) in writing of the following:

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. Purported assignments of grazing permits are not of legal consequence to the United States.

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18.4 - Documentation Required for Permit Issuance Following Sale and Purchase of Permitted Livestock and/or Base Property

The authorized officer must have satisfactory evidence that the sale and purchase of permitted livestock and/or base property was a bona fide transaction between the seller and purchaser prior to issuing a new term permit to the purchaser. In order to demonstrate that the transaction was conducted in good faith, the purchaser of permitted livestock and/or base property must present, at a minimum, the following documents:

1. A completed Waiver of Term Grazing Permit (Form FS-2200-12).

2. An Application for Term Grazing Permit (Form FS-2200-16).

3. A properly executed and recorded or notarized bill of sale, with canceled check or receipt (proof of a monetary transfer) to document sale of permitted livestock, and/or properly executed and recorded deed or contract to purchase base property.

4. Any additional documents deemed necessary by the authorized officer as evidence of the conveyance.

When an applicant for a term grazing permit furnishes the required information in good faith, which is later determined to have errors or defects; a term grazing permit issued based on such information may be continued. No correction that would have adverse effects on the permittee's operation should be made, but corrections that would not cause adverse effects must be made. The later discovery of error or defect will not be cause for suspension nor cancellation.

18.5 - Nonuse

Permits in partial nonuse for permittee convenience can be waived based on the sale of permitted livestock, only to the extent of the livestock numbers placed on National Forest System lands during that grazing season. Permits in total or partial nonuse for permittee convenience can be waived based on the sale of base property. See also section 17.1.

Permits in nonuse for research and resource protection or development may be waived in their entirety on the basis of the sale of base property. See section 17.2 for discussion on waiver based on the sale of permitted livestock.

18.6 - Escrow Waivers

The escrow waiver documents a loan arrangement between a lender (mortgagee) and the permit holder (mortgagor). In recognition of a loan made by the lender to the permit holder, the Escrow Waiver of Term Grazing Permit Privileges (Form FS-2200-13) results in the waiver by the permit holder to the Forest Service of all privileges associated with the term grazing permit, except the privilege of grazing livestock. The Forest Service retains these privileges in escrow until such time as the permit holder satisfies his loan obligations with the lender and the lender's "release" of the escrow waiver. Escrow waivers recognize the mortgagee as the lien holder. Original escrow waiver forms (both active and released) must be retained in the official permit files.

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An escrow waiver may have been executed in connection with the mortgage of land, livestock, or both if a lender made or discounted a loan. If a permittee has executed an escrow waiver, consider the permit 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. The escrow waiver establishes preferred applicant status in the lender in the event of foreclosure. The confirmation of an escrow waiver by the authorized officer does not establish collateral in the amount of the outstanding indebtedness.

The escrow waiver is released upon receipt of a written statement from the lender that acknowledges the escrow arrangement is no longer necessary. This should normally be done by completing the required information on the reverse of Form FS-2200-13.

As a courtesy, the authorized officer shall notify all lenders listed on the escrow waiver of actions to cancel or suspend a term grazing permit in whole or in part, or modifications of a term grazing permit which reduce numbers and/or seasons of permitted use. However, it is not necessary for the authorized officer to defer making such a change because a term grazing permit is held in escrow. The permittees shall contact the lender regarding changes in the status of the term grazing permit.

The authorized officer shall only recognize one lien holder on an escrow waiver. The only entity authorized to hold a second escrow waiver is the Farm Services Agency in which case the authorized officer may accept a second escrow waiver form.

The escrow waiver system was originally established in a 1938 Memorandum Of Understanding (MOU) between the Secretary of Agriculture and the Governor of the Farm Credit Administration. This agreement was terminated August 1990. A new MOU was executed

December 1990 by the Farm Credit Banks and the Forest Service that clarified the Forest Service's ability to take action on violations of grazing permit terms and conditions held in escrow. The 1990 MOU also updated terminology that had been used in the 1938 agreement. (ex. 01).

The Farm Credit Banks are often referred to as Federal Land Banks. While these banks are organized under a Federal Bank Charter, they are not Federal Banks and have no ties to the United States government. As such they are not sister agencies in the government of the United States.

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

18.6 – Exhibit 01

MEMORANDUM OF UNDERSTANDING
between the
FARM CREDIT BANKS
and the
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

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

This memorandum of understanding between the United States Department of Agriculture, Forest Service (hereafter Forest Service), and the undersigned Farm Credit Banks for and on behalf of themselves, the direct lending Farm Credit associations in their respective districts, and other financing institutions as described in Section 1.7(b)(1)(B) of the Farm Credit Act, as amended (12 U.S.C. 2015(b)(1)(B)), with respect to loans that are discounted by or pledged to the Bank under Section 1.7(b)(1) of the Act (12 U.S.C. 2015(b)(1)) (hereafter collectively referred to as Lender), dated December 21, 1990, is for the purpose of encouraging a maximum degree of cooperation and stating the policy regarding the limitation of the use of the grazing privilege by a permittee when he secures a loan from or whose loan is discounted by, a Farm Credit Bank, association, or other financing institution, pledging as security therefore his livestock or ranch unit, or both.

In providing instructions for escrow waivers of the term grazing permit privilege to the United States to be held in escrow, it is with distinct understanding that there shall be no limitation, restriction, or impairment of the authority of the Forest Service to dispose of the escrowed privilege as circumstances justify.

This memorandum is further based upon the following stipulations:

1. It is mutually understood, agreed, and recognized that: (a) the grazing privilege 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 Lender that such a limitation as is proposed herein meets the "reasonable assurance" of continued use required under the Federal Farm Loan Act and any acts amendatory thereof or successor thereto where loans are made to livestock producers who graze on National Forest System lands.

3. Before a loan is made to a National Forest System grazing permittee, the Lender shall definitely ascertain from the authorized Forest Officer the status of the grazing privilege 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 privilege and the probable effect on that privilege of applying the provisions of the regulations and currently approved policies.

18.6 – Exhibit 01-Continued

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 "Escrow Waiver of Term Grazing Permit Privileges" all privilege heretofore carried by his permit except the privilege of continuing to graze his stock on the National Forest System range under the provisions of his grazing permit, pending satisfaction of the mortgage or a written statement by the Lender 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 authorized officer, no waiver subsequently presented will be recognized.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture No. 09-1589 archived on May 28, 2010

5. If for any reason it should become necessary to cancel or suspend, in whole or in part, further use of the permittee-borrower's permit to graze, the permittee and the Lender will be given written notice of the reason(s) and the action against the permit being considered. Such notice will give the permittee and Lender a specific period to respond before the Forest Service makes its decision to cancel or suspend the permittee's permit to graze.

If the cancellation or suspension is a result of the permittee's noncompliance with the permit or regulations, the action against the permit will be effective on the deadline specified in the decision.

6. If a permit is modified for resource protection as determined by the Forest Service, the action against the permit will be effective 1 year from the date of the Forest Service decision. This will allow time for the permittee to adjust his operation.

7. Should it become necessary for a Lender to liquidate a loan in connection with which a privilege has been waived to the Government, the Forest Service will, subject to its regulations and general administrative policy, recognize the Lender as the logical successor to the privilege and will accord the Lender 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 base ranch properties or permitted livestock there may be some instances when disposition may require a longer period than to the beginning of the second season. The Lender mentioned in the "Escrow Waiver of Term Grazing Privileges" or receiver or liquidator appointed under foreclosure of its mortgage may qualify for a permit if any institution of the Farm Credit System owns or controls the base property or the livestock that will be run on the Forest lands by virtue of this permit. It is recognized that a "special limit" will be approved when base ranch properties and associated grazing privileges are accumulated by a Lender where such accumulation is only incidental to the liquidation of mortgage loans through foreclosure or otherwise.

18.6 – Exhibit 01-Continued

8. Questions pertaining to the handling of permittee-borrower cases not specifically provided for in this agreement will be governed by Secretary of Agriculture regulations and Forest Service policy and instructions, as set forth in their manual and handbooks.

9. 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 policy with respect to reduction 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 privilege 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 Lender formally indicates that it no longer relies upon the escrow arrangement.

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

Approved by the United States Department of Agriculture, Forest Service, and the undersigned Farm Credit Banks, for and on behalf of themselves, the direct lending Farm Credit associations in their respective districts, and other financing institutions as described in Section 1.7(b)(1)(B) of the Farm Credit Act, as amended (12 U.S.C. 2015(b)(1)(B), with respect to loans that are discounted by or pledged to the Bank under Section 1.7(b)(1) of the Act, on the day and year first above written.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

By /s/ George M. Leonard
F.DALE ROBERTSON, Chief (Title)

FARM CREDIT BANK OF OMAHA

By /s/ Frank J. Hutfless
Frank J. Hutfless, Sr. VP & General Counsel (Title)

18.6 – Exhibit 01-Continued

FARM CREDIT BANK OF SPOKANE

By /s/ Doyle L. Cook
Doyle L. Cook, President and (Title)
Chief Executive Officer

FARM CREDIT BANK OF ST. PAUL

By /s/ Raymond A. Johns
Executive Vice Pres. (Title)

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

FARM CREDIT BANK OF TEXAS

By /s/ J. E. Lewis
J.E. Lewis, Sr. Vice President (Title)

FARM CREDIT BANK OF WICHITA

By /s/ R. S. Carpenter
RICK CARPENTER, Acting President (Title)

WESTERN FARM CREDIT BANK

By /s/ George D. Beitzel, C.E.O
(Title)

18.7 - Foreclosure in Connection With Term Grazing Permit

18.71 - Foreclosure With Waiver Of Term Grazing Permit

A mortgagee at a forced sale who presents the authorized officer with a duly executed Waiver of Term Grazing Permit on Form 2200-12 shall have priority applicant status and 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 comply with the eligibility and qualification requirements in order to qualify for issuance of the permit.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture
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18.72 - Foreclosure With Escrow Waiver

Procedures for all escrow waivers were established in the terminated Memorandum of Understanding between the Department of Agriculture and the Farm Credit Administration dated February 10, 1936. The Memorandum of Understanding between the Department of Agriculture and the Farm Credit Administration dated December 21, 1990 (FSM 1540) includes this direction and also provided clarification of the role of the Forest Service in actions concerning grazing permits with term status and escrow waivers. The word "preference" as used in exhibit 01 has the same meaning as grazing permit with term status under present instructions. Form 2200-13, Escrow Waiver of Term Grazing Permit Privileges, currently replaces Special Form 763(a).

18.73 - Foreclosure Without Escrow Waiver

An entity that acquires livestock or base property through foreclosure proceedings without an escrow waiver shall receive no special consideration over an ordinary purchaser.

18.74 - Repossession by Previous Owner

Repossession by the previous owner through legal foreclosure is not considered a sale. Consequently, the two-year prohibition against the resale of permitted livestock or base property purchased in connection with issuance of a term grazing permit to the previous seller is inapplicable (sec. 18.5d).

18.75 - Redemption

Redemption is a process under State law that allows an individual to recover property that has been foreclosed upon and subsequently sold. Generally, a party may redeem property by paying into the court the amount that was due and owing at the time of the foreclosure. If this is done within the time prescribed by law, the party may recover the property that was foreclosed upon and resume operations thereon.

Because redemption is a right which may be freely sold or granted to another individual, it is advisable for the authorized officer to delay issuing a new term grazing permit to the individual who acquires the property through a foreclosure sale until the redemption period has expired. Redemption procedures vary from State to State and therefore it is recommended that the authorized officer consult with the regional range management specialist or an attorney in the local Office of the General Counsel to become more familiar with the specific requirements in a particular State.

18.8 - 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.

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

18.9 - Bankruptcy

If unable to pay its debts, a term permit holder may file a petition with the United States Bankruptcy Court under one of the chapters of the Bankruptcy Code to gain relief from the collection of these debts.

When a permittee files a petition for bankruptcy, the bankruptcy court will appoint a trustee in bankruptcy (or the permittee will be designated by the court as the debtor-in-possession) to administer the permittee's estate during the proceedings. Generally, the debtor-in-possession has all of the rights and duties of a trustee in bankruptcy.

Once a petition for bankruptcy is filed and a trustee or debtor in possession is designated, the authorized officer should direct all correspondence regarding the administration of the permittee's term grazing permit to the attention of the trustee or debtor in possession. The trustee's duties include, among other things, collecting and reducing to cash the assets of the estate, operating the debtor's business to preserve the value of the business assets, examining the debtor at a meeting of creditors, filing inventories and making periodic reports to the court on the financial condition of the estate, examining the debtor's financial affairs, examining proofs of claims and objecting to improper claims, and furnishing information related to the bankruptcy to interested parties.

The filing of a petition for bankruptcy by a permit holder generally results in the following:

1. The permittee's property becomes an "estate" under the jurisdiction of the bankruptcy court (11 USC 1471 and 541).

2. Creditors and other persons are prevented from taking action directly against the permittee and his/her property by an automatic stay. Violation of the stay may be treated as contempt of court by the bankruptcy court.

3. Actions by the Forest Service to collect grazing fees or to cancel, suspend, or modify a permit may require approval of the bankruptcy court because the permit action could have a significant effect on the value of the permittee's estate. Approvals of such requests may be granted by the clerk of the bankruptcy court in the form of a "Relief from Stay" order. Bankruptcy is a highly specialized field and specific questions should be directed to the appropriate attorneys in OGC.

18.91 - Types of Bankruptcy Filings

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15895 archived on May 28, 2010

Bankruptcy filings are made under various Chapters of the Bankruptcy Code. Specifically, those chapters are:

1. Chapter 7: This chapter provides for liquidation (selling of assets) of the debtor's estate. In Chapter 7 proceedings, a trustee is appointed to handle the sales of the estate and to distribute the proceeds to the creditors. After administration costs for the liquidation of the debtor's estate are paid, the trustee pays all or part of the creditor's claims against the estate.

2. Chapter 11: This chapter provides a means for debtors to reorganize their business operations and be restored to economic health. Generally, the debtor is in charge of this effort and is referred to as the "debtor-in-possession." The debtor-in-possession may be authorized by the bankruptcy court to deal with the Forest Service on all issues pertaining to grazing of livestock on National Forest System lands. Consult the clerk of the bankruptcy court to determine who the authorized officer should be dealing with in regard to grazing of livestock on National Forest System lands.

3. Chapter 12: This chapter provides a special procedure for the reorganization of agricultural debts of a family farmer with regular annual income. This chapter has features resembling both Chapters 11 and 13. The treatment of the eligible "family farmer" is substantially similar to Chapter 13, and the protections and remedies afforded to creditors are essentially similar to Chapter 11. As in Chapter 11 cases, there is a presumption that the debtor will continue as the debtor-in-possession with respect to the farming and/or ranching operation.

4. Chapter 13: This chapter provides a procedure for persons with regular income to adjust their debts. As in Chapters 11 and 12, the debtor usually remains as the debtor-in-possession. If this is not clear, the authorized officer should check with the clerk of the bankruptcy court to determine what authority the debtor-in-possession has to deal with the Forest Service.

18.92 - Status of Permit

The term grazing permit does not automatically become a part of the bankrupt's estate. The debtor, the debtor-in-possession, or trustee is bound to perform the terms and conditions of the permit after a petition in bankruptcy is filed with the bankruptcy court. A definite action must be taken by them to assume the requirements of the permit. If the permit is not assumed by the

trustee or debtor-in-possession, neither the estate nor the debtor have any remaining privileges under the permit.

It should be understood that the Forest Service's responsibility to administer livestock grazing activities on National Forest System lands according to applicable law and regulation exists regardless of whether a permit holder has filed a petition for bankruptcy. As a result, the authorized officer must be willing to take appropriate action to administer grazing on the permittee's allotment(s) after the bankruptcy petition is filed, even if to do so might result in a reduction in the value of the estate.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15803 archived on May 28, 2010

During the course of bankruptcy proceedings, it may be necessary to explain to the court that term grazing permits are privileges issued by the Federal Government to the permittee and not contracts. The bankruptcy court may attempt to treat these relationships as contracts. Constant reminders to the bankruptcy court of the difference between rights and privileges may be necessary to ensure that mistakes in dealing with the bankrupt estate are not made due to a misunderstanding.

All correspondence concerning the term grazing permit and actions required to maintain it in good standing must be addressed to the trustee or the debtor-in-possession. The name and address of this individual can be obtained from the clerk of the bankruptcy court.

The United States is represented in bankruptcy court by the United States Attorney in the State where the bankruptcy is filed. All actions involving the bankruptcy court must be coordinated with the regional range management specialist, who will work with the Office of the General Counsel and the U.S. Attorney to ensure the interests of the United States are protected.

18.93 - Actions by the Authorized Officer

Listed below are a series of actions that should be taken when the authorized officer learns of the possibility of bankruptcy by a term grazing permit holder:

1. Confirm that a bankruptcy proceeding has been filed by contacting the permittee or the clerk of the bankruptcy court. The clerk can provide information about:

   a. The date bankruptcy was filed.

   b. The chapter the bankruptcy was filed under.

   c. The name and address of the trustee in bankruptcy or debtor-in-possession.

   d. Whether the term grazing permit(s) is listed as one of the assets of the debtor's estate.

2. The authorized officer shall determine the amount of any outstanding debts owed to the Forest Service by the bankrupt and should notify the regional range management specialist of the bankruptcy filing. The regional range management specialist will contact the Office of the General Counsel that will initiate discussions with the Office of the United States Attorney in the State in which the bankruptcy was filed. The U.S. Attorney will assure the interests of the United States are protected.

3. The authorized officer should determine if the debtor-in-possession or the trustee wants to assume the term grazing permit as a part of the debtor's estate or if they have rejected it. If the latter situation occurs, the authorized officer should notify the bankruptcy court of the consequences of this action and also that, with the permission of the bankruptcy court, the authorized officer may take actions to permit livestock grazing on the allotment(s) by another party.

Cited in Buckingham v. Sec. of U.S. Dept. of Agriculture, No. 09-15895 archived on May 28, 2010

19 – ALLOTMENT ADMINISTRATION

19.1 - Determination for Priority for Allotment Administration

The goal of allotment administration is to monitor every allotment every year to a professional standard. However, where staff and resources are limited, the authorized officer must determine which grazing allotments are the highest in priority for administration. Annually each unit shall identify certain allotments and associated grazing permits, in a priority order to be monitored. In determining allotment priority, the authorized officer shall consider the permittee's history of compliance, identified resource problems which have not been resolved, new or emerging resource issues allotments with outdated AMPs, and allotments with new AMPs that are currently being implemented and evaluated for compliance and effectiveness.

Priority allotments will be monitored by an agency employee qualified in grazing permit administration. Monitoring is accomplished through evaluation of the effects of grazing use by authorized livestock on the rangeland resource while implementing direction found in LRMPs, AMPs term grazing permits or grazing agreements, biological opinions, or other documents developed to guide livestock grazing on the area.

Attainment of desired condition should not be confused with administering an allotment "to standard." Administering an allotment "to standard" may lead to the attainment of desired conditions (in either the short or long term) or may merely reflect that additional modifications in the grazing strategy are necessary.

19.2 - Documentation of Allotment Administration

Documentation of allotment inspections and monitoring shall be done electronically using the format in INFRA or other corporate databases to the degree feasible and should also include timely documentation and notification to the permittee(s). An electronic format provides a

consistent form to collect and document pertinent allotment administration and inspection information. It can be utilized to collect and code LRMP monitoring information for later inclusion in annual or periodic LRMP or Biological Opinion monitoring reports.

As soon as possible after allotment inspection or monitoring occurs, field personnel should record pertinent information from personal observations and written notes taken during the inspection. The permittee must be notified in person or by telephone of any items needing immediate attention. An inspection report should be completed as a minimum on those allotments identified as priorities to be administered for the year in a timely manner to allow the permittee full access to information needed to make corrections in livestock management and ensure compliance with the terms and conditions of the term grazing permit, including the AOI. Electronic inspection notes can be printed and filed in the official 2230 permit folder with a copy sent to the permittee.

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

This documentation can serve as a basis for discussions with permittees regarding:

1. Corrective actions needed to ensure compliance, including as appropriate notices of noncompliance and decision letters (sec. 16.2);

2. Completion of annual reporting;

3. Development of AOIs for the next grazing season and;

4. Documentation of management success stories and the permittees contribution to that success.

19.3 - Definitions and Monitoring Methodology for Land and Resource Management Plan (LRMP) Standards

LRMPs may not provide specific direction on how standards related to livestock grazing are applied or measured and it may be necessary to clarify in the project level decision (AMP) how LRMP standards will be applied and measured to ensure uniform understanding. LRMP standards must be clearly understood by both agency personnel and permittee(s) before documentation of compliance with them can be accomplished.

List applicable LRMP standards and guidelines pertaining to livestock grazing for fisheries, riparian or upland vegetation, and wildlife habitat that will be the basis of monitoring and administration of livestock grazing in part 3 (FS 2200-10a) of the term grazing permit. A detailed description of how the LRMP standards and guidelines listed in part 3 of the term grazing permit will be interpreted and measured and should be provided in the AOI each year. This will ensure consistency between observers and understanding with grazing permittees as to how compliance is measured and determined.

19.4 - Documentation of Compliance with Grazing Permit Terms and Conditions and LRMP Standards

Permittees are responsible for meeting the terms and conditions of the grazing permit and moving livestock to ensure compliance with management guidelines. Agency personnel are responsible for ensuring permittees comply with grazing permit terms and conditions and performing monitoring to determine if objectives are being met.

For priority allotments a determination of compliance with grazing permit terms and conditions and LRMP standards should occur annually and be completed by the authorized officer and necessary data entered into INFRA by the end of the grazing season. This compliance determination should be documented electronically on appropriate inspection forms and in letters to the permittee. Based on inspection data and personal knowledge of the allotment, the authorized officer should determine whether livestock grazing on the allotment met LRMP standards and grazing permit terms and conditions during the grazing season. Where standards were not met, the authorized officer should identify corrective actions that will result in improved management in the next grazing season. A determination of compliance will not be made if an allotment did not receive a physical inspection by a technically qualified agency employee during or after the grazing season.

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

The permittee should be provided with all inspection reports in a timely manner. The intent is to ensure full communication between the agency and the permittee(s) to ensure meeting of required management standards and to allow the permittee(s) a reasonable opportunity to correct any management deficiencies in a timely manner. It is also desirable to ensure that the permittee(s) are made aware of the status of the allotment as to whether it is reported as meeting or not meeting standards.

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