



FOREST SERVICE HANDBOOK NATIONAL HEADQUARTERS (WO) WASHINGTON, DC

FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 10 - TERM GRAZING PERMITS

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Effective Date:

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Approved:

Associate Deputy Chief

Date Approved:

Posting Instructions: Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 2209.13-2005-10 to 2209.13_10.

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| New Document | 2209.13_10 | 177 Pages |
| Superseded Document(s) by Issuance Number and Effective Date | 2209.13-2005-10 (Amendment 2209.13-2005-10 (09/09/2005) 2209.13, 11-15 Contents (Amendment 2209.13-92-1, 08/03/1992) 2209.13, 16-19 Contents (Amendment 2209.13-92-1 (08/03/1992) | 67 Pages 1 Page 21 Pages 1 Page 17 Pages |

Digest: Extensively revises, reorganizes, updates, and recodes entire chapter. Numerous substantive, organizational, and stylistic changes are made. Major changes are as follows:

11 - Reinstates an earlier policy that 90 percent of the permitted animals must be placed on the allotment for at least a majority of the permitted use season (rather than just one day) in order to validate the permit in full.

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Digest--Continued:

11.1 - Clarifies that term grazing permits are a privilege, not a property right, pursuant to 36 CFR part 222.3(b).

11.2 - Clarifies the duration of term grazing permits is 10 years, except under certain instances when they can be issued for a shorter period of time.

11.2 - Changes the expiration date for all term grazing permits to February 28 rather than the end of the calendar year (December 31). Provides the rationale in doing so; this also coincides with the end of the grazing fee year. As existing permits expire, directs authorized officers to issue all new term permits with the February 28 expiration date.

11.3 - Clarifies a term grazing permit with multiple allotments should be administered as separate allotment-by-allotment permits.

11.5 - Terminates the use of all livestock association permits. Clarifies that livestock associations are not to be confused with grazing associations.

11.52 - Clarifies that private lands permitted under term permits with on-and-off provisions are also waived to the Government for establishing permitted numbers and seasons of use, as well as for access to all private lands necessary for allotment administration, and requires modification of Form FS-2200-10e.

11.54 - Implements the use of Standard Grazing Agreement FS-2200-135 for grazing associations and grazing districts operating on all National Grasslands except for the Dakota Prairie Grasslands units in Region 1, Standard Grazing Agreement FS-2200-136 for use on all national grasslands on the Dakota Prairie Grasslands in Region 1, Standard Grazing Agreement FS-2200-137 for grazing associations operating on national forests in the West (Regions 1-6), and Standard Grazing Agreement FS-2200-138 for grazing associations operating on national forests in the East (Regions 8 and 9).

11.54 - Creates a Standard Grazing Agreement FS-2200-139 for use with Indian Tribes exercising treaty rights and privileges for grazing livestock on National Forest System lands.

12 - Adds language explaining the complex legal world that employees find themselves in, especially as permittees go through estate planning and attempt to pass their considerable assets down to the next generation. Provides information on helpful sources that are available to them.

12 - References the single exception in section 18.36 whereby ownership of base property and permitted livestock can be in two entities, but they must be comprised of the same people.

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Digest--Continued:

12a - Inserts examples of legal entities that do not meet or may not meet Forest Service eligibility requirements to be issued term grazing permits. This section discusses joint ventures, life estates, and lifetime tenancy.

12b - Inserts examples of terminology and documents that do not meet or may not meet Forest Service eligibility requirements to be issued Forest Service term grazing permits. This section discusses “doing business as “(DBAs), use of “and” and “or” on legal documents, tenants in common versus joint tenancy with right of survivorship (JTROS), and quitclaim deeds.

12.1 - Adds clarification as to how a citizen of a foreign country must be in the process of becoming a naturalized citizen in order to be eligible to apply for a term grazing permit.

12.1 - Inserts limited liability companies, family limited partnerships, Non-Governmental Organizations (NGOs), nonprofit organizations, and other legal entities to the list of representative entities that may hold term grazing permits.

12.1 - Regarding eligibility of entities to hold a term grazing permit, changes the phrase authorized to conduct business in the State(s) “where the permitted grazing activity would occur” to “where the qualifying base property is located”. Since entities can be authorized in one State and be permitted to run on an allotment in an adjacent State, eligibility requirements for each State may need to be met.

12.11 - Removes the term “husband and wife” as an entity and changes it to “married persons” as an entity, since most States now recognize same-sex marriages.

12.12 - Combined “A Minor Who is Head of a Family” and “A Minor Who has Acquired Base Property or Permitted Livestock” into one section.

12.13 - Adds language clarifying under what circumstances a Forest Service employee and/or their family members might qualify to hold a term grazing permit and provides sideboards as to how the permit and the allotment(s) will need to be administered.

12.14 - Provides additional clarifying language regarding the different types of trusts.

12.15 - Provides additional clarifying language regarding estates and estate settlements.

12.16 - Provides additional clarifying language because statutory requirements to be licensed as corporations or partnerships to do business can vary by State.

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12.17 - Adds an additional section for Limited Liability Companies (LLCs) and Family Limited Partnerships (FLPs) as qualifying entities to hold term grazing permits.

12.18 - Adds an additional section for Non-Governmental Organizations (NGOs) and Nonprofit Organizations (NPOs) as qualifying entities to hold term grazing permits.

12.19 - Adds an additional section and discussion for Grazing Associations and Grazing Districts as qualifying entities to hold term grazing permits.

12.21 - Expands on the description of base property requirements and discusses how listing of base property should be done to meet Forest Service qualification requirements as well as the needs of the permit holder.

12.21 - Changes the term “leased base property” to “successional base property” where such leases exist on national grasslands. These agreements are and have been intended to result in the lessee becoming the owner and are limited to a specific number of years (ten) for completion. Existing leases are grandfathered in for specific periods of time. Provides for a grace period by which all new successional base property agreements will be written to conform to existing time requirements for ownership.

12.21 - Explains that the only legal exception to ownership of base property to hold a Term Grazing Permit exists for grazing association members on the Dakota Prairie Grasslands in R-1, and cites the Consolidated Appropriations Act of 2008 as the legislative authority for this single exception to Forest Service regulations and policy.

12.21(a) - Inserts a new section to discuss emerging situations where the base property, and entire base ranch, has been placed under a Conservation Easement or Agricultural Land Trust to guarantee the lands remain in agricultural production for future generations.

12.22 - Explains that the only legal exception to ownership of permitted livestock to hold a term grazing permit exists for grazing association members on the Dakota Prairie Grasslands in R-1, and cites the Consolidated Appropriations Act of 2008 as the legislative authority for this single exception to Forest Service regulations and policy.

12.22-1 - Inserts the provision that grandchildren as well as children can run up to 50% of the permit holder’s permitted animals.

12.22-1 - Clarifies that children (and grandchildren) can run up to 50% of the parents’ permitted numbers to allow the next generation to become the permit holder. Inserts the new provision that

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parents (and grandparents) can run up to 50% of the new generation's permitted livestock as they transition out of the family operation.

12.22-1 - Explains the U.S. Supreme Court's rulings that corporations (and other entities) may be accorded certain rights, but they are not "people" and thus cannot have children. Therefore, these entities cannot have children that can run up to 50% of the entity's permitted numbers.

12.22-2 - Changes the term "share livestock" to "successional livestock" where such arrangements are allowed on National Grasslands. Reiterates the specific time requirements for the successional livestock to become owned livestock (five years). Provides for a grace period by which all new successional livestock agreements will be written to conform to existing time requirements for ownership.

12.3 - Clarifies that brand registrations from other States may be recognized but they must conform to the brand and inspection requirements of both States.

12.3 - Adds the provision to allow the use of holding brands in States where this is a common practice. Explains that care must be taken in these circumstances to assure that the permittee is not running unowned livestock.

12.3 - Adds clarifying language regarding sheep and goat marking in compliance with State statutes.

12.3 - Clarifies that State statutes are the preferred requirement for the marking or branding of bison in that State.

12.3 - Explains that while some States allow the leasing of brands, the Forest Service does not allow leasing of brands because conclusive proof of ownership of the livestock placed on the allotment may be difficult or impossible.

12.3 - Explains the rare occasion when the individuals shown on the brand registration are separated by the word "or" while the same individuals owning the base property are listed on legal documents and at the county courthouse as separated by the word "and" and when this difference can be allowed for permit holders.

12.3 - Provides additional explanations and recommendations on branding of offspring.

12.4 - Exhibit 01 - Provides a sample managerial agreement.

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12.5 - Inserts language stating that upper, special, and lower limits are not established nationally but may be established at the Regional Forester or Forest/Grassland Supervisor level.

12.51 - Explains the general purpose for establishing upper limits, and reiterates the factors and criteria used in establishing or changing upper limits.

12.51a - Changes the title to “Calculating and Applying Upper Limits” and reiterates how upper limits are applied to the various entities eligible and qualified to hold term grazing permits.

12.52 - Retains the section on Special Limits and further describes the process to approve upper limits.

12.53 - Establishes a new section titled “Lower Limits” and explains how they are to be applied and administered if lower limits are established.

13.21 - Adds explanation of priority and ability for restocking vacant allotments.

13.22 - Adds language to further explain the various priority steps of the grant process. Explains that grant priority is most often decided with existing District permittees and issuance of a public prospectus is seldom used.

13.3 - Inserts a section called Changes in Ownership for the Eastern and Southern Regions previously added through R8 and R9 supplements.

13.5 - Adds language concerning exchanges of grazing permit issuance and administration with other agencies.

13.61 - Adds language discouraging use of third-party MOUs for range improvement maintenance on forage reserve allotments.

13.7 - Inserts a new section – Official Agency Policy on Third Party Arrangements or Permit Buyouts by External Groups.

14 - Includes additional explanation for when an application is received but the prospective permittee does not yet fully qualify for the permit and is instead placed in preferred applicant status (which is discussed in detail in section 15.1).

14.24 - Inserts a new section regarding applications for term private land grazing permits.

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14.31 - Expands the discussion on corporations and partnerships to include other entities that may apply for term permits, documents that may be required for submission, and the terms used for individuals that may make up the different entities.

14.4 - Explains that when an application is received from an individual or entity not currently holding a term permit, and it is rejected, the applicant will be informed of the reason(s) for disapproval. In addition, states that the applicant has no right of appeal of the authorized Officer's decision to deny the application.

14.4 - Adds clarification on when an existing permittee may have the right of appeal using the Administrative Procedures Act of 1946 (5 U.S.C. Subchapter II) for disapproval of the application.

14.5 - Adds language and clarifies procedures for applications for annual authorizations for grazing.

14.6 - Adds explanation on receiving and processing applications for crossing permits. Includes a discussion on approving applications for use of established stock driveways.

15.1 - Adds clarification for Permit Applicant and Preferred Applicant Status.

15.2 - Adds the requirement to list designated base property in Part 3 of each Term Grazing Permit.

15.2 - Exhibit 01 - Provides an example of how to list base property in Part 3 of the permit.

15.2 - Exhibit 02 - Provides an example of how to label the allotment map.

15.2 - Clarifies language on how to attach the AMP(s) to the permit.

15.2 - Deletes Issuance of Term Grazing Association Permits.

15.3 - Moves Issuance of Grazing Agreements to Chapter 20.

15.3 - Exhibit 01 - Shows how Part 1 of the term grazing permit should be completed.

15.3 - Exhibit 02 - Shows how Part 1 of the term grazing permit should be completed when AUMs are permitted instead of number of animals.

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15.32 - Adds clarifications and restrictions on how to properly permit variable numbers and variable seasons.

15.32 - Exhibit 01 - Displays how to properly issue variable numbers and variable seasons in Part 1 of the permit.

15.34 - Provides explanation on how to properly permit working pack and saddle stock in Part 1 of the permit.

15.42 - Provides direction to be consistent with the grazing fee year (FSH 2209.13 Chapter 80), where February 28 becomes the expiration date for all new term grazing permits. New tenure would be March 1 through February 28.

15.43 - Provides explanation to revise the Term Grazing Permit (FS-2200-10) to insert the archeological discovery clause in Part 2 of the Term Grazing Permit as Part (b) under Section 10. Protection. The Clause should also be added to the Rules of Management for every grazing agreement as they are modified or reissued.

15.5 - Explains in the Validation section that term grazing permit validation requires placing 90% of the permitted number of livestock on the allotment for at least at majority of the full grazing season for the first grazing season following permit issuance.

15.51 - Provides clarification for validation and how to postpone under special circumstances such as extended drought.

15.8 - Inserts an updated and simplified Table for comparison of term permits with on-and-off provisions and term private land permits and when to issue each type.

15.8 - Explains that regardless of which type of permit is issued, the intermingled/adjacent private/State/other lands (owned or leased) inside the allotment are waived to the Forest Service for “exclusive grazing use” (36 CFR 222.1) because the authorized officer assigns and controls the total numbers of animals and the total season of use on the allotment, regardless of the land ownerships involved.

15.8 - It also explains the “exclusive grazing use” does not apply to any other right or type of use that may take place on those same private/State/other lands.

16 - Clarifies Sections 16.11 and 16.12 regarding circumstances when the term permit may be modified by letter and when the permit may be modified by new permit issuance.

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16 - Moves the provision authorizing cancellation of grazing agreements for violation of Title VI of the Civil Rights Act to chapter 20.

16 - Expands the list of how changes in term grazing permit terms and conditions may be made by modification, suspension, or cancellation.

16 - States that modifications to term grazing permits may be subject to appeal under 36 CFR part 214.

16 - States if the proposed changes are within the scope and range of effects considered in a current analysis, a new analysis is not required. If the proposed modification is outside these parameters, a new analysis may be required.

16 - Issuance of annual operating instructions (or similar document) does not constitute a permit modification and is not listed as such under 36 CFR 222.4 part A. Issuance of annual operating instructions is not an appealable decision (as stated in 36 CFR 214.4(a)(1)).

16 - Includes language and references for both appeal and objection regulations.

16.1 - Clarifies section 16.1 regarding authority to modify a permit under 36 CFR 222.4(a)(7) and (a)(8).

16.1 - Grazing permits may be modified to provide for cooperative range development programs. Describe the development work, specifications, permittee and Forest Service responsibility as provided in Regional permit modification forms or the optional Grazing Permit Modification for Cooperative Range Improvement form shown in Exhibit 01.

16.11 - A permit may be modified at any time by the authorized officer, based on monitoring information and a documented rationale.

16.11 - Annual adjustments within the scope of existing permit terms and conditions may be made through issuance of the AOI (or similar document) and the bill for collection rather than a permit modification.

16.11 - Reaffirms that issuance of annual operating instructions (or similar document) does not constitute a permit modification and is not an appealable decision, 36 CFR part 214.4(a)(1).

16.13 - Specifies that 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, and will be provided to the permittee in writing.

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16.13 - Provides a sample permit modification form that can be used to document a modification that results in reduced numbers or season of use.

16.14 - Moves the former section 13.13 provision regarding modifications to convert kind or class of livestock due to permittee request to this section.

16.15 - Inserts a new section titled “Permittee Requests to Change or Modify Base Property”.

16.16 – The information previously provided in section 16.16 has been moved to section 16.7 and 16.16 has been removed. The information now available in section 16.7 clarifies a term grazing permit may be cancelled when the *no grazing* alternative in an environmental assessment or environmental impact statement is selected to address rangeland resource conditions.

16.3 - Inserts required language concerning the use of Notice of Non-Compliance (NONC) letters, responding to the 2001 Anchutegui court decision on the Boise NF and the resultant 2001 policy letter from the Chief. The NONC replaces the use of the term “show cause.”

16.31 - Inserts language that if a permittee refuses to accept a Certified Letter then the Ranger District staff needs to take steps to deliver the letter in person.

16.4 - Inserts language to explain that the intent of the Uniform Suspension and Cancellation Guidelines is to assure that the same permit infraction by any grazing permittee results in the same penalty, regardless of where in the National Forest System that infraction occurs, and under whose authority and jurisdiction it took place.

16.4 - Changes the order of the types of permit violations that can occur and expands the discussion of each, giving examples of types of infractions where applicable.

16.4 - Provides consistent terminology as to the types of offenses and the resultant actions by the authorized officer.

16.4 - Provides consistent penalties for the various types of infractions when that is possible.

16.4 - Clarifies that the authorized officer must discern if permit actions should be taken against only one allotment on a permit or on the entire permit.

16.41 - Inserts a new section “Serious Offenses that Warrant Immediate Permit Cancellation” and adds the four permit violations that nearly always result in cancellation of the permit in full.

16.41 - Infraction #1. Reinstates an earlier policy that validation of a term grazing permit, which normally occurs only in the first year after the initial term permit is issued, requires that at least

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90% of the permitted livestock must be placed on the allotment, and they must run on the allotment for at least a majority of the permitted use season, before the permit is validated in full.

16.41 - Infraction #4. Adds language to explain that a permittee *can* lease out the base property (or even the entire ranch) but retains language that during such instances the permittee must take non-use for personal convenience and the lessee is not allowed to place his/her livestock on the allotment.

16.42 - Inserts a new section “Offenses that Provide the Opportunity to Remedy and Comply” and places the remaining nine infractions in this section.

16.42 - Infractions #5 and #6. Divides the offense of “Failure to Pay the Grazing Fee” into two separate infractions, depending upon whether the permittee’s livestock have been allowed or placed on the allotment or not, because the penalties for the two infractions are very different.

16.42 - Infraction #8. Changes the rate charged for excess use on all NFS lands in the 16 Western States as well as on the national grasslands in Texas to be the average of the private land lease rates in those 17 States as calculated each year and used in computation of the annual grazing fee.

16.42 - Infraction #8. Inserts the excess use rates and policy in place for bid allotments in Regions 8 and 9.

16.42 - Infraction #13. Adds clarifying language as to examples of Federal and State law violations that might occur and explains the differences in penalties that may result for conviction for violation of those laws.

16.43 - Inserts language to reinforce that permittees must continue to annually maintain all improvements assigned to them even when 100% of their term permit is in suspension.

16.5 - Changes all references concerning mediation from 36 CFR 251 to 36 CFR 214, and updates all policy and procedures that resulted from the new regulations.

16.51 - Inserts a new section called “Expectations of Mediation.”

16.52 - Inserts a new section called “Mediation Process” and explains in detail the requirements and procedures of the mediation session(s).

16.53 - Inserts a new section called “Informal Dispute Resolution” and explains in detail the process created in Section 8 of PRIA to informally resolve allotment management concerns and disputes.

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16.6 - Provides additional examples of how lands may be devoted to another purpose that precludes grazing.

16.7 - Inserts the section on permit cancellation due to resource conditions formerly listed under section 16.16.

17.1 - Clarifies non-use for personal convenience must be requested 40-60 days in advance of the allotment on date. Regions that have year-round permits have established procedures to determine how and when non-use should be applied for.

17.1 - Explains when non-use requests are received and approved for allotments containing intermingled land ownerships, the non-use will be applied on a proportional basis to the capacities of NFS lands and the intermingled lands.

17.1 - Expands the section on specifying personal convenience non-use may be approved for no more than 3 consecutive years, and no more than four years in any rolling 10-year period. Clarifies that the 10-year rolling period transcends term permit renewals and does not start over with the issuance of a new 10-year permit.

17.1 - Clarifies when an allotment has been in approved non-use for three consecutive years, the allotment must be stocked with at least 90 percent of the permitted numbers in the fourth year or the permit will be permanently reduced to the numbers that are or were actually stocked.

17.1 - Provides additional explanation that the requests for personal convenience non-use apply to the permittee and total permitted numbers regardless of how many allotments the permittee is authorized to graze.

17.1 - Requires that the annual approval letter for personal convenience non-use should include a reminder of the personal convenience non-use restrictions regarding three consecutive years and shall advise the permittee that at least 90 percent of the permitted livestock numbers must be grazed during the next season (fourth year) to avoid permit reduction or cancellation.

17.1 - Clarifies 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, the permittee must have or acquire replacement livestock, owned and legally branded, and must place those livestock on the allotment during the permitted use season in order for them to be permitted livestock.

17.1 - Clearly states personal convenience non-use would require restocking of at least 90 percent of the permitted numbers in order for a waiver to be confirmed for 100 percent of permitted numbers.

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17.1 - Strengthens the requirement that livestock and/or base property purchased and subsequently sold back to the original owner, or to an agent, assignee, or anyone representing or

acting in concert with the original owner, within a 24-month period before, during, or after the waiver is received will not be considered a bona fide transaction or valid ownership of the livestock or base property.

17.11 - Gives direction for consideration in making decisions to fill in behind personal convenience non-use.

17.2 - Removes “Or Development” from the “Non-use for Resource Protection or Development” section and discusses resource development in a new Section 17.22 below.

17.2 - Recommends the use of Form FS-2200-26 and phases out the use of a Memorandum of Understanding for resource protection non-use.

17.21 - Adds a section concerning the approval of resource protection non-use during periods of severe or prolonged drought, or other climatic conditions.

17.21 - Explains that most non-use to respond to extended periods of drought or other climatic conditions is approved on the annual application and the bill for collection.

17.21 - Expands discussion on the use of a Non-Use Agreement for Resource Protection (Form FS-2200-26) only when the periods of prolonged drought are longer than two to three years.

17.21 - Clarifies that if a waiver based on the sale of base property is received during the period of resource protection non-use, validation can be staged in, with the approval of the authorized officer, when stocking in full immediately would be detrimental to the resource.

17.21 - Further describes how a waiver based on sale of livestock during non-use for resource protection must be handled. Advance approval of the authorized officer is required prior to restocking of 100 percent of permitted numbers, in order to confirm a waiver for full numbers.

17.21 - States that the same 24-month ownership requirement for a bona fide transaction for waivers based on livestock purchased during periods of personal convenience non-use also applies to waivers based on livestock purchases during periods of resource protection non-use.

17.22 - Inserts a new section titled “Non-Use for Resource Protection during Landscape-Scale Vegetative Treatments and Rangeland Developments to Increase Grazing Capacity.”

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17.22 - Discusses the need to increase livestock grazing levels in many areas to achieve desired vegetative condition and manage for many resource needs and uses. Provides for non-use for resource protection while vegetative treatments and rangeland developments are carried out.

17.22 - Explains that this type of non-use for resource protection is detailed and approved on Form FS-2200-26.

17.23 - Inserts a section concerning the approval of resource protection non-use designed to achieve a changed resource condition.

17.23 - Explains that this type of non-use for resource protection is detailed and approved on Form FS-2200-26.

17.23 - Explains that a trial period to change livestock numbers and/or seasons is agreed upon in an attempt to achieve the desired resource conditions. States that during this trial period the existing term grazing permit is not modified.

17.23 - Discusses that if desired resource conditions are not achieved during the trial period, the permit is then modified, and the permittee given the right of appeal in response to the changes.

17.23 - Clarifies how term permits can be waived during or following non-use for resource protection in an effort to achieve changed resource conditions.

17.3 - Clarifies how term permits can be waived during or following non-use for research purposes.

17.4 - Removes section 17.4 regarding trial conversions in kind or class of livestock grazed and places it in section 16.14.

18.1 - Clarifies disclosures that should be made by the Forest Service when a permittee gives notification of a possible waiver of term grazing permit.

18.2 - Moves the section titled “Transactions without Permit Waiver” to this location from 18.8. All subsequent sections are re-numbered.

18.3 - Reinforces that any time the name of the entity holding the term grazing permit changes, a waiver of term grazing permit (FS-2200-12) must be completed.

18.33 - Adds grandchildren to transactions and transfers within families. Clarifies that children/grandchildren may be adults or minors.

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18.33 - Provides direction to verify legality of quit claim documents as proof of ownership.

18.34 - Provides additional direction in the event base property and permitted livestock are inherited by two different individuals or entities.

18.35 - Adds direction on waiver and issuance following a divorce.

18.36 - Inserts direction, and cross-references, when the base property and the permitted livestock are owned by two separate entities, each comprised of exactly the same individuals. Lists other handbook sections to refer to on how to properly issue the term permit when this one exception to single ownership of both land and livestock can be allowed.

18.36 - Explains the rare occasion when the individuals shown on the brand registration are separated by the word “or” while the same individuals owning the base property are listed on legal documents and at the county courthouse as separated by the word “and” and when this difference can be allowed for permit holders. References this detailed discussion in sec. 12.3.

18.37 - Specifies that any dissolution of a corporation, partnership or other legal entity and subsequent permit issuances must comply with any lower limits established by a Regional Forester or Forest/Grassland Supervisor.

18.4 - Clarifies prohibitions against pending or completed sales or direct transfers of grazing permits and specifies steps to be taken when such documents are discovered or received.

18.5 - Inserts additional information concerning documents required as proof of a legal transaction.

18.6 - Clarifies provision regarding waiver of permits in non-use for personal convenience.

18.7 - Clarifies that a permittee may act as the lender and as such is treated like any lending institution through the use of an escrow waiver.

18.82 - Changes references to Farm Credit Banks (FCB) to Farm Service Agency (FSA).

18.9 - Clarifies direction regarding administration of grazing permits during bankruptcy proceedings.

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This chapter describes the procedures to properly issue, modify, suspend, and cancel term grazing permits. This chapter also describes the various aspects of permit administration such as how to respond to requests for non-use of grazing permits, details on the types of entities that may qualify for a grazing permit, etc.

11 - TERM GRAZING PERMITS

Term grazing permits authorize the use of National Forest System (NFS) lands and lands under Forest Service control for commercial livestock production purposes (36 CFR 222.1(b)(6)). Grazing permits and the authorized livestock operations are issued under the authorities described within Forest Service Manual (FSM) 2201. Objectives and policy for issuing term grazing permits are set forth in FSM 2202 and 2203.

Grazing permits are administrative actions that implement decisions following completion of an environmental analyses (see chapter 90). Per 43 U.S.C. §1752, some exceptions to completing a new environmental analysis may apply relative to the issuance of term grazing permits when certain conditions are met. See section 11.4 of this chapter for more direction on the issuance of a new term grazing permit upon expiration of the previous term grazing permit

The Authorized Officer may issue a term grazing permit when the following criteria have been met:

1. A determination is made that the authorization of grazing and grazing management is consistent and compliant with law, regulations, policy, and the Land Management Plan (LMP).
2. The requirements of the National Environmental Policy Act of 1969 (NEPA) have been satisfied (*see* FSH 1909 and chapter 90 of this handbook). Following the analysis, a decision must be made which authorizes grazing on the allotment. The decision to graze and the environmental effects of grazing are analyzed at the allotment(s) scale. Analysis and subsequent decisions are not focused on the term grazing permit(s). They are focused on the rangeland vegetation conditions and related resources across an allotment or several allotments. Once the appropriate level of analysis is completed, the decision implements the authorized use of livestock grazing for the allotment(s).
3. The applicant is eligible and qualified. Qualification includes ownership of both base property and livestock in accordance with direction contained in this chapter.
4. Waivers following sales of base property and/or permitted livestock are properly executed using Form FS-2200-12, Waiver of Term Grazing Permit, with supporting documentation. See section 13.1 of this chapter for information on changes in ownership with waiver.

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Working with grazing permits is very complex. Forest and Regional Rangeland Management Program Leaders or Directors, and the Office of the General Counsel (OGC), are available to provide expertise and assistance.

11.1 - Term Grazing Permit as a Privilege, Not a Right

It is well settled in both statutory and case law that term grazing permits represent privileges, not rights, to use NFS lands and resources for livestock production purposes (36 CFR 222.3(b)). Several cases have affirmed that the opportunity to graze livestock under a grazing permit is a privilege and not a right (*see Diamond Bar Cattle Co. v. United States*, 168 F.3d 1209 (10th Cir. 1999), *Light v. United States* (220 U.S. 523 (1911))).

Accordingly, the Forest Service does not compensate the term permit holder if the privilege is canceled, suspended, reduced, or modified except in limited situations involving compensation for current permittee investment in rangeland improvements (see FSH 2209.13, chapter 70 and FSM 2240).

11.2 - Duration of Term Grazing Permit

Term grazing permits are generally issued for a term of 10 years unless a shorter period is appropriate because:

1. The land is pending disposal.
2. The land will be devoted to another public purpose that precludes livestock grazing prior to the end of 10 years.
3. It is in the best interest of sound land management to specify a shorter term (see section 15.42).

Term grazing permits may not be issued for longer than 10 years. Many term permits, especially those on National Forest units, have traditionally been set to expire on December 31 of the tenth year. It is important to stop thinking in terms of calendar years, but rather in terms of the grazing fee year. Accordingly, from this point on, all term grazing permits should be set to expire at the end of the grazing fee year, which is the last day of February, in the tenth year.

As these permits expire, the new ones should be issued on March 1 and set to expire on February 28 of the tenth year (unless it's a leap year). For example, a new permit issued on March 1, 2011 would be set to expire on February 28, 2021, thus it is valid for ten grazing fee years.

Doing so not only conforms to the grazing fee year of March 1 to the end of February; it also allows the early part of each calendar year (rather than the end of the previous year's busy field season. October's year-end reporting, and the fast-approaching holiday seasons) for rangeland management specialists to work with the permittee to complete the qualifications evaluations and

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reissuance process prior to the start of the next grazing season. This may also be conducive for some fall and early winter use seasons.

The last three months of the calendar year are also an extremely busy time of the year for grazing permittees, as most are occupied with rounding up livestock and moving off the allotments. Some may still be putting up the last cutting of hay. Most are sorting, weaning, selling the offspring and going to markets, and culling. Many may be vaccinating and pregnancy-testing, and nearly all are making facility and livestock preparations for the coming winter.

11.3 - Permits with Multiple Allotments

The authorized officer should issue one term grazing permit that lists all the allotments the permittee is permitted to graze livestock on within the respective ranger district. Those allotments should be listed in part 1 of the grazing permit. Where a term permit lists more than one allotment, the authorized officer shall still treat each listed allotment as a separate permit authorization (see section 15 and 17.1).

If the same permittee runs on adjacent ranger districts or Forests, the authorized officers involved have the choice to issue a combined permit or to issue a separate permit on each individual unit. If a single permit is issued, the two (or more) authorized officers need to coordinate on permit issuance and permit administration.

Each permit shall have a separate number, distinct to that administrative unit. If a permit lists more than one allotment, each allotment shall also have a distinct number for that administrative or those administrative units. In all cases each allotment is a separate permit authorization.

Refer to section 16.2 regarding permit actions taken when more than one allotment is shown on part 1 of the term grazing permit.

11.4 - Issuance of a New Term Grazing Permit upon Expiration of the Previous Term Grazing Permit

If the permittee has fully complied with the rules and regulations, and the terms and conditions of an expiring permit, then the permittee has first priority for receipt of a new term grazing permit at the end of the term. Priority for receipt of a new term grazing permit means the permittee has preference over other applicants if the permittee remains eligible and qualified.

Compliance problems *should* be resolved prior to issuing a new permit. The authorized officer *shall not* use the occasion of the expiring permit to effect needed reductions for resource management or improvement.

1. If the permittee has not fully complied with the terms and conditions of the expiring permit, the authorized officer *should* take timely action during the life of the permit to

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correct any cases of non-compliance according to the uniform suspension and cancellation guidelines set forth in section 16.3.

2. If the permittee's livestock management is resulting in resource problems on the allotment, the authorized officer *should* immediately work with the permittee to correct the unacceptable conditions, including taking timely permit action, if necessary, according to section 16.3.

If forest/grassland plan decisions and/or allotment planning decisions result in a change of land allocation or grazing use which 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.

The Forest Service may modify a term grazing permit concurrent with issuance of a new permit following expiration only when appropriate noncompliance procedures, permit modification procedures, or new NEPA supported decisions coincide with the time of issuance, and when one year's notice has been given to the affected permittee(s) as required by 36 CFR 222.4(a)(8).

New permits will be issued with a new permit number.

NOTE: Issuance policies for new term grazing permits with competitive bidding procedures in the Eastern and Southern Regions vary from the policies described within this section. Please refer to Chapter 80, section 85.1 and 85.22 for the applicable issuance policies for the issuance of permits with competitive bidding procedures.

11.5 - Kinds of Term Grazing Permits

There are four kinds of permits that provide term status (issued for a period of up to ten years) – term grazing permits, term grazing permits with on-and-off provisions, term private land grazing permits, and grazing agreements (FSM 2205). Term livestock association permits shall be discontinued (see sec. 11.55 of this chapter). Term grazing permits and grazing agreements are issued with priority for renewal per 36 CFR 222.3(c)(1).

All grazing permits with term status contain most of the same standard terms and conditions, and grazing agreements generally state the same responsibilities and requirements (section 11.54).

11.51 - Term Grazing Permit

This permit (Form FS-2200-10) authorizes livestock grazing use (36 CFR 222.3) on NFS lands or lands under Forest Service control and may be issued to individual(s) or other legal entities who meet eligibility and qualification requirements (see section 12).

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This permit is issued when the grazing allotment contains only NFS lands or the capacity of the NFS lands is all that is authorized for grazing.

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

This permit (Forms FS-2200-10 and 10e) authorizes livestock grazing to a qualified applicant when a logical grazing area contains both NFS lands and lands owned or controlled by the applicant, who already is or will become the permit holder on the NFS portion. On Form 10e, the applicant must waive exclusive grazing management of the private lands involved to the United States for the term of the permit in order to determine livestock numbers and grazing season for the entire allotment (the permittee accepts the FS determination of capacity for the private lands), as well as for allowing access to the private lands necessary for allotment administration. The legal description of the private lands involved is listed on form FS-2200-10e and/or shown on an attached map.

See section 15.6 for issuance procedures related to term grazing permits with on-and off provisions. See section 15.8 for a comparison between this type of permit and term private land permits to determine which type of permit to issue.

11.53 - Term Private Land Grazing Permit

This permit (Form FS-2200-11) authorizes livestock grazing to a qualified applicant who owns or controls land in a Forest Service allotment but does not hold a term grazing permit for use of the NFS lands. 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, as well as for access to the private lands necessary for allotment administration. In return, the applicant is authorized to graze livestock only for the capacity of the waived private lands in the allotment with intermingled private and NFS lands.

See section 15.7 for issuance procedures related to term private land grazing permits. See section 15.8 for a comparison between this type of permit and term permits with on-and-off provisions to determine which type of permit to issue.

11.54 - Grazing Agreement

A grazing agreement is a type of term grazing permit which assigns responsibility to grazing associations or grazing districts, established under state law and recognized by the Forest Service, to administer livestock grazing by their members on NFS lands and on any other intermingled land ownerships identified in the grazing agreement. The grazing association is a permittee of the Forest Service. The relationship between the Forest Service and the grazing association is described in the grazing agreement and is not extended to the individual members. Under these agreements, grazing associations manage their members and are responsible for insuring that their use of the rangeland forage resource is following the terms and conditions of

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the grazing agreement. “Association term grazing permits” and “association temporary grazing permits” are the mechanism that is used by grazing associations to manage their members and distribute grazing opportunities to their members. Association term and temporary grazing permits do not create a direct relationship between the Forest Service and individual members but instead are tools used by the grazing association to track and manage livestock use made by their members on NFS lands and other intermingled land ownerships described in the grazing agreement.

Grazing agreements are used principally on national grasslands but are also used on national forests to authorize grazing use by recognized grazing associations.

1. Standard Agreement FS-2200-135 is used on all national grasslands except those administered by the Dakota Prairie Grasslands in Region 1.
2. Standard Agreement FS-2200-136 is used only on the national grasslands administered by the Dakota Prairie Grasslands in Region 1.
3. Standard Agreement FS-2200-137 is used on national forests in the West (Regions 1-6).
4. Standard Agreement FS-2200-138 is used on national forests in the East (Region 8 and Region 9).
5. Standard Agreement FS-2200-139 is created for use with Indian tribes exercising treaty rights and privileges for grazing livestock on National Forest System lands.

See chapter 20 for a detailed description of the policies and procedures pertaining to grazing agreements. All five Standard Grazing Agreements are shown as Exhibits in Chapter 20.

11.55 – Term Livestock Association Permits (Discontinued)

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, and no new term livestock association permits shall be issued. Where a decision is made to authorize grazing following the expiration of a term livestock association permit, the authorized officer should then issue new term grazing permits to the individual livestock association members.

Livestock associations – not to be confused with Grazing associations – are groups of individual term permit holders informally operating together under certain rules they established to better manage the rangeland resources on their allotment(s). They often pool their resources to hire a range rider, or to buy salt; they often agree upon the use of only one breed of bulls on their community allotments.

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12 - ELIGIBILITY AND QUALIFICATION REQUIREMENTS FOR TERM GRAZING PERMITS

The business world is constantly evolving, especially in the realm of families and other permittees attempting to create ways to pass their considerable assets down to the next generation intact, and to minimize or avoid such things as probate, estate taxes, inheritance taxes, and capital gains. Some are establishing conservation easements to keep the land as one parcel and in agricultural production in perpetuity. Most permittees, as well as Forest Service employees that administer grazing permits, did not take a paralegal course in college, and the legal world is very complex.

The requirements for the numerous entities to conduct business can vary tremendously by state. Secretary-of-State offices can be helpful points of contact. Web-based searches can often be helpful in securing information regarding definition of terms, types of entities, and accessing state statutes. *Black's Law Dictionary* is an extensive legal source and, for its content, is relatively inexpensive to acquire. Regional Office rangeland management specialists and OGC personnel should be contacted whenever there are any questions about a particular type of legal entity qualifying to hold a term grazing permit.

Term grazing permits may only be issued to individuals, business organizations, other legal entities, or Tribal Governments as provided in section 12.1.

To be issued a term grazing permit and to continue to hold said permit, all documents provided as proof of eligibility and 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 (except in States which require “or” in entity names – see Sections 12.3 and 18.36) as well as any/all supporting documents, must all be in the same exact name. An entity may consist of certain types of individuals, partnerships, corporations, or certain other business organizations, trusts, estates, limited liability companies, Non-Government Organizations, nonprofit organizations, or at times Tribal Governments.

There are only three exceptions to ownership by the same precise legal entity:

1. Section 18.36 explains the limited exception to this requirement concerning family estate planning whereby one entity can own the base property and a second one, made up of all the same individuals, can own the permitted livestock.
2. Section 12.1b, number 2, explains when documents can be different in the use of the words “and” and “or.”

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3. Section 12.21a explains how more than one term grazing permit can declare the same base property when the entire ranch is enrolled in a permanent conservation easement.

Forest Service employees, their spouses, children, and parents may only apply for and be issued term grazing permits in accordance with code of conduct and conflict of interest requirements set forth at FSM 6174.1. See section 12.13 for information on the eligibility of Forest Employees to hold any type of Forest Service grazing permit.

Term grazing permits may not be issued to Federal, State, and local Governments, or to subdivisions thereof (36 CFR 222.1(b)(18)). If such entities such as Land Grant Universities currently hold term grazing permits, they should be grandfathered out and evaluated for issuance in some other manner such as livestock use permits for research, special use permits, or Memoranda of Understandings (MOUs).

12a - Entities That Do Not or May Not Meet Forest Service Eligibility Requirements

States allow many entities to organize and conduct business, but some of those entities may not meet the Forest Service requirements to hold term grazing permits. The following are examples:

1. Joint Ventures – Some States and countries allow joint ventures to conduct legal businesses within their boundaries. Only some States recognize them as legal entities. If the joint venture is a partnership, then they must apply in the name of the partnership and not as a joint venture. Do not issue a term grazing permit in the name of a joint venture.
2. Life Estates – Life estates are estates held only for the duration of a specified person's life, usually the lifespan of the estate holder. Some States (such as North Dakota) recognize life estates as legal entities, other States may not. The problem with life estates is that the grantor can revoke title to the estate at any time. Since ownership of the estate [base property] can revert back at will, the grantee is not eligible to hold a term permit.

Do not issue a term grazing permit to a life estate unless the legal document contains language specifying that it is an irreversible arrangement and title cannot revert back to the previous permit holder.

3. Lifetime Tenancy – In lieu of a Life Estate, however, this legal document sanctions an arrangement that the agency can usually honor. It can be executed either in addition to, or preferably in place of, a life estate. In such cases, the former permit holder can sell the base property and waive the permit but is granted lifetime tenancy to occupy the base property on which he/she/they reside for the remainder of their lives. This can and does occur whereby the parents retain lifetime tenancy, but the child/grandchild owns title to the land and base property facilities and is issued and operates the term grazing permit.

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12b - Terminology and Documents That Do Not or May Not Meet Forest Service Eligibility Requirements

States allow many entities to organize and conduct business, but some of those entities may not meet the Forest Service requirements to hold term grazing permits. The following are examples:

1. “Doing Business As” (DBAs) – The Forest Service does not recognize one entity doing business as (DBA) a second entity. A DBA is a “false name” or “assumed name” that does not identify the actual legal definition of the entity it represents. In some States, more than one entity may use the same DBA name. Permits, associated livestock ownership, and base property ownership must be in the name of the actual legal entity and not in a DBA name.
2. Use of “Or” and “And” – If more than one individual makes up the legal entity, such as in cases of married persons (see section 12.11 below) and some partnerships, the names on the legal documents, especially the ownership of the base property, should be listed as “and” or as “and/or.”

With the exception discussed in the paragraph below, do not accept documents that show just “or” or list the names on the permit in this manner because that may knowingly, or unknowingly, allow either of the individuals to make permit decisions independent of the entity.

However, most livestock commissions and public sale yards require all individuals named on the brand registration to be present for legal signature(s) when livestock are sold at public auction. In order to have only one of the individuals present at the sale yard, some permittees may want to separate all persons named on the brand registration certificate with the word “or” instead of “and” which is in conflict with policy stating that “or” is not acceptable to the Forest Service. See additional discussion on livestock brand registration exceptions to the use of “or” in section 12.3.

3. Tenants in Common – This is a tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but having no right of survivorship.

This essentially has the same effect as using the word “or” between individuals.

Do not accept documents that state “tenants in common” after the names of the individuals making up the entity, or list the names on the permit in this manner, because that may knowingly, or unknowingly, allow either of the individuals to make permit decisions independent of the entity.

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4. Joint Tenancy with Right of Survivorship (JTROS) – This is a tenancy with two or more co-owners who take identical interests simultaneously by the same document and with the same right of possession. This is the opposite of tenants in common because each joint tenant has the right of survivorship to the other's share.

Married persons frequently add JTROS at the end of their names on legal documents, warranty deeds, sometimes even bank accounts, thereby assuring that the property passes to the surviving spouse without going through probate or paying estate taxes.

Whenever individuals are separated by “and” or “and/or,” followed by JTROS, this is considered as meeting the Forest Service requirements to hold term grazing permits.

5. Quitclaim Deeds – A deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid. In short, if the quitclaim deed grantor owns nothing, the grantee receives nothing.

In most cases a quitclaim should not be accepted as proof of ownership of base property. A quitclaim given out by a person who does not actually own the property named in the deed will not be liable for any damages at law. There are no breached covenants because no covenants or warranties were created. The deed is just a valueless piece of paper and nothing is transferred.

The California Gold Rush is probably the best example of the incredible value and efficiency of the quitclaim by which people took legal title and shaped the economy and social hierarchy of the day.

Many Forest Service employees have been handed a quitclaim deed in the 1900s when people could not afford, or perhaps even find, a lawyer to draw up a different legal document. Often the quitclaim deed was written by the permittee and tucked away in a safe or some other safe place, only to surface upon the death of the permittee, and often to the surprise of the named heir(s).

Today, quitclaim deeds are sometimes used for low-risk transactions between people who know each other. They are most often used to transfer property within a family. One example is when an owner wishes to change the name on the title from her maiden name to her married name. Other examples are when an owner gets married and wants to add the spouse's name to the title or when owners divorce and one spouse's name is removed. A quitclaim deed can also be used when parents transfer property to their child or children or when siblings transfer property to each other.

The rules about handling quitclaim deeds vary by jurisdiction, but the legal description of the real estate being transferred must be included, and the names of the “grantor” and

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“grantee” must be shown as well as the date of the transfer. Not all States require the quitclaim deed to be recorded.

Even when the quitclaim is between family members, the authorized officer should require that the deed is signed by all parties in front of a notary public, then the deed should be copied and recorded at the county clerk’s office and filed with the registrar of deeds.

In a typical real estate purchase, such as buying the base ranch, if presented with a quitclaim deed, ideally it should be replaced with a contract for deed, a general warranty deed, or a special warranty deed before the applicant can be considered qualified to hold a term grazing permit. Consult with OGC if the situation warrants.

12.1 - Eligibility Requirements

The following are eligible to hold term grazing permits:

1. A citizen of the United States who has reached the legal age by State (age of majority) except:

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

b. A citizen of a foreign country who has demonstrated intent to become a citizen by having filed petition for naturalization with the Clerk of the U.S. District Court.

The requirement to be a U.S. citizen was originally established in the 1862 Homestead Act. The Enlarged Homestead Act of 1909, doubling the allowed acreage from 160 to 320, retained the citizenship requirement. The Stock-Raising Homestead Act of 1916 increasing the allowed size to 640 acres likewise retained the citizenship requirement. The Taylor Grazing Act of 1934 that created the Bureau of Land management (BLM) likewise required U.S. citizenship for eligibility to hold a grazing permit.

This citizenship requirement remains in place to hold a grazing permit on NFS lands, both public domain and acquired.

2. A legally recognized and established corporation, partnership, trust, estate, limited liability company, NGO, nonprofit organization, or other business entity (including, but not limited to, grazing associations and grazing districts) authorized to conduct business in the State(s) where the permitted grazing activity would occur. If the legal entity is organized in a different State than the base property and allotment are located in, then all

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involved State statutes may influence eligibility. Both State statutes may need to be met; one State statute may disqualify the applicant.

Although some State statutes may allow otherwise, applicants must own at least 80 percent of the capital stock of any legal entity in order to qualify to hold a Forest Service grazing permit.

3. Tribal Entities (see chapter 50, section 51.33).

To resolve any questions about the eligibility of a business organization to hold a grazing permit, it is advisable to consult with the forest or regional rangeland management specialist and/or an attorney in the OGC.

12.11 - Married Persons

Consider married persons as an entity for permit purposes, when both names are on the permit. The name on the permit should be shown the same as the title on the base property and the brand certificate.

If both names are on the permit, it is most appropriate to be shown as “and” or as “and/or”. Do not accept documents that show just “or” because that may knowingly or unknowingly allow either of the individuals to make permit decisions independent of the entity.

Special rules apply to spousal property in the community property States (as of 2020) of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

States that recognize common law marriage: Alabama, Colorado, Iowa, Kansas, Montana, New Hampshire (for inheritance only), Oklahoma, Rhode Island, South Carolina, Texas, and Utah, and the District of Columbia (as of 2018). States that previously allowed common law marriage, but have abolished it after a certain date, include Florida (1968), Georgia (1997), Indiana (1958), Ohio (1991), and Pennsylvania (2005).

In the case of divorce, the term grazing permit will be issued based on the terms of the divorce settlement approved by the court of jurisdiction.

In some cases, married persons or other family members may be shown as "Joint Tenants with Right of Survivorship (JTROS)." This is recognized as an entity eligible to hold a term grazing permit. See Section 12b.

When applying upper limit restrictions to entities such as corporations, partnerships, or Limited Liability Corporations (LLC), care should be taken to determine if married persons are listed as one entity or as two individuals as members of such entities. See section 12.5 concerning the application and calculation of upper and special limits.

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12.12 - A Minor Who Is Head of a Family or Who Has Acquired Base Property or Permitted Livestock

A minor who is the head of a family and provides its principal support has the same status as an applicant of legal age (declared by State statute) and is eligible to hold a term grazing permit. If age of the applicant appears to be in question, ask for proof of age and head of family status.

A minor who is dependent upon parents or a guardian and who acquires base property or permitted livestock from any source may be issued a grazing permit with term status. Require co-signature of the permit by a parent, guardian, or trustee who assumes responsibility for compliance with terms and conditions of the permit until the minor reaches legal age.

12.13 - Forest Service Employees

Employees of the Forest Service may be eligible to hold any type of a Forest Service permit, including term grazing permits, but they must receive written approval of the responsible official (Forest/Grassland Supervisor or Regional Forester) prior to making application for the grazing permit. (See FSM 6174.1 and/or contact the USDA Office of Ethics concerning employee conduct and employee conflicts of interest).

Any circumstances of possible conflict of interest, or even the appearance of a possible conflict of interest, must be resolved before permit issuance.

If circumstances arise whereby an employee inherits the base property from his/her parents, or an employee marries into a family currently holding a term permit, or other similar instances, they may fully qualify to be issued the term grazing permit. However, how and by whom the permit and allotment(s) will be administered must be determined by the authorized officer.

Of utmost importance in such employee/family circumstances, the authorized officer must determine who on the administrative unit or adjacent units will be able to firmly and fairly administer the grazing permit and the allotment(s) under permit and who is able to hold the permittee/employee accountable in the event of non-compliance with the terms and conditions of the grazing permit.

If these conditions, or other identified concerns, cannot be met or resolved, the application should be denied, and the permit should not be issued.

12.14 - Trusts

The regulations and eligibility and qualification requirements that apply to individuals also apply to trusts. The trust must hold legal title to permitted livestock and base property. Trusts are created in various ways and their purposes, management, and methods of termination vary. Although the names for the individuals involved in the trust may vary considerably, they

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generally use terms such as grantors, settlors, trustees, and beneficiaries. In some cases, another trust or other legal entity might be one of the parties of the parent trust.

While there are literally dozens of different types of trusts, most generally fall into two categories: 1) revocable (in which the settlor reserves the right to later terminate, or change, the trust) and 2) irrevocable (one that cannot be changed by the settlor once it is signed and is only invoked upon the death of the settlor).

One of the more common types employees deal with are reciprocal trusts whereby married persons are each the beneficiary of a trust set up by the other.

Consult Forest rangeland program staff often, and Regional staff or OGC legal advice if needed.

12.15 - Estates

The regulations and eligibility and qualification requirements that apply to individuals also apply to estates. Upon the death of the permittee, the designated or appointed executor will sign for the estate and be responsible for permit administration until the estate is settled.

Upon being notified of the death of the permittee, the permit should be modified to place the word “Estate” at the end of the current name of the permit holder; for example, “William Smith” becomes “William Smith Estate”. The executor of the estate should sign the modification and the address for the permit holder should be changed if needed. Attach a new page 1 of the permit, or modification form if used, to the face of the existing 2230 term permit. In the database of record make any changes, including the address of the permit holder if needed, and show the name of the executor, but do not change the name or permit number of the permit holder at this time. Do not issue a new permit (unless the existing 10-year term permit expires, and re-issuance is in order) until the estate is settled.

If the permit is listed in the name of both married persons, upon being notified of the death of one of the individuals, continue the permit as listed until such time as the surviving spouse provides all legal documents necessary to issue a new permit in compliance with the legal documentation provided at that time.

In those States where ownership of base property and livestock automatically pass to the surviving spouse under State law, the surviving spouse will continue to enjoy the privileges of the grazing permit, including execution of waivers. If the surviving spouse was not listed on the permit, issue a new permit in the name of the surviving spouse.

Given the extremely high land values found in many parts of the West, even smaller dependent ranches can be valued in the millions of dollars. More and more wills are being contested, often by children not involved in the day-to-day or yearly operations, and court cases often take prolonged periods of time to be settled.

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If the estate is not able to meet all qualification requirements within three years, the administrator of the estate needs to document why it would be inequitable to do so or why a longer time period is required. Subject to needed updates, the permit will remain valid and listed in this manner until estate settlement documents have been provided. Refer to section 18.34 for detailed information on inheritance of land and livestock, permit issuance, and estate settlements.

Consult forest rangeland program staff often, and regional staff or OGC legal advice if needed.

12.16 - Corporations and Partnerships

Regulations and eligibility and qualification requirements applying to individuals also apply to corporations and partnerships.

To qualify, corporations and partnerships must hold title to both permitted livestock and base property. As stated in section 12, the base property, permitted livestock, State brand registration certificate, as well as any/all supporting documents, must all be in the name of the same precise legal entity.

Unless allowed otherwise by State law, each shareholder of a corporation must own at least one percent of the shares of that corporation, and each partner must own at least one percent of the partnership.

Normally, one corporation owns both the base property and the permitted livestock. However, in cases involving family estate planning, the ranching operation might occasionally be organized into two corporations and/or partnerships. Please refer to section 18.36 for a description of the important and limited exception that may allow one entity to own the base property while a second entity (made up of all the exact same individuals) is able to own the permitted livestock.

It is not unusual that an entity such as a corporation or LLC to be made up of shareholders or members that are also entities. In some cases, one individual or one entity may be the sole member of the parent entity. Each entity involved in the make-up of the entity listed as the permittee must fill out form FS-2200-25 Ownership Statement by Corporation, Partnership or Other Legal Entity.

The requirements to file and to do business as a legal corporation or partnership can vary greatly from State to State. For example, some States may require that all, or a majority, of the members or partners of the corporation or partnership be U.S. citizens; others may allow foreign nationals to be members of the entity, or may even allow a wholly foreign corporation to be State-licensed.

Follow State statutes in determining if the corporation or partnership meets full eligibility requirements on that unit, with the exception that U.S. citizens must own at least 80 percent of the capital stock of any legal entity to be eligible to hold a Forest Service term grazing permit.

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Resolve questions regarding the legality of a particular corporation's or partnership's eligibility to hold a permit by consulting with the regional rangeland management program manager or director and/or OGC.

12.17 - Limited Liability Companies (LLCs), Family Limited Partnerships (FLPs), and Similar Legal Entities

Regulations and eligibility and qualification requirements applying to individuals also apply to limited liability companies, family limited partnerships, and similar legal entities.

A "limited liability company" (LLC) is a hybrid type of legal structure that provides the limited liability features of a corporation and the tax efficiencies and operating flexibility of a partnership. The owners of an LLC are referred to as members. Depending on the State, the members can consist of a single individual (one owner), two or more individuals, corporations, or even other LLCs.

Unlike shareholders in a corporation, LLCs are not taxed as a separate business entity even though they must file an IRS income tax return. Instead, all profits and losses are "passed through" the business to each member of the LLC. Limited liability company members report profits and losses on their personal federal tax returns, just like the owners of a partnership would.

Just as with corporations and partnerships, each member of an LLC must own at least one percent of the LLC, unless allowed otherwise by individual State statute (see FLPs below).

A limited partnership is formed by filing a certificate with the Secretary of State and entering into a limited partnership agreement among the partners. At least one general partner must be designated to manage liability and affairs of the partnership. This individual should be identified as the point of contact to work with the Forest Service on all matters pertaining to the grazing permit. The limited partners must agree to take no active role in discussions with the Forest Service on grazing permit matters to avoid confusion and facilitate the efficient communication and administration of the permit.

"Family Limited Partnerships" (commonly called FLPs) are simply limited partnerships in which all or substantially all of the partners are family members. Limited partnerships are frequently used as an estate planning tool. The unique status that they occupy under State law, and the flexibility afforded partnerships in the income tax area, make limited partnerships an attractive device in many family planning situations, particularly as a vehicle for the ownership of family assets.

The nature of a family limited partnership is that the management is consolidated in a general partner (or partners) that control the partnership and its assets, while at the same time may be

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effectively transferring indirect ownership of portions of the family's assets to second and third generation family members who are limited partners.

Limited partners have no ability to control, direct, or otherwise influence the operations of the FLP; they have no vote.

A second example of where FLPs are sometimes used is when one (usually) of the siblings has been running the ranch and livestock operation for a number of years for the parents, while all the other children have long ago moved away and established other careers. The parents, still not wishing to show favoritism, will include or establish the long-time operating child as the General Partner, and their other children only as Limited Partners.

In this second case, the limited partners have no involvement or vote in the operations of the FLP. They do not share in the profits or losses of the FLP in any year, and thereby have no tax involvement or obligation. And it is most likely set up that they will not share in the inheritance of the land and livestock operation down the road (the parents usually make different financial arrangements for them).

It may vary greatly by statute, but in some States the limited partners can and do own less than one (1) percent of the partnership, even as little as 1/10th of one percent.

Resolve questions regarding the legality of an LLC's or FLP's eligibility to hold a permit by consulting with the Regional Office Range Management Specialist and/or OGC.

12.18 - Non-Governmental Organizations (NGOs) and Nonprofit Organizations (NPOs)

Regulations and eligibility and qualification requirements applying to individuals also apply to Non-Governmental Organizations and nonprofit organizations.

Non-Governmental Organizations (NGOs) are business organizations that are independent from States and national and international Governmental organizations. If they are not-for-profit businesses, they may also file for 501c3 status in the state of operation, following IRS tax-exempt code. They are usually funded by donations, but some avoid formal funding altogether and are run primarily by volunteers.

Nonprofit organizations (NPOs), also known as non-business entities, are organizations the purpose of which is something other than making a profit. A nonprofit organization is often dedicated to furthering a particular social cause or advocating for a particular point of view.

To qualify, NGOs and NPOs must hold title to both permitted livestock and base property. As stated in section 12, the base property, permitted livestock, State brand registration certificate, as well as any/all supporting documents, must all be in the name of the same precise legal entity.

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They must actively manage the allotment and carry out normal annual livestock management operations.

In most cases, NGOs and NPOs will not meet eligibility and qualification requirements, and very few will apply to hold term grazing permits. In any case, do not allow one NGO/NPO entity to hold title to the base property and a second NGO/NPO entity to own the livestock.

Follow State statutes, as applicable, in determining if the NGO or NPO is eligible to hold a term grazing permit on the unit. Resolve questions regarding the legality to hold a permit by consulting with the Regional Office Range Management Specialist and/or OGC.

12.19 - Grazing Associations and Grazing Districts

Regulations and qualification requirements applying to individuals and other legal entities are quite different for grazing associations and grazing districts.

Grazing associations and grazing districts (collectively referred to as associations) were first authorized and organized under State laws (most statutes call them associations, but, for example, South Dakota and Montana laws named them districts), beginning in the 1930s. Most were originally formed up and down the Great Plains on lands that were purchased and would later become known as national grasslands, but associations exist today on other grasslands as well as on some national forest units.

In those cases, a group of homesteader ranchers and farmers would band together to consolidate management of intermingled private and public lands and petition the State to be organized as an association. They developed bylaws, elected a board of directors, submitted a list of their members, and described and displayed the lands upon which they proposed to graze livestock and develop sound conservation measures. Applicants were granted Articles of Incorporation from the State.

Under the authority of the Bankhead-Jones Farm Tenant Act of 1937, grazing agreements were developed by the Soil Conservation Service (SCS), now the Natural Resources Conservation Service (NRCS). These agreements serve as the association's term grazing permit. They are longer and more detailed than the term grazing permit held by all other entities. The intent, policy, and practice is that all associations hold identical grazing agreements (FS-2200-135 on grasslands, FS-2200-136 and FS-2200-137 on forests) just as all direct permittees hold the same term grazing permit (FS-2200-10). See chapter 20 for more details on grazing associations and grazing agreements.

Under a grazing agreement, the association is responsible for managing their members consistent with the conditions of the grazing agreement for livestock grazing on the lands identified in the grazing agreement in a manner that is consistent with the direction set forth in chapters 10, 20 and 30.

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While some associations own, or lease, land in their own name, and a few even own livestock, most associations own neither. Thus, the association itself is eligible to hold their term grazing permit (the agreement), but most associations do not own qualifying land or livestock. Instead, the association distributes grazing privileges and issues association term grazing permits to their members, and all of their members must own qualifying base property and permitted livestock just as Forest Service direct-issued term grazing permittees must own both.

12.2 - Qualification Requirements

With the exception of grazing associations under grazing agreements and districts, in order to qualify to hold a term grazing permit, an eligible applicant must own both the base property and the livestock to be permitted, except as expressly set forth in sections 12.21 and 12.22 below, and in sections 18.35, 24.31, and 24.32.

Ownership of both the base property and permitted livestock must be in the precise name of the permit applicant and must be verifiable 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 notify the authorized officer prior to or as they occur 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 suspension or cancellation of the permit (see section 16.4).

The policy that children or grandchildren can run any number up to 50 percent of the parents' or grandparents' permitted livestock is *not* an exception to these qualification requirements, since the older generation still retains ownership of the base property and a majority of the permitted livestock. See section 12.22 below for a more detailed discussion of this policy.

12.21 - Base Property Ownership 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.

Base property is defined as the land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by the applicant to qualify for a term grazing permit (36 CFR 222.1). Base property shall include the basic facilities to conduct a ranching operation; at a minimum, this will include water and the corrals (usually permanent, sometimes temporary) and fencing necessary for the handling and sorting of livestock. It may include headquarters and other structures, but these are not required.

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Approval for use of portable corrals and chutes has become fairly common in some areas in recent years. In very limited cases it may be necessary to allow water hauling facilities as acceptable for meeting the water supply requirement.

Forest/Grassland Supervisors have been delegated the authority to establish (specific or additional) base property requirements for national forests and national grasslands within limits established by the Regional Forester (FSM 2204). Forest/Grassland Supervisors shall consult with local livestock organizations when establishing or proposing to change base property size, location, or other requirements.

Property designated as base must actually be used in concert with the livestock operation and, except for the national grasslands, cannot be inside the allotment or accepted as waived land for a term private land permit or the off portion of an on-and-off permit (FSM 2231.22c through 2231.22d).

Where base property is jointly owned (undivided interest) by several individuals, all of the owners must apply for the term permit as one entity. 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. The name on the permit will be stated the same way as the land ownership is recorded at the county courthouse.

Because it is the active center of the livestock operation, and although many permittees own hundreds or thousands of private acres, the intent of base property designation is to only list that legal portion of the ranch that meets the base property definition and requirements. For example, depending on regional or local established requirements, a 40-acre legal parcel may meet base property requirements, while in other areas; some declared parcels may be smaller or larger. Permittees are free to list larger acreages than the minimum requirement if they so desire.

Permittee requests to change or reduce the declared base property, by permit application or letter, can be made only with approval of the authorized officer after it has been shown the new offering meets all base property requirements (see section 16.15). Such a request cannot be honored at the time of permit waiver, if the waiver is based on the sale of base property.

Leasing base property, where not specifically authorized by a grazing agreement or rules of management (see section 24.11), does not satisfy the base property ownership requirement and can result in the rejection of a term grazing permit application.

Base property ownership requirements also apply to members issued grazing permits by grazing associations through grazing agreements. Requirements can vary by individual grazing association and are stated in the grazing agreement and rules of management for each association. Successional base property provisions (leased, buying over a time period not to exceed 10 years) have been executed between some holders of grazing association-issued term

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grazing permits. Chapter 20 specifies exceptions that relate to grazing associations and their members on national grasslands.

NOTE: The only exception allowed regarding ownership of base property for members of grazing associations, as well as the exception for consummating successional base property arrangements within 7-10 years, is provided for the grazing associations operating on the Dakota Prairie Grasslands (DPG) in R-1.

The authority for allowing these two exceptions is found in the Consolidated Appropriations Act of 2008 (PL 110-161), Division F, Title IV, SEC. 425, which states:

“In fiscal year 2008 and thereafter, the Forest Service shall not change the eligibility requirements for base property, and livestock ownership as they relate to leasing of base property and shared livestock agreements for grazing permits on the Dakota Prairie Grasslands that were in effect as of July 18, 2005.”

This authority will remain in effect until such time as both parties would arrive at a different resolution of the base property ownership issue and request an amended legislative solution at that time.

Resale agreements and/or the return of notes or checks upon the return of ownership of base property at any time within 24 months after a waiver, does not constitute a bona fide transaction, and will result in denial of the application or cancellation of the permit.

12.21(a) - Conservation Easements and Agricultural Land Trusts

In recent years, more and more ranching families are entering into contractual agreements that maintain their private lands in agricultural production in perpetuity. Conservation easements restrict certain uses or development while allowing owners to retain many private property rights and to live on and use their land.

Although their exact name may vary slightly by State regulation or statute, conservation easements are based on the concept that protecting certain conservation values have significant public benefits. They are dedicated to conserving working family ranches and farms and the wide-open spaces, scenic views, natural habitats, historical or culturally important sites or structures, and the rural communities they support.

Conservation easements generally allow the ranching family to retain ownership to the lands for future generations, thus keeping those lands, amassed over several generations, in perpetual agricultural production. A mixture of private and public interests is usually the source of the funding needed to secure the long-term easement. Easement terms are negotiated and agreed upon by both the private landowner(s) and the purchaser(s).

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Conservation easement terms are negotiated between the landowner and the entity purchasing or being donated the conservation easement. The Forest Service is not involved in those negotiations. The following discussion provides some examples of how certain resulting scenarios associated with conservation easement terms could be addressed to continue to provide opportunities for individuals and entities owning property under a conservation easement to continue to maintain that property as qualified base property for the purposes of a term grazing permit.

Depending on how the conservation easement is crafted, there could be ramifications for the private landowner who holds a term grazing permit for which the land in question is recognized as base property. This may also have an impact relative to the children and grandchildren regarding what opportunities may be available associated with the ownership/inheritance by subsequent generations of the lands recognized as base property.

When the terms of a conservation easement do not allow the property to be subdivided into different ownerships/parcels in future, children/grandchildren may need to inherit the entire ranch as a whole – as an entity. But it also generally means – unless the easement terms have been negotiated differently – that each of the children might *not* be able to parcel out the ranch – each owning even a small portion of the ranch that could qualify as base property – and each being able to be issued individual term grazing permits.

In those instances where the terms of a conservation easement prohibit the subdivision in ownership of the property there still may be administrative opportunities that would allow the children, or the grandchildren to continue to be part of a livestock operation that is permitted to graze on NFS lands. This would include the formation of two entities. One that owns the lands recognized as base property and a separate entity that owns the permitted livestock.

Section 18.36 addresses the important limited exception whereby one entity may own the base property and another entity – that must be comprised of all the same individuals – can own the permitted livestock. This situation most often occurs when it is being done for estate planning purposes and the documents are drawn up between direct family members.

Accordingly, in these special cases, each individual owning a share of the base property (on which there is now a conservation easement that prevents later subdivision or separate ownership) must also own a share of each livestock herd.

For example, if the husband and wife who have owned and operated the ranch for the last 30 years as Rock Creek Ranch, and now sign a conservation easement on their ranch with their three adult children as Rock Creek Ranch LLC, the parents may now own 25% of the LLC, and each of their children may own 25% of the LLC as well.

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Each of the three children may apply to run their separate livestock herd, but each of these herds must have at least 1% ownership by the parents and 1% ownership by each of the other two siblings under the same Rock Creek Ranch LLC name (or a different entity name). Each then owns 97% of his/her herd of cattle.

If the parents still desire to run their own herd of cattle, each of the children must own at least 1% of their herd as well since the base property is now owned by four “individuals.”

Each of the four herds of cattle must be branded appropriately with State-registered brands issued to the applicable livestock ownership entity’s name.

This can be a very complex situation and can become even more complicated once the operation(s) pass down to succeeding generations.

There may be opportunities for the Forest Service to work with the permittee to articulate what types of entities may be considered to be eligible to hold a term grazing permit while meeting the needs of the all the family members in a manner that would allow them to meet the intent the terms of the conservation easement. See section 12 for information on eligibility and qualification requirements for term grazing permit.

Another example that could be used is to organize under State statute as a grazing association, with all the required documents such as articles of incorporation and bylaws, and the board of directors can issue association term permits to each of their members, which might be the children and grandchildren of the landowners who negotiate the conservation easement. In this way, separate parcels of the jointly owned ranch property could be declared as base for each of the separate livestock operations. See Chapter 20 for issuance of a Grazing Agreement.

However, the simplest, and recommended, solution for management of a conservation easement, under current Agency regulation and policy, is to allow one declared base property under one entity’s name (that portion of the conservation easement ranch) to be declared as the center for *more than one* livestock operation – and allow two or more applications being received for a term grazing permit from other entities composed of the same membership as the base property membership.

In the example above, it would be the same parcel declared as base property for the parents and all three of their children as well and result in the issuance of four term grazing permits. A second way to handle it would be to issue one permit but have four separate brands registered with the State for that entity.

Resolve questions regarding these situations by consulting with regional rangeland management specialist and/or OGC.

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The private landowners should exercise care in negotiating easement terms so that future livestock management operations are not unduly restricted (such as changing kind or class of livestock, changing use seasons, or from including other lands into the year-round operations).

12.22 - Livestock Ownership Requirements

Except as set forth below and also in Chapter 20, the permit applicant must own the mature livestock to be grazed on NFS lands under a term grazing permit and the on portion of on-and-off permits (see section 11.52).

Mature animals are defined as those animals that are weaned or 6 months of age or older at the time of entering NFS lands; or will become 12 months of age during the permitted period of use (36 CFR 222.50(c)).

Livestock that were authorized and currently graze, or grazed during the preceding grazing season, on the assigned allotment shall be considered permitted livestock for the purpose of waivers of term grazing permits (see sections 17.2, 17.3, and 18.1). Livestock ownership is not required for term private land grazing permits or for the off portion of on-and-off permits.

When a waiver is based only upon sale of permitted livestock, the new permit holder must postpone herd-replacement marketing or more-than-normal culling of the herd until the purchased permitted livestock have grazed on the allotment to validate the new permit the next grazing season (see section 15.5). A waiver based only on the sale of permitted livestock requires the sale of 100 percent of the permitted livestock in order for the preferred applicant to be qualified to be issued a term grazing permit for the full numbers. The waived permitted livestock must be branded with the new permit holder's brand. See chapter 30, section 33.4 for when waivers based on sale of base property are received in the middle of the grazing season.

Resale agreements and/or the return of notes or checks upon the return of livestock at any time within 24 months before, during, or after a waiver, does not constitute a bona fide transaction, and will result in denial of the application or cancellation of the permit.

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

There are three instances in which exceptions to the livestock ownership requirement may be recognized by the authorized officer. Those instances are described as follows:

1. The first is a modification of the agency's long-standing policy of allowing children to place some livestock on the allotment permitted to their parents. This is not considered an exception to the livestock ownership requirement, since the older generation still retains ownership of the base property and a majority of the permitted livestock. The

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permit holder's children or grandchildren are in the process of acquiring their parents 'or grandparents' ranching operation or are participating in a farm youth program such as Future Farmers of America, 4-H, or a similar organization, in which case the authorized officer may waive the ownership requirement with respect to up to 50 percent of the permitted livestock that may be owned by the permit holder's children or grandchildren and are placed on the allotment each year under this provision. The permittee must identify ownership and brands to be grazed under this provision annually to the authorized officer in order for them to be authorized to graze during that grazing year.

Once more than 50 percent of the permit holder's permitted livestock are owned by the children or grandchildren, the term grazing permit holder must then waive the term permit to his or her children or grandchildren. All animals that were grazed during the last grazing season under the parents'/grandparents' term grazing permit are recognized as permitted livestock in the waiver. A waiver usually will not have been executed prior to this time because the children or grandchildren did not yet own base property; now they are required to own base property.

The permittee may not waive the permit to anyone other than his or her children or grandchildren under this provision. And if the permit holder wishes to bring other family members such as nieces or nephews into the livestock operation, they must pursue other options such as creating other legal entities to involve those family members.

The permit holders may express a desire, or need, to stay involved in the business as their next generation takes over the operation in full; they may need the guidance, and perhaps also the financial backing. In some cases, the parents/grandparents may choose to no longer be legally involved in the ownership of the land and livestock. But they may also wish to continue running a small herd of their own.

When and if these circumstances exist, since agency policy requires that the older generation waive the permit in full once the succeeding generation owns a majority (over 50%) of the permitted livestock, there was no way for the older generation to continue owning and operating a part of the generational family operation.

In order to stay current with escalating land values, family estate planning efforts, and the need and objective to keep sustainable working ranches and farms on the landscape, it is timely to acknowledge that what worked on the front-end of the family livestock operation to keep the next generation on the land can and should now be allowed to work on the tail-end of the family operation as well.

Accordingly, since the older generation cannot retain any portion of the previous permit as individuals or as some percentage of a different family entity, the older generation can now continue to run up to 50% of the permitted animals shown on the younger generation's term permit. And all the permit holder needs to do is declare how many

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head are owned and run by the parent or grandparent (and the brands they carry) each year until the older generation is no longer involved in the livestock operation.

The one restriction that must be applied to this situation, however, is that the permit holders involved must always be individual persons. It cannot apply to families that are established, or about to be established, as a separate legal entity (corporation, partnership, LLC, LLFP, etc.).

Since 2010, the U.S. Supreme Court has ruled that corporations are afforded certain “personal rights”—including the right to contribute money to candidates in political elections and the right to refuse to comply with certain Federal legal mandates on religious grounds—just as are afforded private citizens. A corporation, however, has been partially defined by the Court as being “a number of persons united in one body for a purpose,” clearly distinguishing corporate entities from private citizens. The Court has also made it clear that its rulings regarding corporate personhood are chiefly concerned with protecting the rights of individuals that organize and associate as a corporation, not those rights of corporations themselves. Further signaling that corporations are not to be considered as equivalent to individual persons, the Court’s rulings have refused to extend many human rights to corporate entities, such as the right to marry, the right to parent a child, or the right to vote.

Accordingly, legal entities that are comprised of multiple individuals are not considered individuals for the purpose of permit holding. As such, permittees organized in this manner do not have the ability to allow their children or grandchildren to run any portion of the livestock on the term grazing permit in the manner discussed above, even though they may be able to incorporate them into their legal entity (i.e. through corporation membership, etc.).

2. Successional livestock agreements have been executed between some holders of grazing association-issued term grazing permits and another entity (normally completed within 5 years). Chapter 20, section 24.32 specifies exceptions that relate to grazing associations and their members on grasslands.

3. All or some of the breeding animals (sires) which service permitted livestock are sometimes leased from another individual or entity. 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 bulls, their brands or markings, and to whom they belong. Although it is a duplication of effort, the term permittee must be issued a separate Temporary Grazing and Livestock Use Permit (FS-2200-05) annually since the Chief does not have authority to allow term permittees to run unowned livestock. See chapter 30, section 31.24 for specific details.

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The requirements of ownership are not intended to interfere with routine marketing or culling of livestock. Annual sale of a portion of the base herd, offspring, or yearlings is a standard industry practice; however, if those animals are purchased as the basis for a waiver on sale of permitted livestock it is acceptable as long as it is a bona fide transaction as evidenced by the actual transfer of funds between parties for the animals.

12.3 - Livestock Branding

Mature livestock, including yearlings, to be placed on NFS 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 must conform to the brand and inspection requirements of both States. Brands must be recorded with the State Brand Department and the permittee must hold a valid certificate of brand.

Adhere to State branding or marking requirements whenever possible. Some States (e.g., many in the eastern U.S.) do not have any branding requirements. If the base property is located in a State without branding requirements, the authorized officer may require ear-tagging or paint marking if deemed necessary.

Some States, for example New Mexico, allow the use of holding brands. In such cases, the brand registered in another State, such as Texas or Arizona, is allowed to be registered as a holding brand in New Mexico. This prevents the need to double brand. This usually occurs because the permittee's base property is in the adjacent State and that permittee's out-of-State brand, or the location of the brand on the animal, is already registered to someone in New Mexico. However, be very diligent in confirming brand ownership and registration since these circumstances could also provide the opportunity for the permittee to attempt to run unowned livestock.

As required by State law, sheep/goats carry paint brands or tattoos. Contact the State and the local Wool Growers Association' association representative to determine branding and inspection requirements and brand ownership. Some States do not require registration of sheep/goat brands.

Follow State statutes regarding requirements to mark or brand bison. This is important because some States have both domestic bison herds as well as wild and free-roaming bison.

While some States allow the leasing or sharing of brands, the Forest Service does not recognize or allow leased brands because two different livestock producers could be using the same brand in the same area, thereby creating the opportunity to run unowned livestock.

For example, the State of Colorado is less restrictive than some other States as to where the brand is located on the animal. Since Colorado allows leasing of brands, the permittee could lease his brand to his neighbor. Animals could be branded in different locations, or even in the same location but perhaps have different identifying markings such as ear tags or ear clips.

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Either way, it may be difficult or impossible to tell during allotment inspections if the cattle on the allotment belong to the permittee or to the neighbor – or some of both.

It is preferable that brand certificates are not listed as one person “or” another person but instead should be listed as “and” or as “and/or”. However, refer to State law to assure this does not mean that livestock ownership can be by either person or entity. Refer to section 12b above for a detailed discussion of the proper use of these two terms. This section also explains the use of tenants in common (which implies “or”) and joint tenants (which implies “and”) in documents.

Most State brand commissions or livestock boards themselves have little or no restrictions on the use of the two terms except that when the brand is transferred all the parties listed on the brand registration must sign to release and transfer the brand.

But most livestock commissions and public sale yards require all individuals named on the brand registration to be present for signature(s) when livestock are sold at public auction. In order to have only one of the individuals be present at the sale yard, some permittees choose to separate all persons named on the brand registration certificate with the word “or” instead of “and.”

This circumstance can create a conflict when legal documents use the word “and” between the parties who jointly own the base property (such as William and Nancy and Nolan Smith) and the brand registration is shown as William “or” Nancy “or” Nolan Smith.

In some States, this apparent conflict in ownership of both the base property and the permitted livestock needing to be in one entity’s name can be resolved by placing “JTROS” at the end of the brand registration, meaning that while the parties are registered as “or” for sale purposes, the brand is actually owned in common as “joint tenants with right of survivorship.”

If State statutes or policy do not allow resolution of the apparent conflict in this manner, it may be necessary to allow the land ownership documents (and the names on the permit) to be separated by the word “and” while the names on the brand registration are separated by the word “or.” The authorized officer should request assistance from their Regional Rangeland Program Manager or OGC to contact State brand offices to determine if this exception can be allowed. See also section 18.36.

If mature livestock placed on NFS lands or other lands under Forest Service control do not bear the brand shown on the permit application, request proof of ownership from the permittee. If proof is not provided, send the permit holder a notice of non-compliance (see section 16.3), thereby initiating the possibility of suspension or cancellation action.

The Forest Service requires the permitted (mature) animals to be branded with the permittee’s registered brand; offspring (calves) are not required to be branded. However, the offspring branding requirement may vary by State law. It is a recommended and usual business practice;

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cases of rustling still exist, especially in times of higher cattle prices. Offspring *may* be branded with other brands to facilitate marketing.

Occasionally offspring may be branded with other brands such as to build up the base herd of children or grandchildren. If offspring are a method of payment for an agent or manager, some may also carry that brand (mature animals can never carry the manager's brand; see below).

It is the responsibility of the authorized officer to annually approve all offspring that will bear other brands prior to their placement on NFS land.

12.4 - Agreements between Permit Holders and Ranch Managers

A permit holder may enter into an agreement with a third-party ranch manager to manage the day-to-day business affairs of the ranch operation. A copy of the permittee-ranch manager agreement must be provided to the authorized officer for review and approval.

Agreements between permit holders and ranch managers are acceptable to the Forest Service if the following requirements are met:

1. The permittee retains 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/grandchild who is in the process of acquiring the ranch operation (see section 12.22).
2. Only mature livestock owned by the permittee and branded or marked accordingly may be placed on NFS lands specified in the permit (see section 12.3). Some portion of the offspring may carry the ranch manager's brand if the approved managerial agreement allows for that as a method of payment for managing the ranch. However, any weaned or mature animals that might be owned by the ranch manager cannot be placed on NFS lands at any time in lieu of or in addition to the mature livestock owned by the permittee.
3. The permittee remains fully responsible for compliance with all laws and regulations applicable to grazing on NFS lands and the permit terms and conditions. All correspondence and contact involving non-compliance, or other situations of a serious nature, need to be addressed directly with the permit holder with a copy to the manager.
4. The permittee must delegate in writing the specific scope of authority given to the ranch manager. This may range from full authority 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 or may be limited to specific actions. The agreement must also specify exactly how the ranch manager is paid if livestock are involved as payment for performing the required duties. The permittee may not delegate

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the authority to sign the term grazing permit to the ranch manager, unless the agent or manager has been issued Power of Attorney by the permittee.

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

A sample managerial agreement is shown in Exhibit 01.

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12.4 - Exhibit 01

Sample Managerial Agreement

MANAGER AGREEMENT

This Manager Agreement (Agreement) is entered into by and between _____ (Permittee) and _____ (Manager) under the terms of Forest Service Handbook 2209.13, Section 12.4 to allow the Manager to conduct the livestock business operations under Term Grazing Permit # _____ on the _____ allotment(s).

THEREFORE, the parties agree as follows:

SCOPE OF AUTHORITY. Permittee hereby delegates to the Manager full authority to take whatever action is necessary to comply with all of the laws and regulations applicable to grazing the livestock on National Forest System lands and under the Permit terms and conditions and as specified below:

- a. Meet as required by the Forest Service
- b. Sign the annual application and annual operating instructions (AOI)
- c. Maintain all range improvements listed on the Term Grazing Permit and construct any new improvements
- d. Sign all grazing permit modifications for new range improvement construction
- e. Submit the Actual Use Report to the Forest Service annually

The Permittee remains fully responsible for compliance with all laws and regulations applicable to grazing on the National Forest System allotment(s) and the permit terms and conditions and as specified below:

- a. Sign all 10 year term permits
- b. Be notified by the Forest Service of any permit non-compliance issues
- c. Be responsible for annual payment of the Bill for Collection

RETENTION OF OWNERSHIP. Permittee shall retain ownership of the base property and the mature livestock associated with the permit, and shall not lease or otherwise convey an interest in either the base property or mature livestock to the Manager during the Term of this Agreement.

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NOTIFICATION OF CHANGES. Permittee shall notify the authorized officer when changes occur regarding the status of the Manager and shall provide the authorized officer with new or amended Manager Agreements.

CONTACT INFORMATION FOR MANAGER. The Manager's contact information is as follows:

Address: _____

Telephone: _____

Cell Phone: _____

Email (optional): _____

COMPENSATION. Permittee agrees to compensate the Manager for all services provided by the Manager under this Agreement (**Insert actual methods of payment; possible examples are listed below**).

- a. Rent-free living quarters
- b. \$1,500/month subject to social security and FICA withholding
- c. Five percent of the weaned calf crop at the end of each grazing season

TERM. The term of this Agreement shall begin on _____, and shall continue thereafter on an annual basis; provided, however, that either party may terminate this Agreement on not less than thirty (30) days' notice.

PERMITTEE

MANAGER

(Signature)

(Signature)

Dated: _____

Dated: _____

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12.5 - Upper, Special, and Lower Limits

Upper, special, or lower limits governing the maximum and/or minimum number of livestock a permit holder is authorized to graze on NFS lands pursuant to a term grazing permit(s) are not established by the Chief of the Forest Service, but may be established at the discretion of the regional forester (FSM 2204).

In the absence of a regional supplement, individual national forest and national grassland units may establish upper, special, and lower limits as specified in forest/grassland supplements. Forest/grassland supervisors may set lower limits for their units that are equal to or higher than those established by the regional forester. Forest/grassland supervisors shall consult with local livestock organizations when establishing or changing upper and lower limits.

Individual grazing associations/districts may likewise establish upper, special, and lower limits as specified in their bylaws and approved Rules of Management within limits established by the Forest Service. These locally established limits should be displayed in the forest/grassland FSM supplement, and may be listed by Ranger District, a subunit or mountain range, or even by individual grazing association.

Upper, special, and lower limits should be expressed as mature animals, but may occasionally be listed as Animal Unit Months (AUMs) or even Head Months (HMs.)

The dependency of local livestock ranchers to hold term grazing permits on NFS grazing allotments in order to round out a properly balanced year-round livestock operation is a key factor to be considered in establishing or changing upper and special limits.

12.51 - Upper Limits

Upper limits establish maximum numbers of livestock that an individual, partnership, corporation, or other legal entity may hold under a permit with term status and be allowed to graze upon National Forest System lands at any given time.

The general purpose for establishing upper limits is to prevent one grazing permittee or a small percentage of grazing permittees in a particular area from obtaining a disproportionate share of permitted use on NFS land. Setting the upper limits helps to stabilize local communities by maintaining a wide distribution of grazing use on NFS lands among qualified livestock producers in the local area.

There is no fixed formula for determining upper limits. The Regional Forester establishes upper limits by Forest or Grassland in cooperation with local permittees and other interested individuals and/or groups. Upper limits on adjacent forests or regions should be similar if conditions are comparable.

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Factors and criteria to be used in establishing or revising upper limits include:

1. Total amount of grazing use currently available on NFS lands in the area
2. Local demand for grazing use on National Forest System lands.
3. Dependency of present grazing users on National Forest System lands.
4. Present distribution of term permits by ranch size.
5. Numbers and size of ranches with and without FS grazing permits in local areas.
6. Trends in number and size of ranches and farms.

Forest/grassland range program managers may need to seek regional office and OGC review of legal documents if it appears that entities are being formed to avoid or get around upper limits established in cooperation with the livestock industry.

Upper limits are usually established on the basis of total numbers of mature livestock currently permitted by grazing permits with term status. Numbers permitted under term private land grazing permits and the off-portion of term on-and-off permits are not included.

Upper limits are usually established for the both kinds of permitted livestock: cattle and sheep/goats. Some units may list upper limits for horses and bison as well. Conversion factors can be developed to allow for different classes of livestock (for example, yearlings could be counted as 0.7 of a mature cow/calf animal).

12.51a - Calculating and Applying Upper Limits

Apply upper limits as follows:

1. *Two Kinds of Livestock.* Where two kinds of livestock are under term permit to one permittee, the total number of animals permitted shall determine the relationship to the upper limit. Convert each kind of livestock to a percentage of the upper limit for that kind. The percentage for each kind added together must not exceed 100 percent of the upper limit.

For example, if the established upper limit for a national forest or grassland is 400 cattle or 4000 sheep, a permittee grazing 200 cattle (50 percent of the upper limit) and 1000 sheep (25 percent of the upper limit) could not increase the permit there or elsewhere by more than 25 percent of the upper limit for cattle, or 25 percent of the upper limit for sheep.

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2. *Inter-Forest and Inter-Regional Permits.* On each national forest or national grassland, whether or not it is located in the same Region, express the relationship of the permit to the locally established upper limit on a percentage basis. For example, if a permittee has 60 percent of the upper limit on one forest or grassland, the same permittee could obtain a permit for only 40 percent of the upper limit on another forest or grassland.

3. *Married Persons and Immediate Families.* Except in irrevocable trusts, upper limit restrictions apply to married persons, and minor dependent children, as an entity, regardless of the legal interest of each in livestock or base property and regardless of whether the permit is separate or joint.

However, when married persons who hold a term grazing permit as one entity are also members of other entities such as corporations, partnerships, or LLCs, the married persons will be considered individuals when applying upper limit restrictions against them as individual members of such entities.

4. *Corporations, Partnerships, and Other Legal Entities.* Upper limits apply to corporations and their individual shareholders in the same way they apply to individual permittees. The upper limit restrictions likewise apply to partnerships and other legal entities in a proportional percentage of the individuals and other entities who are the “partners” or “members” in the same way they apply to individual permittees.

When a corporation or partnership holds or acquires capital stock in another entity, charge that corporation with the percentage of the upper limit represented by its own permit plus the percentage of the upper limit represented by its interest in the permit of the second entity. Added together, the total must not exceed 100 percent. For example, if a permittee corporation or partnership has a permit for 80 percent of the upper limit on one NFS range, it could hold or acquire capital stock in another permittee corporation, partnership, or other legal entity equivalent to 20 percent of the upper limit on NFS range used by the second entity.

If a shareholder in a corporation or partnership is also an individual permittee, charge the individual the percentage of the upper limit represented by the individual's interest in the corporation or partnership permit plus the percentage of the upper limit under the individual's permit.

5. *Trusts.* Upper limit restrictions apply to a trust as an entity. Charge individual beneficiaries of the trust with their proportionate share of the upper limit. Do not charge trustees, other than those with simple retainer responsibilities, unless the trust specifies that the trustee actually is the beneficiary of trust proceeds. Do not charge settlers of a

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trust with upper limit restrictions unless the trust establishes them as a recipient of proceeds from the trust.

Trusts established for minor children will reflect against the upper limit provision of the parent or guardian unless the trust is irrevocable. Continue to honor as approved any previously approved trust arrangements that are contrary to the above instructions.

6. Members of Grazing Associations. Upper limit restrictions do not apply to grazing associations as a permittee. Each association will establish upper limits for the members within the association.

The number of livestock permitted by an association to a member applies toward the upper limit of any other NFS unit where an individual member or permittee may obtain a permit except when the association permits also authorize use on private land.

When a grazing association controls private land used in conjunction with NFS lands, the number charged to an individual member of the association will be in the same proportion as permitted numbers on NFS lands bears to numbers grazed on all lands controlled by the association in conjunction with that individual's permit.

For example: An individual is permitted 400 head of cattle by an association. One-half of the grazing capacity is on lands other than National Forest System lands. Although the individual is already at the upper limit allowed by the association (400 head), charge only 200 head against the individual's upper limit (50 percent) on that unit. If the upper limit on another NFS unit is 600 head, the individual may hold or acquire a term permit there for up to 300 additional head (50 percent of that unit's upper limit).

12.52 - Special Limits

A request to exceed the upper limit may be submitted by the permittee for review; this sometimes occurs if a permittee or member near the upper limit has purchased another base ranch or the permitted livestock of another permittee. If the request for the special limit is at or below any special limit established at the regional level, it may be approved by the forest/grassland supervisor. The approval letter to the permittee or member should state the justification for the special limit and is sufficient for documentation.

Regional Foresters have the authority to establish special limits in the following situations:

1. Because of inheritance of base property (inheritance of livestock only does not justify establishing a special limit).
2. To provide for consolidation of two or more individual base ranches belonging to members of family groups into a single ranching operation for greater efficiency and

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economy. (If this larger base ranch is later divided, the need for the special limit no longer exists.)

3. To allow use of available capacity and there are no other qualified applicants.
4. To permit use of increased grazing capacity resulting from permittee participation in a range improvement and development program.

Forest/grassland supervisors shall assure any approved special limits are displayed in applicable regional and/or forest supplements.

Existing special limits remain in effect and are honored when waivers are received.

12.53 - Lower Limits

The intent of considering the establishment of lower limits is to minimize permit issuance and potentially reduce administration expenses. They are not a mandatory requirement, and regions/forests should coordinate closely with the local livestock industry before establishing such limits. They should not be used solely to reduce costs if doing so does not improve allotment management and permit administration.

If lower limits are established, 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. Lower limits would not apply to term private land permits.

For example, if a rancher holding a term on-and-off grazing permit for 18 animals on NFS lands and another 72 animals on intermingled off-lands (private and/or State lands) in the allotment, this permittee grazes 90 animals under permit, so has at least a 90-head livestock operation. Therefore, he/she is not subject to a 25-head lower-limit restriction on that national forest unit.

If lower limits are established, 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, it is desirable that these term permit holders be encouraged, but not required, to only waive their term grazing permit to another existing term grazing permit holder, so that the resulting permit exceeds the lower limit.

This direction on lower limits does not apply to situations where the NFS 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 intermingled land resource, and where the alternative action could create unauthorized use situations.

See additional direction in chapter 50, section 54 concerning special use permits and authorizations.

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13 - ACQUIRING TERM GRAZING PERMITS

Term grazing permits may be acquired as shown in sections 13.1 thru 13.4.

13.1 - Changes in Ownership with Waiver

Upon meeting all eligibility and qualification requirements (section 12), a term grazing permit may be issued to an applicant under the following circumstances:

1. The current permittee executes 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 (typically no more than 15 to 20 percent), that are currently grazing on the allotment or which grazed on the allotment the previous grazing season (please note that a waiver of term grazing permit based only on the sale of permitted livestock requires sale of 100 percent of the permitted livestock in order for the preferred applicant to be qualified to be issued a term grazing permit for the full numbers), and/or
 - b. The designated base property.
2. The applicant inherits the permittee's permitted livestock and/or base property.
3. The applicant is the permittee who desires to change the status of the permit holder, for example, from individual to corporation, from partnership to sole proprietorship, and so forth.
4. The applicant was a shareholder of a previously permitted entity that was dissolved and may now be a successor in interest to a new entity or for an individual permit. Seek legal advice with your forest/grassland and regional rangeland management specialist, and with OGC if necessary.
5. 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, Special Masters sale, etc.); 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 (section 18.8).

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

In cases of change of ownership of both base property and permitted livestock where separate parties acquire base property or permitted livestock without waiver (as may happen in an inheritance, an estate-settlement lawsuit, divorce, or in a partnership dissolution situation), the

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term grazing permit will normally follow the base property unless the settlement specifically decrees otherwise.

13.2 - Grant

The grant process is the procedure to determine to whom a term grazing permit should be issued when grazing capacity becomes available. This usually happens when an existing term permittee waives his permit back to the Government without preference to any new owner. It can also become available when an existing permit is cancelled because of non-compliance with permit terms and conditions by the existing permittee, when NEPA is completed on a vacant allotment, or when new NFS lands are acquired.

The authorized officer may modify existing term permits or issue new permits to allocate the available capacity. All eligibility and qualification requirements apply.

13.21 - Requirements for Using Grant Authority in Grazing Capacity Determinations

Grazing capacity that is not obligated on vacant allotments, or unobligated grazing capacity on active allotments, is available for grant after:

1. The needs of other resources and values have been considered and the grazing activity is consistent with direction in the applicable LMP.
2. A sufficient environmental analysis and decision to authorize grazing is in effect for the allotment(s).
3. A determination has been made that forage is available, based on monitoring and/or inventories.
4. Rangeland improvements necessary for proper livestock management are in place, or will be in place, and are maintained prior to actual stocking.

Priorities for management of active allotments should be considered when allocating resources to pursue stocking vacant allotments under the grant process. In some cases, a prospective applicant or an existing permittee may be willing to contribute to environmental analysis and/or to maintain or construct needed improvements in order to restock a vacant allotment.

13.22 - Grant Priority

Grants may be made to existing term grazing permit holders or to new applicants. Normally preference will be given to existing term permit holders, especially where doing so may help to resolve other resource concerns.

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When a decision to grant unobligated grazing capacity 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, including timely resolution of management concerns, and consistently demonstrated good livestock management and accountability practices. Existing permittees with unsatisfactory permit compliance records as demonstrated by one or more suspension or cancellation actions over the previous 10 years shall not be considered for grants of unobligated capacity.

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 that community allotment for their proportionate share of any increased grazing capacity resulting from range improvements, development programs, or applied management to which they have contributed.
2. To existing permittees on that community allotment for reductions resulting from resource concerns they sustained during the previous 10 years that resulted in the improvement of rangeland resource conditions and an increase in available capacity.
3. To permittees on the same or other Forest Service-administered allotments where the opportunity exists to help resolve resource or management concerns by relocation of permitted livestock or alteration of permitted seasons or allotment boundaries.

The rangeland management specialist should evaluate all existing management systems, allotment boundaries, seasons, and stocking levels on the district or other allotments on the forest before giving consideration to adjacent forest's permittees.

This is an informal process; document any interest expressed and the decision rationale.

4. To owners of livestock currently authorized on ranges administered by the Bureau of Land Management (BLM) to the extent that the BLM ranges need adjustments as provided for in the Memorandum of Understanding dated November 8, 1966 (FSM 1531.12b).
5. To a new applicant (not an existing term permittee) who is eligible and qualified. Nearly all grant decisions will be made in the categories above; rarely will it come down to the process of seeking new applicants.

Where a grant is proposed to be made available to new applicants, a prospectus should be posted in a public venue and also made available to parties who have previously expressed an interest. Many districts maintain a list of such individuals who have inquired as to how they could be issued a Forest Service grazing permit.

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The prospectus should indicate what is being made available, the terms and conditions under which it is being offered, and provide applicants with an opportunity to file a written application indicating their qualification to hold a permit, their ability to meet the terms and conditions detailed in the prospectus, and describing how the available capacity would fit into their ranch operations.

Consult your forest/grassland and regional range program leaders prior to issuance of any prospectus to the public as this process is very seldom used.

In evaluating applicants, 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.

When the grant is to be offered to new applicants, the authorized officer shall establish a set of qualification requirements and should consider placing a rangeland management specialist(s) from the supervisor's office or an adjacent ranger district on the evaluation team. The authorized officer should then use this written evaluation as supporting information in making the grant decision.

A grant to an existing permittee can be made through modification of their existing grazing permit. The authorized officer shall file a brief statement with the new or modified term grazing permit explaining the basis for the new or changed authorization.

A grant to a new permit applicant shall be made through the application and issuance procedures set forth in section 14. A decision not to grant available grazing occupancy to a new applicant is not appealable (36 CFR 214.4).

Document the process and rationale used in the 2210 allotment folder when grants are made.

13.3 - Changes in Ownership for the Eastern and Southern Regions

A "bid" permit may be transferred to a new applicant before expiration and without going through the bid process under the following conditions:

1. The new applicant purchased base property or permitted livestock.
2. The applicant is willing to accept the permit and its terms and conditions, including the numbers, kind, season, present bid rate, and current expiration date.
3. The applicant is willing to accept current fee credit agreements, and other modifications made to the current permit.

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The current expiration date of the permit will not be extended upon transfer. Upon expiration, the transferred permit will go through the bid procedures explained in FSH 2209.13, chapter 80. The new permittee may match high bid provided he is in good standing with the Forest Service and has submitted a bid.

A Term Permit or a Term Permit with On-and-Off provision may be issued to a new base property owner without going through the “bid” process in the following situations:

1. An allotment is landlocked by the applicant’s private land with no access for another user.
2. An allotment and the private land make an effective and logical grazing unit.
3. The applicant is willing to accept the permit and its terms and conditions, including the numbers, kind, season, grazing fee rate, and current expiration date.
4. The applicant is willing to accept current fee credit agreements, and other modifications made to the current permit.

The current expiration date of the permit will not be extended upon transfer. Upon expiration, the transferred permit does not need to go through the “bid” process because of the land-locked nature that precludes other prospective users.

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 (section 13.2) in accordance with applicable law, regulation, and forest or grassland plan direction and environmental analysis, if required.

In all circumstances of lands being added to the NFS, 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 shall be given priority consideration for issuance of a Forest Service term grazing permit. The current user will need to meet all eligibility and qualification requirements.

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

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grant (section 13.2) or designate the land as a forage reserve allotment in accordance with applicable law, regulation, and forest or grassland plan direction.

Procedures for adding lands to the National Forest System generally include an environmental analysis and associated decision. The authorized officer will review these analyses and determine that they address livestock grazing before issuing grazing permits for the added lands.

13.5 - Exchange of Grazing Use and Administration with Other Agencies

An exchange of grazing use and administration may be desirable when two or more permittees graze livestock under term grazing permit on lands administered by the Forest Service, as well as lands administered by another public land managing agency (BLM). Exchanges of this kind should consolidate administration and grazing to a common permittee or set of permittees across the management unit generally under the administration of one of the agencies. The exchange should result in issuance of new grazing permits by each agency. The exchange must result in improved management and administration of the resource or should not be undertaken. All grazing use that occurs on each agency's land must be authorized through a grazing permit issued by that agency. Any new holders of Forest Service grazing permits must meet Forest Service eligibility and qualification requirements.

The authority for such exchange on ranges administered by the Bureau of Land Management (BLM) is provided for in the Memorandum of Understanding dated November 5, 1966 (FSM 1531.12b). The authority to establish such agreements with the BLM has been delegated to Regional Foresters and may only be delegated to Forest/Grassland Supervisors (FSM 2204).

Such exchanges are rare and should be evaluated carefully to determine that they are of mutual benefit to both agencies and all parties.

13.6 - Forage Reserve Allotments

Forage Reserve allotments are a type of allotment on which there is no current term permit obligation (10-year) 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 on an occasional or incidental basis to enhance management flexibility for authorized livestock use.

Forage reserve allotments were formerly active allotments, but now all or part of those allotments are no longer scheduled for annual livestock use. They may also be allotments that were previously active, then became vacant, but have been analyzed and approved for occasional use to meet vegetation objectives. Once an allotment is designated as a forage reserve allotment, it will no longer be classified as vacant.

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Forage reserve allotments may be used in conjunction with authorized livestock use when there is a temporary loss of forage availability on another allotment or to resolve short-term resource concerns arising from a variety of factors on another area including but not limited to:

1. Drought,
2. Fire (either prescribed or wildfire),
3. Rangeland restoration activities,
4. Litigation or consultation needs,
5. Short-term resolution of resource concerns on other NFS allotments.

See additional information regarding the designation and management of forage reserve allotments in the Allotment Management Handbook (FSH 2209.16).

13.61 - Designation of a Forage Reserve Allotment

All allotments that have become vacant should be evaluated for designation as a forage reserve allotment or, if possible, even brought back into active status. Consider the following when evaluating:

1. There must be an appropriate level of environmental analysis and decision, and consultation if required, 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 (36 CFR 222.3(c)(2)(i)(E)). If the current environmental analysis is not sufficient for designation, schedule the allotment and determine the appropriate priority with other allotments being analyzed.
2. The Forest Service may 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 of all or part of it as a forage reserve will be relatively simple. However, the designation of one or more pastures of a community allotment as a forage reserve increases the complexity and should seldom be used.
4. A Memorandum of Understanding (MOU) may be established with a third party to operate a forage reserve allotment. The MOU will identify the responsibilities and requirements for the allotment for the third party and the FS including:

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- a. Criteria and procedures for allocating grazing use to prospective permittees (FS).
- b. Maintenance of existing improvements (by agreement).
- c. Construction or reconstruction of new improvements (by agreement).
- d. Annual management and grazing use criteria (FS).
- e. Monitoring (by agreement; but with FS quality control and quality assurance).
- f. Administration responsibilities (FS).

These MOUs should not be entered into lightly since there is limited ability to hold the third party accountable for maintenance requirements, especially for allotment boundary fences. Failure to meet requirements and/or carry out the responsibilities identified in the MOU will be cause for terminating the agreement. The authorized officer, with proper notification as identified in the agreement, may terminate the agreement. Such a decision is not appealable.

Even if these MOUs are not recommended, they may be the only option available to keep the allotment infrastructure intact and/or to avoid vacating or closing the allotment.

13.7 - Official Agency Policy on Third Party Arrangements or Permit Buyouts by External Groups

The Chief's official Forest Service policy of April 3, 2014, regarding permit buyouts by external groups and requested closure of active grazing allotments states the following.

The sole responsibility and authority for management of National Forest System (NFS) lands is delegated to the Secretary of Agriculture and in turn to the Chief of the Forest Service. These responsibilities and authorities are non-delegable to private entities.

Management and use of NFS lands are to be determined in an open public process as defined by the National Forest Management Act (NFMA) of 1976, from which a Land Management Plan (LMP) is produced. Determinations of suitability and overall use must be compliant with those goals, objectives, and standards and guidelines set forth in the LMP.

Removal of lands suitable and available for livestock use must be compliant with the applicable forest's or grassland's LMP. Even if a grazing allotment is vacated, it will be retained in vacant status. Allotment closure restricts future agency management options in a world of changing conditions; allotment closures are not to be carried out at the request of any third party.

Grazing permits are the sole property of the Federal Government. They bestow no right or title of interest other than to the United States (CFR 222.3(b)). Therefore, the Forest Service does not, and cannot, acknowledge any monetary value of grazing permits.

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The Forest Service through its authority delegated to its authorized officers does not recognize the sale of or reimbursement for the relinquishment of a permit.

If a permittee waives their grazing privileges back to the Forest Service, there can be no guarantee or agreement, whether written or verbal, regarding waived grazing capacity allocation, based upon buyout agreements between permittees and conservation groups, or other outside parties.

Financial arrangements made between third parties purporting to determine the status and management of NFS lands will not be acknowledged, sanctioned, or accepted by the Forest Service.

Grazing capacity allocations will be determined through the NEPA process, in consideration of rangeland vegetation, soil, wildlife, watershed, fisheries, water quality, and other resource conditions identified in land management plans. (36 CFR 222.2(c)).

Responses to requests for grazing permit buyouts by all authorized officers must be consistent with statutes, regulations, and Agency policy.

Buyouts that include permanent allotment retirement will not be recognized or accepted by the Forest Service because such agreements would impose restrictions on the Forest Service's management prerogatives. It would cause the Forest Service to relinquish future management options without knowing beforehand what the long term affects would be on the resources.

14 - APPLICATION FOR TERM GRAZING PERMITS

The authorized officer shall require the submission of a written application (Form FS-2200-16) prior to the issuance of a new term grazing permit. The authorized officer shall also require the applicant to submit any and all additional documentation necessary to assure that the relevant eligibility and qualification requirements discussed in section 12 are satisfied.

See section 15.1 regarding instances when a new first-time purchaser of land or livestock submits an Application for Term Permit but does *not* yet meet both qualification requirements. In this case, the application cannot be approved and the purchaser is placed in Preferred Applicant Status.

Prior to the expiration of an existing term grazing permit, the permittee must submit a new application and supporting documentation to be considered for the issuance of a new term grazing permit. A primary reason of requiring an application for each new ten-year permit is to assure there have been no changes in the base property listing or livestock ownership and branding requirements.

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Permittees' successors must file an application and be qualified applicants in order to receive a grazing permit.

14.1 - Notice to Current Permit Holders of Upcoming Permit Expiration

The authorized officer should notify the term grazing permit holder of the need to file an application for a new permit with supporting documentation in advance of the expiration of the existing permit. Such notice should be sent sufficiently in advance to provide the permit holder with time to prepare and submit the necessary application forms and identify the corresponding documentation that needs to be submitted. The authorized officer will invite the permittee to meet with him/her to review the procedural requirements and answer any questions related to the application.

The timeline (see section 11.2 above) should also provide the authorized officer with sufficient time to review the supporting documents, process the application, and issue a new permit, well before the start of the next grazing season. Ideally, a new permit should be issued in the first week of March immediately after the expiration of the existing permit on the last day of February.

14.2 - Applications for Term Grazing Permits

Applications for term grazing permits 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 (chapter 20, section 21).

Although an applicant may hold term grazing permits on more than one allotment or administrative unit or with two or more kinds of livestock, only one application is necessary.

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

Applications for a grazing permit with term status, either at the beginning of a term period or because of any change during the term period, must show the number, kind and class of livestock, period of use, and location of use, that is, allotment(s), desired by the applicant. Show the major composition of the herd on the grazing application, for example, cattle-cow/calf, cattle-yearling, sheep-ewes/lambs, sheep-dry ewes, and so forth.

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14.22 - Livestock Yet 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 to be permitted. However, the permit will not be issued until the applicant provides satisfactory proof of ownership of the livestock (see sections 14 and 15.1 regarding preferred applicant status).

14.23 - Application for Term Grazing Permit with On-and-Off Provision

In applying for term grazing permits with on-and-off provision, only the “on” numbers should be shown in Section A of the application (Form FS-2200-16). Place an asterisk (*) at the end of that line on the application and indicate in the Remarks section below the full numbers being applied for with the “off” provision (as shown in section A-9 of the application). The applicant must list the private lands that will be waived to the United States for the term of the permit.

If approved, the full numbers authorized are shown in Part 3 of the Term Grazing Permit (Form FS-2200-10e) and the qualifying “off” lands are listed in Part 3. See section 15.6 for issuance of term grazing permits with on-and-off provision.

14.24 - Application for Term Private Land Grazing Permit

Application for term private land grazing permits should be made on Form FS-2200-17. The Forest Service has no obligation to approve applications or issue a term private land permit solely for the convenience of the applicant.

Term private land grazing permits should only be issued to persons who waive exclusive grazing use of the lands and if it is in the best interest of the Government to do so. If issued, use Form FS-2200-11; the owned or controlled lands are listed in Part 3. See section 15.7 for issuance of term private land permits.

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 fully satisfied. These documents, or necessary pages thereof, shall be retained in the official files and may be subject to disclosure under the Freedom of Information Act.

14.31 - Corporations and Partnerships or Other Legal Entities

When *any* legal entity submits an application for a term grazing permit, the authorized officer shall require a list of all individuals operating as a part of the entity (officers, directors, partners,

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members, shareholders, etc.), a copy all documents required to legally operate in the State (articles of incorporation, articles of organization, operating plan, agreement, etc.), a list of the shareholders, the agent(s) authorized to act on the entity's behalf with respect to the grazing activities described in the application, and documentation that members/shareholders meet citizenship requirements (see section 12.1).

A corporation must provide its articles of incorporation and a list of all shareholders. If a corporation (such as a publicly traded corporation) is unable or unwilling to provide a list of all shareholders, deny the application and suggest that they apply for the permit as a different entity. With corporations (such as an "S" or "C" Corporation), the authorized officer will need to be provided a copy of the Certificate of Incorporation or Articles of Organization, by-laws or operating plan, and/or other documents required by the State for its establishment and operation.

A partnership must include a list of all partners, their relative interest in the partnership (usually shown as a percentage), and the State-required documentation authorizing its establishment.

When the partnership or company has a limited liability structure, such as a Family Limited Partnership (FLP), Limited Liability/Limited Partnership (LLLP), or a Limited Liability Company (LLC), the authorized officer will need to be provided a copy of the Articles of Organization, the Operating Agreement, and/or other documents required by the State for its establishment and operation.

All entities (except individuals) are required to complete an Ownership Statement by Corporation, Partnership, or other legal entity using Form FS-2200-25, proof of compliance with citizenship requirements for each individual, and provide it to the authorized officer. This form must show any agent(s), member(s), or partner(s) designated to act on behalf of the entity with respect to the permitted grazing activities.

Many of these types of entities are complex and their requirements vary by the States where they are established and authorized to do business. Forests should work with regional rangeland management specialists and as appropriate with the Office of the General Counsel to ensure that these entities meet eligibility and qualification requirements for holding term grazing permits.

14.32 - 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.

While the authorized officer may not need to retain the entire legal document in the official files, which may be subject to the Freedom Of Information Act of 1966, (5 U.S.C. §552). He/she must retain all applicable pages pertaining to all parties of the trust as well as their names and the roles

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they hold within the trust or estate. The file should include documentation that the authorized officer reviewed the entire document but only retained applicable pages.

The entity will also complete an Ownership Statement by Corporation, Partnership, or Other Legal Entity using Form FS-2200-25 and provide it to the authorized officer.

14.33 - Certificates of Brand

An application for a term grazing permit must include a copy of the certificate of brand registration from the State Brand Division or other appropriate State agency in the same name as the permit applicant. Ensure that all participants in these entities hold the brand in common as part of the parent entity; this may need to be confirmed through communication with the State Brand agency.

Brand certificates from other States may be acceptable when they are accepted by the state where the permitted livestock grazing is to occur. Holding brands may be acceptable in some States according to standard practice. Leased or shared brands are not acceptable. See section 12.3 above for a detailed discussion of brand registration requirements.

In the case of sheep where brand registration or markings may not be required by law, obtain information from State or local Wool Growers Association representatives to confirm that the applicant's brand or other proof of ownership is shown on or included with the application.

Require documents and follow State statute regarding the branding or marking of bison.

14.34 - 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 all books, papers, and records pertaining to purchase, sale, or ownership of any livestock for which an application is filed. Such information may be used in accordance with the interests of the United States if required in court or appeal proceedings; and this information is subject to provisions of the Federal Records Act, the Freedom of Information Act, and the Privacy Act (FSM 6230, FSM 6270, FSH 6209.11, and FSH 6209.13).

14.35 - Certified or Sworn Statements

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

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14.36 - Document Examination

Documents submitted as part of an application for a term grazing permit shall be examined carefully by the authorized officer to assure their accuracy and authenticity. Request assistance from the forest/grassland and regional rangeland management specialists as needed; they in turn may request review by OGC personnel if needed.

14.37 - Information Revision and Updating

It shall be the ongoing obligation of the permit applicant 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 responsibility of the permit applicant to notify the authorized officer of any changes to the information set forth in these documents on a timely basis during the term of the permit. Failure to do so may result in permit action by the authorized officer (sec. 16.4).

14.4 - Action on Applications

An application shall not be processed until the applicant satisfies all eligibility and qualification requirements. See section 15.1 for placing the applicant in preferred applicant status until all qualifications *are* met.

If all information in the application is found to be correct and complete and the applicant is eligible and qualified, the authorized officer will proceed to issue a term grazing permit to the applicant in accordance with all laws, regulations, policies, and procedures applicable to grazing on NFS lands.

If the applicant does not currently hold a term grazing permit and the application is rejected, then a term grazing permit is not issued and the authorized officer shall document the reasons for 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 214).

If the applicant is a current permittee applying for reissuance of his/her recently-expired term grazing permit, but did not or would not submit all necessary documents to satisfy ownership and qualification requirements, do not issue a new term permit. The applicant/permittee has the right to appeal the authorized officer's decision by virtue of the Administrative Procedures Act of 1946 (5 U.S.C. Subchapter II) and recent case law (from other agencies) (36 CFR 214).

14.5 - Use of Annual Applications

Annual applications are required only when the-number of permitted livestock, period of use, or grazing allotment is different than that listed on Part 1 of the term grazing permit.

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However, many units do require or request and approve annual applications/authorizations. If an annual application is used, the permittee should fill it out with the assistance of the forest officer. If the forest officer fills out the application, the permittee should review it for accuracy. The permittee receives a copy of the approved application. Annual grazing under a term permit is authorized by the issuance of a bill for collection and acknowledged by the permittee's payment of the grazing fees.

Each year at the annual coordination meeting, the rangeland management specialist should ask the permittee if all of the application information on record is still correct (address, phone number, name on the permit, percentages of ownership of the entity as applicable, listed base property, brand registration). The permittee should verify all brands that will appear on permitted animals or offspring.

Where private land permits are issued for a term of years, an annual application for grazing may be required each year to confirm continued ownership or control of the private lands.

14.6 - Application and Approval of Grazing Involving Designated Driveways and Other Crossing of National Forest System Lands

When grazing permit holders are granted crossing privileges to and from National Forest System ranges, the crossing period(s) will be included in the annual permitted season of use. The total permitted season of use, including the crossing period, will be shown on both the annual application for grazing and the bill for collection.

Crossing permits for individuals or entities who do not hold Term Grazing Permits are properly issued as a type of Livestock Use Permit (form FS-2200-05). See chapter 30, sections 36.1, 37, and 38 concerning application for and issuance of Livestock Use Permits for crossing. If needed, management requirements can be included as Part 3 of this permit and/or on the Annual Operating Instructions (AOI) or similar document.

Example: ABC Sheep Company grazes 2,000 sheep on the Cabeza Allotment. The permitted season on the allotment is 6/1-10/31, as shown on the term grazing permit. Total use is normally as follows:

| | |
|------------------------------|-------------|
| 2,000 Sheep - Gravy Driveway | 6/1-6/2 |
| Cabeza Allotment | 6/3-10/29 |
| Gravy Driveway | 10/30-10/31 |

The annual application for grazing and bill for collection should indicate:

2,000 sheep - 6/1-10/31 Cabeza Allotment
(This includes up to 4 days on the Gravy Driveway.)

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Infractions along driveways by users whose crossing use is included as a part of their permitted grazing season will be considered a violation of the term grazing permit.

Driveways often traverse more than one national forest. All livestock driveway use will normally be evaluated and authorized through the environmental analysis and decision making process. Forest Officers of the assigned national forest will include driveway use as part of the term grazing permit and issue AOIs or similar documents for use of driveways as part of the total livestock use on an annual basis.

At a minimum, AOIs and schedules or similar documents will show crossing time per driveway for each national forest and should include camp areas to be used, areas to be avoided, and any other special instructions necessary for proper management and use of the driveway. If more than one band of sheep use the driveway, the crossing dates for all bands must be scheduled in advance for both spring and fall drives.

15 - ISSUANCE OF TERM GRAZING PERMITS

Term Grazing Permits are issued on Form FS-2200-10, with attached Forms 10a and 10b as needed or desired. Term Grazing Permits with On-and-Off Provisions are also issued on Form FS-2200-10, with attached Forms as needed, but must also attach Form FS-2200-10e to document the waived “off” lands. Both of these types of term grazing permits shall continue to be printed on *green* paper for the official 2230 folders as well as for the permittee’s copy.

Term Private Land Grazing Permits are issued on Form FS-2200-11, with attached Form 11a as needed or desired for special terms and conditions. These permits shall continue to be printed on *salmon* paper for the official 2230 folders as well as for the permittee’s copy.

See chapter 20 regarding issuance of Grazing Agreements.

See chapter 30 for issuance of all types of Temporary Grazing and Livestock Use Permits.

NOTE: These types of *annual* permits are issued on Forms FS-2200-05, and Form 05a if needed or desired. These authorizations should *not* be included on a term grazing permit.

They shall continue to be printed on *yellow* paper for the official 2230 folders as well as for the permittee’s copy. (Before the two types were combined into one form in 2000, Livestock Use Permits were issued on blue paper.)

All supporting documents related to issuance of term grazing permits (i.e. deed for base property, proof of livestock ownership, and brand certificates) must be consistent in terms of ownership by the same entity.

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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 2230 files. For new permit holders, each term and condition of the permit should be discussed and explained.

The authorized officer should issue one term grazing permit that lists multiple allotments in Part 1 for all allotments on the ranger district. If the same permittee runs on adjacent ranger districts or forests, a separate permit may be issued on each individual unit. Where a term permit lists more than one allotment the authorized officer shall still treat each listed allotment as a separate permit authorization for purposes of administrative action, including the recognition of waivers, which could be for only one of the allotments, and escrow waivers which are usually tied directly to the base property and/or to the permitted livestock (see section 11.3). If the authorized officers decide to issue only one permit for all allotments on all units, the authorized officer selected to manage the permit 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 database requirements maintained by the Forest Service. The identification number shall appear on every page of the term grazing permit. If the electronic database does not generate an automatic numbering system, one should be developed by each national forest or national grassland unit, using an approved region/forest/district numbering system, to ensure consistency.

Do not issue term grazing permits and temporary grazing permits on the same permit form.

Authorize pack and saddle stock, pastured on NFS lands and used for the management of permitted livestock for the permitted season, as a separate line in Part 1 of the term grazing permit and listed in the AOI or similar document. Ensure pack and saddle stock are included on the bill for collection. Include the following clause in the term grazing permit Part 3:

1. Pack and saddle stock authorized by this term grazing permit shall be for management of permitted livestock only. These livestock cannot be waived independently, but only as part of a total waiver of the term grazing permit.

See section 15.34 of this chapter for more detail.

15.1 - Permit Applicant and Preferred Applicant Status

The authorized officer shall not issue a term grazing permit to a permit applicant until all eligibility and qualification requirements are satisfied (sections 12.1 and 12.2).

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Following the permit holder's submission of a Waiver of Term Grazing Permit (FS-2200-12) in favor of a third party who purchased the permit holder's base property and/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 yet met. This should be done by certified letter informing the applicant that they are in preferred applicant status and the timeframe in which they have to provide required supporting documentation to fully qualify for the permit. This timeframe should generally not exceed one year.

Exhibit 01 gives an example of a preferred applicant letter in the particular case where the base property has been purchased from the former permittee.

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15.1 - Exhibit 01

Sample Preferred Applicant Letter

Reply to: 2230

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

February 24, 2017

Mr. Jim Casey
1436 County Road 48
Bridger, MT 59014

Dear Mr. Casey:

Thank you for your phone call earlier this month and agreeing to come to our office last Thursday, February 16, to meet with me and my rangeland specialist Brian Russell to discuss the details concerning your recent purchase of the Robert Smith Ranch. As you are well aware, Bob holds a term grazing permit to run 140 cattle on the Wapiti Ridge Allotment.

We discussed our requirement for Bob to execute a Waiver of Term Grazing Permit to waive his grazing permit with preference to you as the purchaser of the qualifying base property. You took the Waiver with you to have Bob fill it out with the proper information and you took the waiver with you to get all the required signatures of the seller(s) and you as the buyer(s).

Brian gave you a copy of the Application for Term Grazing Permit and we discussed the information needed from you on that form. We also discussed the documents you would need to provide for our review as a part of verifying your eligibility and qualifications to hold the Term Grazing Permit.

During the course of our discussions, you stated that you did not yet own any cattle to stock the allotment, and are not planning to purchase livestock prior to the start of the grazing season this year on the Wapiti Ridge Allotment, which has been from June 1 to September 30.

Accordingly, since you do not own both the qualifying base property and the livestock to place on the allotment to validate it this grazing season, this is to notify you that I am placing you in preferred applicant status for one year from the date of this letter.

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15.1 - Exhibit 01 - Continued

Preferred applicant status means you are the priority applicant to qualify to hold the term grazing permit by virtue of your purchase of Bob Smith's base ranch, but we are not able to issue the term permit until you fully meet all qualifications to hold it.

In this case, the one year of preferred applicant status gives you the opportunity to purchase the livestock to fully qualify. This means I am unable to confirm the Waiver in your favor at this time, and I am not able to approve your Application and issue the Term Grazing Permit until such time as you have purchased the livestock.

When you purchase cattle in the coming year, and provide all the qualifying documents, I can then issue you the new Term Grazing Permit.

Assuming you apply for the same number of cattle and the same grazing season on the allotment as Robert Smith operated, placing the 140 cattle on the allotment in the summer of 2018 from June 1 to September 30 will fully validate the Term Grazing Permit.

You are required as the preferred applicant to maintain all the rangeland improvements on the allotment – as a minimum, all assigned fences and water developments – before the start of the 2018 grazing season on June 1. Failure to do so will result in the cancellation of your preferred applicant status, and you will not be issued a Term Grazing Permit.

I encourage you to contact Brian and set up another meeting at your earliest convenience when you can become familiar with all permitting and allotment management requirements as well as the list and location of the range improvements you are responsible for maintaining this spring.

Failure to purchase livestock within one year will result in the cancellation of your preferred applicant status, and you will not be issued a Term Grazing Permit. If you do not fully meet the qualification requirements, my decision to not issue a Term Grazing Permit to you would not be appealable.

It was a pleasure to meet you, and I look forward to working with you in the future. Thank you for your cooperation, and your interest in a Forest Service grazing permit.

Sincerely,

J. S. HICKS
District Ranger

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Provided that the Waiver of Term Grazing Permit has been properly signed, witnessed, and dated (executed) by the permittee and the purchaser, the authorized officer can confirm the Waiver. But the Application for Term Grazing Permit will not be approved by the authorized officer until all proof of ownership of base property and livestock, including supporting documents, has been received.

After meeting 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 up to 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 may then be made available for grant to other qualified applicants (section 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 if he/she owns the livestock but has not yet met the base property requirements. The preferred applicant is responsible for maintaining the range improvements that would be assigned in the term grazing permit unless another entity is authorized temporarily 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 CFR 214, since no term grazing permit was issued to occupy or use NFS lands.

Typically only the permitted livestock will be purchased, and the buyer is in the process of acquiring base property or completing the purchase transaction for qualifying base property. In such cases, the sample preferred applicant letter above can be modified to give the buyer a one year period to acquire base property (instead of the livestock) to fully qualify for the permit.

If this is the case, and the preferred applicant needs or wants to place the purchased livestock on the allotment, a temporary permit can be issued for that year while he/she is acquiring base property to qualify to hold a term permit. If a temporary permit is applied for and approved, that information should also be included in the preferred applicant letter or later correspondence.

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15.2 - Base Property Description, Range Allotment Description, and Allotment Management Plan (AMP)

The legal description of the base property shall be described in Part 3 and included in each permit with term status; a proper example of listing base property is shown in Exhibit 01.

15.2 - Exhibit 01

Base Property Declaration

The base property for this permit is identified as follows:
(Include here the legal description of the designated base property) For example:

NE1/4 of section 27, T.5 S., R.17 W., New Mexico Prime Meridian.
160 acres.

Every term and temporary grazing permit should include a map which clearly delineates the NFS lands and other lands under Forest Service control which comprise the designated allotment(s) where grazing is authorized. The permit and allotment numbers shall be included on the map. Management features such as pastures, structural improvements, and monitoring sites should be included. All other land ownerships as well as any areas restricted to grazing within the allotment should also be delineated on the map.

Written descriptions of allotments, as used in the past, are not required for permits with term status. Historical allotment boundary descriptions are usually located in the 2210 Allotment folder, and should always be retained. If allotment boundaries have changed through the years, make sure the maps in the 2210 and 2230 folders are updated and identical.

Any change in the map is a modification to the permit; therefore, a letter of transmittal, with appeal notification, should be sent to the permittee documenting the changes in the map.

The following information must be shown clearly and distinctly on grazing permit maps:

1. Allotment boundary.
2. Areas excluded or restricted from grazing.
3. Private land and other land ownerships.
4. Range improvements should be numbered, or otherwise identified, for individual permittee maintenance responsibility.

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5. Forest Service administrative site fences, study plot fences, recreation site fences, wildlife improvements, and so forth will be shown on the map and identified by name. These types of improvements need not be numbered or associated with the improvement tabulation sheet unless they are assigned to the permittee for maintenance.
6. Any areas with special designation (such as wilderness, wilderness study areas, recommended wilderness, primitive, special interest areas, research natural areas, wild and scenic rivers, or eligible and suitable study rivers) which require special management considerations when utilizing the forage resource under a grazing permit.
7. Title, permittee name, permit number, date the map was created, and legend.

The statement shown in Exhibit 02 shall be included on each map.

15.2 - Exhibit 02

Allotment Map

| | |
|---|-----------------------------------|
| This map shows the <u>XYZ</u> Allotment designated for use, | |
| Issued to _____ | _____ |
| | Name of Permittee & Permit Number |
| By _____ | _____ |
| | Name of Authorized Officer |
| On _____ | _____ |
| | Date |

The legend placed on each map should be consistent from district to district and using the latest mapping standards and symbols available.

The AMP is attached to and made a part of the term grazing permit.

The authorized officer should use the following clause in Part 3 to attach the AMP(s):

The Allotment Management Plan for the (name) Allotment, approved by (name and title) on (date) is hereby made a part of this permit.

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15.3 - 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 authorized.

Exhibit 01 shows how Part 1 of the term grazing permit should be completed.

15.3 - Exhibit 01

Display of Permitted Use Based on Number of Livestock 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 |
| 3 | Horses | Mature | 6/1 | 9/30 | Elm Spring |
| 1000 | Sheep | Ewe-lamb | 7/1 | 9/30 | White Bear |

The number of livestock shown on the face of the permit is the total number that will be allowed to graze annually. The number of livestock includes breeding sires, if breeding occurs on the allotment. For example, if the permittee places 4 bulls in with the cattle authorized in line 1, only 96 cow-calf pairs would be allowed to graze.

There is no need to list the cows and bulls as two separate lines on the permit unless the permittee believes the bulls (or rams) can be placed on the allotment in addition to the number of permitted cows and ewes; doing so will then eliminate any incorrect assumptions.

However if the breeding sires are leased, a separate Temporary Grazing and Livestock Use Permit (FS-2200-05) will need to be issued annually to the term grazing permittee for the bulls or rams, since the Chief has not been granted authority to allow term grazing permittees to run unowned livestock. The paid livestock use permit (chapter 30, section 36.2) for the 4 bulls will show ownership and brand registration of the leased sires, will reduce the authorized cow/calf pairs to 96, and allows the term permittee to be in compliance with 36 C.F.R. 222.3 (c)(1)(vi)(A) and 222.3 (c)(2)(ii)(H).

Most Forest Service permits are issued in number of Head Months (HMs), but some administrative units choose to issue permits in number of AUMs (the number of animals times the number of months) instead. The reasons for this may be on year-round allotments, to allow for annual flexibility in operations, or to implement adaptive management decisions, as displayed in Exhibit 02 below.

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Regardless of how the permit is issued, the billing is always issued for the authorized HMs grazed that year.

NOTE: An AUM is *not* the same as a HM. Do not confuse AUMs used for capacity and permitting, with HMs used for billing purposes only. See FSM 2200, Rangeland Management, chapter Zero Code, for the definitions of AUM and HM.

NOTE also: The AUM definition for capacity and permitting (1.0, with or without calf at side) is not the same thing as an AUM (1.32) as shown in the RIMS database calculations.

15.3 - Exhibit 02

Display of Permitted Use Based on AUMs in the Permit

| No. of Livestock | Kind of Livestock | Class of Livestock | Period of Use From To | | Grazing Allotment |
|---------------------|----------------------|-----------------------|-------------------------------|------|----------------------|
| 100* | Cattle | Cow-calf | 3/1 | 2/28 | Deadman |

Up to 1,217 AUMs are authorized annually in the 12/14/12 Deadman Allotment decision notice.

As an example, this would be equivalent up to 100 cow/calf pairs (or equivalent use by other kind or class of livestock) for up to 365 days annually.

The period of use could be shortened to less than 365 days with additional livestock not to exceed 1,217 AUMs. For this allotment, a request to change class of livestock will use the following conversion factors:
A Cow/calf AUM = 1.0, Yearling AUM = 0.7, Bull AUM = 1.2, Horse AUM = 1.5

When authorizing grazing following an adaptive management decision through the NEPA process, the number of livestock to be authorized may be expressed as a range of livestock numbers or AUMs or a maximum number of livestock and/or AUMs. This information should generally be displayed on the term permit in the format as shown in the parent text in Exhibit 02. Explanatory footnotes may be added on the face of permit or in Part 3.

If permits are listed in AUMs, conversion *must* be made back to the number of livestock and period of use equivalent to the total AUMs in order to validate the term grazing permit, and also to process a waiver of term grazing permit. See Section 18 for more detail.

Conversion back to the number of livestock must also occur when the permittee applies for non-use for personal convenience because non-use applies to numbers only. See Section 17 for more detail.

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15.31 - 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. Any temporary changes should also be documented in the annual operating instructions (AOI). Such changes are most often associated with annual climatic variations and the resultant timing and amount of forage production.

In years of favorable moisture and forage production, the authorized officer may decide to permit an extension of the normal grazing season. In such cases, a bill for collection will be issued in advance for the additional permitted use. Due to the timing of the authorized use at the end of the grazing season, the AOI may or may not get updated, but the extension should be reflected in the actual use records.

Permanent changes in the numbers, kind, or class of livestock authorized to graze in the term permit should be made by permit modification (section 16.1).

15.32 - Variable Numbers, Seasons, and Areas to Be Grazed

A variable management system is a livestock operation in which the number of livestock to be grazed on NFS lands, the season of use, or other areas to be grazed in the rotation with the NFS allotment fluctuates over time. Some variable management systems may even call for a year-long rest period for one of the parcels, in which case the authorized officer shall not consider it to be non-use for personal convenience.

Variable numbers and season permits will not be used to 1) allow the permittee maximum flexibility of the number of livestock to be stocked each year or 2) to preclude listing the number of livestock on the face of the permit. The number of livestock on the face of permit should never be open-ended.

Changes from year to year, when grazing occurs only on the NFS allotment or a group of NFS allotments, are authorized in the AOI(s) and the Bill for Collection. Billing shall be for each year's authorized use and not the average use.

Where variable management systems have been approved, the statements shown in Exhibit 01 and Exhibit 02 are examples of what 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.

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15.32 - 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 which is incorporated into this permit. The average use on NFS lands under this permit is _____, which is equivalent to _____ head for a _____ period of use not to exceed _____ AUMs.

15.32 - Exhibit 02

Variable Numbers, Seasons, and Areas To Be Grazed

2. The number, kind and class of livestock, period of use, and grazing allotment on which the livestock are permitted to graze are as follows, unless modified by the Forest Service in the Bill for Collection:

| LIVESTOCK | | | PERIOD OF USE | | GRAZING ALLOTMENT |
|-----------|--------|----------|---------------|----|-----------------------|
| NUMBER | KIND | CLASS | FROM | TO | |
| 100 | Cattle | Cow/Calf | * | | Snell Creek Allotment |

* Variable numbers and periods of use are specified in Part 3. The average use under this permit is equivalent to 100 head for 2.0 months on the Snell Creek Allotment.

Exhibit 03 is follow-up to the example used in Exhibit 02 that then needs to be included in Part 3 of the term grazing permit:

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15.32 - Exhibit 03

FS-2200-10b (12/99)

| | | | | |
|--|------------------|--|----|--|
| USDA - FOREST SERVICE | Page | | of | |
| GRAZING PERMIT - PART 3 (Reference FSM 2230) | Permittee Number | | | |
| | Permit Number | | | |

Special Terms and Conditions

Management Practices. (List the specific management practices required of the permittee, such as salting, riding and movement of cattle, herding or bedding of sheep; or incorporate into the permit the specific allotment management plan or other document which outlines these practices in detail. If you need additional space, use next page.)

Snell Creek C&H Allotment Permitted Numbers and Season of Use

100 head of cattle, cow/calf, 4/16 to 5/15 = 100 HMs and

100 head of cattle, cow/calf, 11/1 to 11/30 = 100 HMs

Description from the 2015 Snell Creek C&H AMP:

I. LIVESTOCK MANAGEMENT

A. Current Permitted Numbers and Seasons

The Snell Creek Allotment contains two pastures. Currently, the allotment is under a two-year deferred rotational schedule in which each pasture is rested every other fall, and grazed for only two weeks each spring. Move dates for the pastures are determined by dates outlined in the Term Grazing Permit; however, this document, range and climatic conditions, pine needle abortion conditions, status of allowable use standards, and concurrent grazing on another allotment may determine move dates for any given year. Also, during some years and seasons, the permittee may graze the maximum amount of livestock, and other years a portion. The grazing rotation for this allotment is outlined in the annual operating instructions.

In fall, cattle can be turned onto the allotment up to 14 days earlier, and in a different rotational pattern than scheduled. This use is not to exceed 100 head months or 30 days, and is implemented to prevent pine needle abortion. Depending on the vegetative response to fall climatic conditions, there may be years of non-use in fall; this adaptive management strategy for non-use may become resource protection non-use. Permittee must contact the Range Specialist at least five days prior to turn-out and removal of the cattle. An allotment inspection may be needed to determine if turn-out is feasible.

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15.32 - Exhibit 03 - Continued

The spring off date for Snell Creek is May 15 and the fall off date is December 20. Most term grazing permits are written for specific numbers and seasons that apply for the term of the permit, and only vary from one grazing year to the next in the yearly application, based largely on annual climatic fluctuations. Variable numbers and variable season permits are a good way to meet specific resource and management needs, but they are only occasionally used.

Another, less common, example of a variable number and variable season permit would be where the permittee has a NFS allotment, an adjacent BLM allotment, and an adjacent TNC lease. All parties agree that one of the three allotments will be rested each year to achieve the best resource objectives on all three ownership parcels. And the rested allotment varies though time. Thus, the NFS allotment will be grazed two out of three years and rested the third.

In this particular example, the face of the permit will show the average number of livestock to be grazed and the average season of use for the three-year period. There will be a different billing for year one and year two, and no bill for year three when it's rested. And personal convenience non-use does not apply for year three.

The more detailed explanation of the variable management system is in the AMP and can be summarized in Part 3 of the permit.

For permit waiver or escrow waiver situations, the permitted number and season of use must be considered to be the average number, kind and class, and season of use, as grazed each year across all land ownerships.

15.33 - 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 a separate authorization. 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 on 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 section 16.2) or occurs on all allotments at the same time.

The limitations for permittee convenience non-use apply to the permittee and total permitted numbers regardless of how many allotments the permittee is authorized to graze (section 17.1).

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15.34 - Permittee Working Saddle and Pack Animal Use

The authorized officer will prescribe the terms under which permittees on NFS lands may graze animals needed in managing permitted livestock in the term grazing permit. Show the authorization as a separate line in Part 1 of the term grazing permit. Include the stipulation in Part 3 of the term grazing permit that the horses/mules are to be used solely for the management of the permitted livestock and cannot be waived, except as part of the total waiver of the term grazing permit.

Annually authorize management livestock for the same period as permitted livestock, with the possible exception on year-round allotments, and include on the bill for collection. The use authorized shall cover only those animals actually needed and used in connection with the permitted livestock and when there is available forage.

Management animals used periodically, but not pastured on NFS lands, are exempt from the authorization requirements under this section. If a permittee owns or controls adjacent or intermingled private rangelands that can be used by the management livestock, NFS grazing use for working saddle and pack animals may be denied.

15.4 - Grazing Permit Terms and Conditions

15.41 - General Terms and Conditions

Do not alter standard terms and conditions in Parts 1 and 2 of Form FS-2200-10. 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 shall be prohibited from placing livestock on the designated allotment(s).

15.42 - Tenure

Under no circumstances may a permit be issued for more than 10 years; for example, the expiration date for a 10 year term permit issued on March 1, 2017 would be February 28, 2027.

To be consistent with the grazing fee year (FSH 2209.13 Chapter 80), February 28 should be used as the expiration date for all term grazing permits regardless of the permitted season of use or the date during the year the permit was issued (i.e., January 1, June 1, or December 1). This means that the duration of permits issued on a date later than March 1 will be somewhat less than for a full 10 years. All expired seasonal permits should be reissued as soon as possible after March 1, but no later than prior to the start of the permitted grazing season.

Permits with a yearlong season of use and expiring on February 28 should be prepared for signature reissuance on March 1 so there is no lapse of authorization to graze.

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Term permits can be reissued at any time as needed to update terms and conditions resulting from an updated environmental analysis and decision. In such situations term permits should be issued for another 10 years.

If an existing term permittee wants to change the permit entity (i.e., Tom and Mary Smith to Smith Family LLC), they need to execute a waiver and submit an application with all supporting documents. Regardless of how many years remained on the old permit, a new ten-year permit is issued in the name of the new entity.

If a permit expires and updated NEPA has not yet been completed, Part B of the Rescissions Act of 1995 requires issuance of a new ten-year permit with the same terms and conditions as the expired permit.

Although the standard duration for a term grazing permit is ten years, 36 C.F.R. 222.3(c)(1) states that term permits may be issued for less than 10 years if:

1. The land is pending disposal.
2. The land will be devoted to uses which preclude livestock grazing prior to the end of 10 years.
3. It is in the best interest of sound land management to specify a shorter term.

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. The new permit must be issued prior to the start of the next grazing season and with adequate time to issue a bill for collection and receive payment for authorized use.

For those few national forests where year-round grazing occurs, and the several national grasslands where it is commonplace, the expiration dates of February 28 for the permits issued by the Forest Service or an association 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 fee year to the next. In these cases, the 10-year permits would be issued on or soon 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.

15.43 - Special Terms and Conditions

Standards, guidelines, and other requirements related to the management of vegetation, soil, water, and other resources affected by livestock grazing that may be found in national forest and national grassland LMPs and site-specific allotment decisions should be detailed in the allotment

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management plan (AMP). These specific requirements should not be duplicated and inserted in the permit.

Where they have not been included in the AMP, or a current AMP is not in place, appropriate direction from LMPs and project level decisions that apply to required permittee actions should be included in Part 3. Do not include direction for the Forest Service where the permittee has no direct involvement in executing stated direction.

Part 3 of the term grazing permit should be used for special terms and conditions that may not be generally applicable to all permits.

All provisions of the term grazing permit, including the allotment management plan, will be reviewed with the applicant prior to signing the permit.

Some examples of additional Special Terms and Conditions are listed below:

Base Property (see section 15.11 above)

- General Maintenance Responsibilities
 - Specific fence maintenance standards
 - Water development maintenance standards
 - Other improvement standards
 - Archeological Discovery Clause*
- Management Practices
 - Salting or supplement practices
 - Off-road use authorization
 - Herding and bedding requirements
 - Monitoring requirements
- On-and-Off Provisions (see section 15.83 below)

NOTE: Since archeological discovery clauses exist in nearly every permit the Forest Service issues (timber sale contracts, special use permits, and road use and maintenance agreements and contracts) that involves varying levels of ground-disturbing activities, the Term Grazing Permit will be updated to insert the following Clause in Part 2 of the Term Grazing Permit as Part (b) under Section 10. Protection. It could also be re-stated in the AOI annually:

“If a previously unidentified archaeological, paleontological, or historic site(s) is encountered during maintenance or construction of any rangeland improvement by the permittee or contractor, that person shall discontinue work in the general area of the site(s) and notify the Forest Service authorized officer immediately.”

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Until new Form FS-2200-10 is modified to include this clause and new permits can be issued with this change, include the above statement in Part 3 of existing permits.

For grazing agreements issued to grazing associations and districts, place the following clause in the Improvements section of the Rules of Management:

“If a previously unidentified archaeological, paleontological, or historic site(s) is encountered during maintenance or construction of any rangeland improvement by the member, permittee, or contractor, that person shall discontinue work in the general area of the site(s) and notify the board of directors immediately, who shall in turn notify the Forest Service authorized officer immediately.”

This will allow permittees to annually maintain their improvements as required by the grazing permit without the additional need for heritage notification or review, provided that work be discontinued upon discovery of an archaeological, paleontological, or historic site.

The authorized officer should require the permittee to provide monitoring information related to livestock operation compliance shown in Part 2 of the terms and conditions of the permit, such as actual livestock numbers grazed, time period of grazing, livestock distribution, structural and nonstructural improvement condition, improvement maintenance activities conducted, vegetation use, and other terms of the permit. Discuss these requirements fully with the permittee prior to initiation and offer any training necessary to achieve desired permittee performance.

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

Allotment description maps which are a part of the term permit should not be considered static for the term, but are to be revised or reissued after any major change in the allotment status or improvements and resulting change in maintenance responsibility. This normally occurs through modification of the permit or when a new term permit is issued.

Term permits can be reissued at any time as needed to update terms and conditions included within the scope of an adaptive management environmental analysis and decision based on monitoring or otherwise determined to be needed. In such situations term permits can be issued for another 10 year term regardless of the number of years remaining on the existing term permit.

When a permit is modified, neither the term nor permit number will be changed.

15.5 - Validation

The issuance of a bill for collection, payment of fees, and turning out at least 90 percent of the permitted livestock for at least a majority of the permitted grazing season the first year after the permit is issued will validate the permit for the number, kind and class of livestock, grazing

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allotment, and period of use for the particular year. (Grazing Permit, Part 2, Section 1).
Validation occurs on livestock numbers, not season of use.

Do not issue a term grazing permit until the applicant is fully qualified. Until validation occurs, the permittee may neither waive the permit nor apply for personal convenience non-use (see section 17).

If an applicant does not qualify for issuance of a term grazing permit or indicates they may not be able to validate their grazing privilege as required under this section, place them in preferred applicant status by written notice, generally not to exceed one year (section 15.1 above) until they fully meet qualification requirements.

A permittee is only required to validate a term grazing permit once. When a new term permit is issued to the same permittee replacing an expiring permit, validation is not required. Validation is required when a term permit is issued to a new entity, such as formation of an LLC or a partnership, or when an existing permit holder acquires an additional term permit (validation is required only for the new portion of the permit).

The only exception to this requirement is stated in section 15.51 (see also section 17.2).

If the new permittee is fully qualified and has been issued a permit for full numbers and fails to fully validate in the first grazing season, the permit will be reduced to the actual number of livestock placed on the allotment for the majority of the season or cancelled in full (see section 16.4). These un-validated permitted livestock numbers may be made available for grant to other prospective livestock operators in accordance with section 13.2 above.

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.

Validation can be phased-in, but only with the approval of the authorized officer during periods of severe or prolonged drought, following catastrophic wildfire, or other natural disasters when stocking in full immediately would be detrimental to the resource or to allow the resource to recover as the preferred applicant gradually replenishes the herd.

15.51 - Postponement Due to Required Non-Use for Resource Protection

The authorized officer may postpone the validation requirement, based upon a determination that the designated allotment(s) is not available for grazing by the full permitted livestock numbers, due to resource concerns. 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

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management concerns are resolved to the satisfaction of the authorized officer, the allotment(s) validation requirement is reinstated. A permit may not be waived until validation has occurred.

15.6 - Issuance of Term Grazing Permits with On-and-Off Provisions

The Forest Service has no obligation to issue term grazing permits with on-and-off provisions 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 NFS lands and resources within the allotment, costs of administration, and potential conflicts with other uses of or activities occurring on NFS lands.

Carefully review a request for on-and-off provision to determine if the land offered can and should be managed with the Forest Service-administered land as a natural unit. The total number of livestock approved must not exceed what the natural unit can support. Deny applications where:

1. The NFS lands and the offered private/State lands do not form a logical grazing area best managed as a single unit.
2. The NFS lands and the offered private/State lands 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 NFS lands and resources.
4. The authorized officer has suspended or cancelled a term grazing permit held by the applicant within the last 10 years for violation of term grazing permit terms and conditions.
5. Livestock use would be detrimentally concentrated on NFS lands.

15.61 - General Guidelines

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

An on-and-off permit may be issued to qualified applicants that hold a term grazing permit. The on-and-off provision of a term grazing permit may be issued to a qualified applicant who owns or controls non-NFS land located within a Forest Service allotment. To receive this permit, the applicant must waive to the Forest Service the exclusive use to access and administer livestock grazing activities on the affected non-NFS land for the full term of the permit. In return, the applicant is authorized to graze livestock on NFS lands within the allotment in which the waived

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land is located. Permit issuance must be based on, and shall not exceed, the estimated grazing capacity of the waived lands, as determined by the authorized officer. Waived “off” lands will not be grazed outside of the permitted season.

See section 15.8, Exhibit 01 for a comparison of term on-and-off permits and term private land permits.

The numbers for the on-portion of on-and-off permits are displayed the same way as any other term permit with respect to the “on” numbers shown for NFS lands. Issue the permit on Form FS-2200-10, Term Grazing Permit. Show only the on-portion numbers in Part 1 of the permit, but make note in the Remarks section that total numbers include permitted use on “off” lands. Show the total on-and-off numbers on Form FS-2200-10e, Grazing Permit, Part 3.

For example, if the authorized officer decides to issue an on-and-off permit for 100 head of cattle in an area where 70 percent of the grazing capacity is on NFS land and 30 percent of the grazing capacity is on land owned or controlled by the permittee, 70 head would be shown in Part 1 of the permit, the Remarks section would state that a total of 100 head would be permitted on the allotment on account of the “off” lands, which are shown in Part 3 of the permit along with a map or the legal description of the “off” lands.

As 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 NFS lands. In an even smaller percentage of those allotments, the grazing capacity of the NFS lands may be located on steep, unsuitable terrain, resulting in an unusual circumstance where almost 100 percent of the available capacity is on the private/other ownerships and little suitable capacity is on NFS 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 NFS lands in the allotment while grazing the other land ownerships. In such rare cases, there still needs to be an AMP and a permit, but the permit would show 0 percent NFS capacity and 100 percent capacity on private/other land ownerships. There needs to be an AOI annually, but there is obviously no Bill for Collection to prepare.

There may be examples, especially in year-round allotments, where nearly all of the allotment capacity is located in the riparian areas or on extensive or large sections of private land, and the NFS lands are used very little or very infrequently. Such situations properly lend themselves to issuance of an on-and-off permit where only a small number of the permitted animals actually use the NFS lands and are shown on the Bill for Collection.

In both these examples, the permittee needs to have authority to use the area, there needs to be a management plan prepared for the allotment, and the Forest Service has a responsibility to assure the NFS lands are meeting or moving toward desired conditions.

Improvements on waived “off” lands are to be maintained to standard annually by the permittee.

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15.62 - Qualification Requirements

The permittee must meet base property and livestock ownership requirements for the on-portion numbers (see section 12.2). The permittee must either own the off-portion land or demonstrate control through contract or lease.

For national forest grazing operations, the “off” lands cannot be designated as base property.

With the purpose and management of the national grasslands being different, parcels of declared base property are sometimes included within established grazing allotments and eligible for a term grazing permit with on-and-off provisions. But the “off” lands cannot be used outside of the permitted use season.

15.63 - Grazing Capacity of Off-Portion Lands

The authorized officer shall estimate the grazing capacity and permitted numbers for the private lands identified for the “off” portion of an application for a term grazing permit with on-and-off provisions. The estimated grazing capacity as well as advantages or disadvantages of issuing the permit must be determined by field examination and documented in the allotment and permit folders. The permit should not be issued if the permittee and authorized officer cannot reach agreement regarding the grazing capacity.

If intermingled lands of other ownerships form a natural grazing unit with NFS lands, and some Bureau of Land Management (BLM) administered lands are included in that unit, then the Forest Service allotment capacity will authorize the AUMs permitted by the BLM on their lands as a portion of the “off” lands for the FS term grazing permittee.

15.7 - Issuance of Term Private Land Grazing Permits

Term private land grazing permits are most often issued on national forests. Because of the different legislative mandates and agency policies and procedures for the management of intermingled land ownerships on national grasslands, term private land permits are seldom issued on national grasslands (see section 15.8).

As with term grazing permits with on-and-off provisions, 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 NFS lands and resources within the allotment, costs of administration, and potential conflicts with other uses of or activities occurring on NFS lands.

Carefully review a request for term private land grazing permits to determine if the land offered can and should be managed with the Forest Service-administered land as a natural unit. The total

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number of livestock approved must not exceed what the natural unit can support. Deny applications where:

1. The NFS lands and the offered private/State lands do not form a logical grazing area best managed as a single unit.
2. The NFS lands and the offered private/State lands 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 NFS lands and resources.
4. The authorized officer has suspended or cancelled a term grazing permit held by the applicant within the last 10 years for violation of term grazing permit terms and conditions.
5. Livestock use would be detrimentally concentrated on NFS lands.

15.71 - General Guidelines

Issue term private land grazing permits on Form FS-2200-11 Term Private Land Grazing Permit to qualified applicants who do not hold a term grazing permit on the allotment but own or control non-NFS lands located within a Forest Service allotment. To receive this permit, the applicant must waive to the Forest Service the exclusive use to access and administer livestock grazing activities on the affected non-NFS land for the full term of the permit. In return, the applicant is authorized to graze livestock on NFS land within the allotment in which the waived land is located. Waived lands will not be grazed outside of the permitted season. Permit issuance must be based on, and shall not exceed, the estimated grazing capacity of the waived lands, as determined by the authorized officer.

Term private land grazing permits may be issued to owners or lessees of private or State land within national forest or national grassland grazing allotments. Where leases are concerned, the term of the permit may be issued for up to 10 years, but shall be subject to annual proof of lease renewal where the lease term is less than 10 years. A Part 3 clause can then require the lessee 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 the authorized officer determines that issuing a term private land grazing permit is not in the best interest of the United States, or the applicant declines to waive the associated lands for exclusive grazing use, then no permit shall be issued for the grazing

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capacity of the private land. Refer to section 15.8. Improvements on waived private/State lands are to be maintained annually to standard by the term private land grazing permittee.

Waived lands cannot be claimed as base property for a term grazing permit on national forests but may be claimed on national grasslands.

15.72 - Qualification Requirements

Applicants for term private land grazing permits are not required to own base property, permitted livestock, or the waived land (see section 12.2). However, the applicant must have the right to use the offered private/State land for grazing, and shall provide the Forest Service with the appropriate documentation such as contracts or lease agreements to substantiate the claimed right-of-use.

The landowner always retains the option of fencing the private lands rather than waiving privately owned lands to the United States for exclusive grazing use.

For the national forest grazing operations, lands designated as base property for a term grazing permit cannot be offered as the basis for a term private land permit. With the purpose and management of the national grasslands being different, parcels of declared base property are sometimes included within established grazing allotments and eligible for a term private land grazing permit. But the private lands cannot be used outside of the permitted use season.

15.73 - Grazing Capacity of Private Lands

The authorized officer shall estimate the grazing capacity and permitted numbers for the private lands identified in the application for a term private land grazing permit. The estimated grazing capacity as well as advantages or disadvantages of issuing the permit must be determined by field examination and documented in the allotment and permit folders. The permit should not be issued if the permittee and authorized officer cannot reach agreement regarding the grazing capacity.

If intermingled lands of other ownerships form a natural grazing unit with NFS lands, and some Bureau of Land Management (BLM) administered lands are included in that unit, then the Forest Service allotment capacity will authorize the AUMs permitted by the BLM on their lands. If the applicant holds the BLM permit, but doesn't own or control any other private/State lands in the allotment, follow the provisions of the Memorandum of Understanding (MOU) regarding interchange of grazing privileges between the Forest Service and BLM dated October 26, 1966 (FSM 1531.12b), and no private land permit needs to be issued.

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15.8 - Comparison of Term Grazing Permits with On-and-Off Provisions and Term Private Land Grazing Permits

Definitions of the two types of Term Grazing Permits are as follows (36 CFR 222.1):

“On-and-off grazing permits are permits with specific provisions on range [an allotment] only part of which is National Forest System lands or other lands under Forest Service control.”

“Private land grazing permits are permits issued to persons who control grazing lands adjacent to National Forest System lands and who waive exclusive grazing use of these lands to the United States for the full period the permit is to be issued.”

“Adjacent to” can also mean “intermingled with,” and that certainly applies to the national grasslands added to the NFS in 1954.

The differences between these two permits, and when to issue each of them, is one of the most complex and often-misunderstood management situations on-the-ground and in this handbook.

NOTE: It is extremely important to remember that the private and State lands covered here by virtue of issuance of either type of term grazing permit are “waived” to the United States for the grazing use of those lands in that the Forest Service “controls” both the numbers of permitted livestock and the seasons of use for all the lands shown on the permit and inside the allotment boundary. The Forest Service thereby has administrative access to cooperate with the permittee in the administration of the grazing use on all lands under permit in the allotment. Those lands under Forest Service control cannot be grazed outside of the designated season.

It is equally important to remember that “exclusive” applies *only* to permitted grazing use authorized on both types of Term Grazing Permits. It does *not* apply to any *other* right or type of use that may take place on those same private/State/other lands (i.e., public access, recreation use, mineral leasing, and payment of resource damages from minerals operations).

This entire Section 15.8 had previously been written and interpreted *before* the national grasslands were acquired and became an integral part of the NFS. Part of the mission and management direction for the grasslands is to encourage including intermingled land ownerships into logical grazing units – and to demonstrate that the management practices in use on the NFS lands are desirable practices to also be used on adjacent deeded lands.

Section 15.8 Exhibit 01 now accounts for the considerable management differences between most national forest grazing allotments and the intermingled land ownerships on many national grassland grazing allotments. It updates, simplifies, and compares the term grazing permit with on-and-off provisions to the term private land permit.

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15.8 - Exhibit 01

**Comparison of Term Grazing Permits with On-and-Off Provisions
and Term Private Land Grazing Permits**

| Term Grazing Permits with On-and-Off Provisions (FS-2200-10, 10e) | Term Private Land Grazing Permits (FS-2200-11) |
|---|--|
| <i>Regardless of the number of acres, or the percentage of acres, in the allotment:</i> | <i>Regardless of the number of acres, or the percentage of acres, in the allotment:</i> |
| On National Forests and National Grasslands | On National Forests and National Grasslands |
| The current term grazing permittee owns or leases the private/State/other lands within the allotment. These other lands constitute the “off” portion of the permit. | The applicant is <u>not</u> a current term grazing permittee on that allotment, but owns or leases private/State/other lands within the allotment. |
| Authority and responsibility to administer owned/leased private lands for livestock grazing purposes is waived to the Forest Service for the term of the permit. It is waived <u>only</u> for grazing use because the Forest Service specifies overall season of use and livestock numbers in the allotment. | Authority and responsibility to administer owned/leased State and/or private lands for livestock grazing purposes is waived to the Forest Service for the term of the permit. It is waived <u>only</u> for grazing use because the Forest Service specifies overall season of use and livestock numbers in the allotment. |
| Forest Service administers livestock grazing activities on the waived "off" lands in conjunction with the NFS “on” lands as a logical grazing area and single unit. | Forest Service administers livestock grazing activities on the waived State or private lands in conjunction with the NFS lands as a logical grazing area and single unit. |
| Term of permit is usually for 10 years. The permit is issued on green paper. | Term of permit may be issued for 10 years but shall be subject to annual proof of lease renewal where lease term is less than 10 years. The permit is issued on salmon paper. |
| The Forest Service determines private land carrying capacity, but may reduce State assigned carrying capacity in order to meet NFS allotment objectives. If applicant and/or the State do not concur with Forest Service capacity determination, deny the application. | The Forest Service determines private land carrying capacity, but may reduce State assigned carrying capacity in order to meet NFS allotment objectives. If applicant and/or the State do not concur with Forest Service capacity determination, deny the application. |

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15.8 - Exhibit 01 – Continued

| Term Grazing Permits with On-and-Off Provisions (FS-2200-10, 10e) | Term Private Land Grazing Permits (FS-2200-11) |
|--|--|
| <i>Regardless of the number of acres, or the percentage of acres, in the allotment:</i> | <i>Regardless of the number of acres, or the percentage of acres, in the allotment:</i> |
| Base property is required for the livestock numbers for the "on" portion, but not for the "off" portion of the permit. | Base property is not required to hold the permit. |
| Waived "off" lands on the NFS will not be grazed outside the designated season, and cannot be "used" as base property. | Waived owned or leased lands will not be grazed outside the designated season. |
| Applicant must own the livestock authorized for the capacity of the "on" lands, but does not need to own the livestock for the capacity of the "off" lands. | Applicant does not need to own the livestock to be grazed under permit. |
| Permitted "off" livestock are run together with the "on" livestock. | Permitted animals are run together with other livestock authorized on the allotment. |
| Issue a Bill for Collection for the portion of HMs on NFS lands. No grazing fee is due for capacity of owned or leased "off" lands. | There is no grazing fee charged (or bill issued) for the free-use capacity of the permittee's owned or leased lands. |
| All Government-owned improvements must be maintained to standard annually. All improvements on the waived "off" private lands must also be maintained to standard annually by the permittee. | All improvements on the waived State or private lands must be maintained to standard annually by the permittee. Additional maintenance of Government-owned improvements may be required as a result of running in common with the NFS permittee. |

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16 - CHANGES IN TERM GRAZING PERMITS

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

1. Achieve resource management objectives.
2. Comply with requirements of or changes to applicable laws, regulations, national forest or national grassland LMPs, 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.
6. Respond to permittee request.
7. Increase or decrease livestock numbers or period of use.
8. Change kind or class of livestock.
9. Change in area to be grazed, including modification of allotment boundary.
10. Change or include an updated allotment management plan.
11. Modify other terms and conditions of the permit, including provision for construction or reconstruction, and/or maintenance, of range improvements.
12. Comply with laws, regulations, executive orders, or other resource needs.
13. Devote lands to another public purpose.

Modifications to term grazing permits are subject to appeal under 36 CFR part 214.

A grazing permittee can object under 36 CFR 218 to an LMP or an allotment planning decision.

Issuance of annual operating instructions (AOIs) or similar document does not constitute a permit modification and is *not* an appealable decision (36 CFR 214.4(a)(1)).

If the proposed changes are within the scope and range of effects considered in a current analysis, a new analysis is not required under NEPA. If the proposed modification is outside these parameters a new analysis may be required. This determination is independent of whether the proposed change will increase or decrease permitted livestock grazing (see chapter 90). This

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NEPA sufficiency review and determination (FSH 1909.15, Sec. 18.1) should be documented and filed with the allotment record.

16.1 - Modification of Term 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 part 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 or to authorize construction of cooperative range improvements. The authorized officer shall discuss proposals to modify a term grazing permit with a permittee prior to approving the modification. The authorized officer must strive to obtain the permittee's agreement with the modification through these discussions, but 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, development or revision of an AMP, or other management needs. Other management needs would include amendment or revision of a Land Management Plan (LMP).

Where the modification is to the seasons of use, number, kind, class of livestock, or allotment to be used and is the result of concerns about the condition of rangeland resources or at a permittee request, 36 CFR 222.4(a)(8) requires the authorized officer to provide the permittee with a 1-year advance notice prior to approving the modification. This 1-year advance notice requirement can be waived in emergency situations by the authorized officer (including, but not limited to fire, flood, or drought) or by the permittee in writing.

Permit holders shall receive written notification of any decisions resulting in the modification of term grazing permits. The permit holder may appeal any modification under regulations at 36 CFR 214.

Grazing permits may be modified to provide for cooperative range development projects. The development work, specifications, permittee and Forest Service responsibilities may be described in the AOI, by certified letter, and/or by permit modification forms. A permittee's failure to satisfactorily complete the development as specified in the modification constitutes a violation of the terms and conditions of the grazing permit unless the Forest Service failed to complete its obligations.

The optional "Grazing Permit Modification – Cooperative Range Improvement" form is shown in Exhibit 01 below.

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16.1 - Exhibit 01

GRAZING PERMIT MODIFICATION - COOPERATIVE RANGE IMPROVEMENT

| | |
|--|---------------------|
| Modification for cooperative development of range improvements on the: | Permit Number |
| | |
| | Modification Number |
| | |
| | |
| Allotment Name | |

1. The Permittee and the Forest Service will cooperate in accomplishing the following range improvement work: (Description of work, location and standard(s) of construction.)

| | |
|---|----|
| | |
| | |
| | |
| | |
| | |
| The total estimated cost of this work is | \$ |
| Work authorized will begin within (no. of months) | |
| And will be completed by (date) | |

2. The Forest Service will contribute:

| | |
|--|-----|
| | |
| | |
| The Forest Service share represents what percent of the total value: | 50% |

3. The Permittee will contribute:

| | |
|---|-----|
| | |
| | |
| The Permittee share represents what percent of the total value: | 50% |

4. Title of improvements constructed or maintained as a result of this modification shall be and remain vested in the United States Government.

5. Range improvements constructed or work performed at Permittee's expense shall not in any way confer on the Permittee exclusive use of the improvements or the land where the developments are located.

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16.1 - Exhibit 01 - Continued

6. If the Permittee receives property belonging to the United States for use in completing the project, the following provisions apply:

a. Unless otherwise provided in this modification, the Permittee assumes the risk and shall be responsible for any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent such property is used in performance of this modification.

b. A Form AD-107 or other document shall list all property furnished by the United States. The form shall be signed by the Permittee or the authorized representative and countersigned by a Forest Officer.

c. Materials and equipment furnished shall remain the property of the United States.

7. This modification makes no provision for exchange of dollars between the permittee and the United States for the development of the improvement(s) involved.

8. The attached pages _____ through _____ are a part of this modification as standards, specifications, and design which must be adhered to in the development of this improvement.

9. Failure to fulfill the terms of this modification is a violation of the Permittee's grazing permit and may be cause for suspension or cancellation of the permit in whole or in part.

10. Upon satisfactory completion and acceptance of the improvement by the District Ranger, the modification is moved from the Permittee's 2230 folder to the 2240 folder of the allotment, and the project is then added to the list of improvements that the permittee is required to maintain annually.

| | | | |
|-------------------------------|------|------------------------|------|
| Permit Modification Request: | | Modification Approval: | |
| | | | |
| Permittee or Authorized Agent | Date | District Ranger | Date |

| | | | |
|----------------------------------|------|------------------------------------|------|
| Permit Modification is Complete: | | Improvement Complete and Accepted: | |
| | | | |
| Permittee or Authorized Agent | Date | District Ranger | Date |

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16.11 - Modification Procedure

Except as otherwise provided by law, regulation, or policy, livestock grazing is authorized by an appropriate level environmental analysis and decision (see chapter 90). 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 decision which will normally set sideboards (design criteria) to management. 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.

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 ensure that the permittee is aware of and informed about the permit modification before it is implemented.

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 should not wait for NEPA analysis to modify a permit when sufficient monitoring and rationale documentation indicates a need for modification. The authorized officer will follow guidance in sections 16.12 through 16.15.

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 letter should state the permittee may voluntarily accept the modification or appeal the modification under 36 CFR 214. Final determination of the appeal dictates the terms of the modification. The statement shown in exhibit 01 shall be used in the modification letter.

16.11 - Exhibit 01

Modification Statement

This modification is hereby made part of Grazing Permit Number _____ issued to _____ on the _____ day of _____, 20____ by _____.
It is hereby attached to and incorporated in the permit as pages ____ through ____.

The modification letter shall be sent to the permittee via CERTIFIED MAIL -- RETURN RECEIPT REQUESTED or hand delivered if appropriate. A copy of the modification letter shall be sent to the holder of escrow waiver(s), if any. Copies of the letter and verification of receipt shall become part of the permit file maintained by the authorized officer.

Annual adjustments within the scope of existing permit terms and conditions may be made through issuance of the AOI (or similar document) and the bill for collection rather than a permit modification.

Correct use and issuance of annual operating instructions (AOIs) does not constitute a permit modification and is *not* an appealable decision, 36 CFR part 214.4(a)(1). See chapter 90, section 95.3.

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

The authorized officer, exercising professional judgment and utilizing the best information available, and after conducting any needed analysis, may make written modifications to term grazing permits. Modifications that result in increased numbers or seasons of use can be made through an administrative decision with supporting monitoring and rationale documentation, a decision (chapter 90), or during a NEPA sufficiency review (FSH 1909.15, sec. 18.1). Decisions to modify a term grazing permit are subject to administrative appeal by the permittee under 36 CFR 214.

The number of livestock or season of use authorized by a grazing permit may be temporarily or permanently increased 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.

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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. Where additional analysis is unnecessary because the increases are within the scope of the existing grazing authorization decision and analysis, temporary increases in numbers or seasons of use are addressed through the issuance of a bill for collection and in the AOI or similar document.

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

The authorized officer, exercising professional judgment and utilizing the best information available, and after conducting any needed analysis, may make written modifications to term grazing permits. Modifications that result in reduced numbers or seasons of use can be made through an administrative decision with supporting monitoring and rationale documentation, a decision (chapter 90), or during a NEPA sufficiency review (FSH 1909.15, sec. 18.1). Decisions to modify a term grazing permit are subject to administrative appeal by the permittee under 36 CFR 214.

In addition to monitoring, the decision that authorized grazing on the allotment should also be reviewed. The authorized officer shall determine whether the proposed modifications and resource conditions are within the scope and range of effects contained in the analysis. In some situations new information or new conditions may trigger the need for a new analysis and decision (chapter 90). If the proposed modification is within the scope of the existing grazing authorization decision, then changes to the grazing permit within the parameters of the decision can be made without further analysis (section 16).

The authorized officer should initiate action when sufficient monitoring data indicates that permit modification is warranted. Make the changes in permitted livestock numbers and/or season of use based on the data that has been collected and any necessary analysis. Attempts should be made to negotiate the adjustments with the permittee; however, if a negotiated agreement cannot be reached, permittee concurrence of the modification is not necessary. Ordinarily, schedule not more than a 20 percent reduction in numbers or season in any one year to give the permittee ample time to make changes in their livestock operation.

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. Adjustments resulting in reductions in permitted numbers or seasons of use are appealable as noted above.

Where the modification is being made under the authority of 36 CFR part 222.4(a)(8) and the permittee does not agree to the modification, the authorized officer shall provide one year's written notice before the modification takes effect, except in emergency situations. Such notice shall be in writing and sent by CERTIFIED MAIL -- RETURN RECEIPT REQUESTED or hand delivered. If the authorized officer and the permittee cannot agree on the need for a

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modification or on the scope and extent of a modification, the authorized officer should still proceed with the modification even if the permittee refuses to sign it.

Decisions to modify a term grazing permit that results in reduced numbers or seasons of use are subject to administrative appeal under 36 CFR 214. Only decisions to cancel or suspend based on non-compliance situations are subject to mediation by the permittee under 36 CFR 222 Subpart B, (see sections 16.2 and 16.5), if a USDA certified mediation program exists in the State (or an adjoining State).

The optional “Term Grazing Permit” form is shown in Exhibit 01 below:

16.13 - Exhibit 01

Term Grazing Permit Modification

This is modification #____ of your Term Grazing Permit and is hereby made a part of your Term Grazing Permit, number _____, issued _____, by _____.
It should be attached to your permit as page _____.

This permit is being modified for the following reason(s):

The modification is as follows:

Old:

New:

This modification will remain in effect until _____, unless sooner terminated as provided for under Part 2 of the permit.

I accept the modification in my Term Grazing Permit as stated above.

Permittee

Date

District Ranger

Date

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

Based on written requests by permittees, the authorized officer may modify the term grazing permit to convert the kind or class of livestock, grazing management, or season of use. Modifications may be approved if they are consistent with the LMP, and are consistent with the decision to authorize grazing and the current NEPA analysis, the AMP and AOI (or similar document), and if they comply with applicable law and regulations.

Permittee-requested modifications, to convert the kind or class of livestock, must be approved by the authorized officer. Change in class of livestock is an administrative decision which normally will not require additional NEPA review.

Current LMP and project level grazing authorization analyses will need to be reviewed to determine if additional NEPA analysis is required for a change in kind of livestock. If the current NEPA analysis and decision do not support or did not analyze conversion in kind, a proposal to convert should be analyzed and supported by an appropriate level NEPA analysis and related decision.

The permit and the AMP must be updated to reflect any conversion in kind or class of livestock.

Adjustments to rangeland improvements necessitated by a conversion, and solely benefiting the permittee, shall be funded and built entirely by the permittee. Appropriate NEPA analysis authorizing new range improvements must be completed prior to initiating any construction of new range improvements needed to implement the modification in the grazing activity.

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 generally should not be approved if other permittees on the community allotment provide valid objections to the conversion.

Where a request to convert from a cow/calf operation to yearling steers or heifers is made, the authorized officer should consult with permittees on adjacent allotments before approving the conversion.

Conversions in the kind or class of livestock may result in a corresponding change in permitted numbers. Changes in numbers should not be based on differences in forage consumption rates (AUM conversion factors) but on the ability to meet annual use standards and the relative impacts that the change may have on the rangeland resources across the allotment(s). Additional issues related to changes in the level of livestock management that would be needed should also be considered. The authorized officer must exercise caution in this process. Rarely can change in kind or class be evaluated using an AUM conversion factor. Change in kind and class of

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livestock generally results in different areas of the allotment being used, changes in herd and band practices, changes in distribution, changes in use rates, etc. Conversion factors do not take these into consideration. Generally be conservative in authorizing changes in permitted numbers until adequate monitoring can be done to reflect the appropriate change that could be made.

Certain rangelands are best suited to yearling cattle or sheep rather than cow/calf operations. A trial conversion commits the District Ranger to study impacts of the trial changes and conduct sufficient monitoring and/or resource assessments to make more precise estimates of grazing capacity based on established management objectives. The trial conversion can be authorized in the AOI, and on the bill for collection, with a letter approving the trial basis sent to the permittee.

Experience has shown that it normally takes about 3 years to adequately monitor how the different kind or class of livestock will use the allotment. Based on monitoring and additional assessments through this stock-and-monitor approach, a NEPA sufficiency review (FSH 1909.45, sec. 19.1) or a NEPA analysis and decision authorizing grazing with the proposed changes will need to be completed to make long-term or permanent changes in the AMP and on the permit.

16.15 - Changes or Modifications to Base Property

Changes in base property can be made only with approval of the authorized officer after it has been shown the new offering meets all base property requirements. Permittees with holdings that are below minimum requirement may not change base properties without fully meeting the established National Forest minimum requirement.

1. There are cases where the current permittees have been grandfathered in with base property ownership that is less than the National Forest requirement. In such cases, if the Forest establishes a higher base property, the grandfathered permittees are not required to meet the increased level of base property. If the permit is waived based on the sale of permitted livestock only, the higher base property requirements must be met by the new preferred applicant.
2. A permittee who does not meet the minimum base requirement will be allowed no increase in term status permit numbers through grant.
3. In cases where the National Forest has increased the minimum base property requirement, permittees with holdings that met the old requirement may not change their declared base property without fully meeting the new requirement. If the permit is waived based on the sale of the lower amount of base property, the preferred applicant must meet the higher minimum requirement.
4. Any permittee who does not meet the minimum requirement because all or part of the base property has been sold or lost will be given 1 year to meet the minimum

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requirement. Notice of this will be given to the permittee in writing. If, after a year's notification, the permittee does not comply, the permit will be canceled for failure to meet qualifications.

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

Grazing permits are subject to the administrative actions of suspension or cancellation, in whole or in part, for violations of terms and conditions found in Parts 1, 2, and 3 of the permit and as set forth at 36 CFR 222.4. Non-compliance can be directly related to specific terms and conditions of the grazing permit or may be related to non-compliance with the AMP which is attached to and made a part of the term grazing permit. All situations are simply referred to as non-compliance with the terms and conditions of the grazing permit. Non-compliance with the AOI may result in permit action under Part 1, paragraph 3 of the term grazing permit as failure to comply with the instructions of Forest officers.

Suspensions are the temporary withholding of some or all of a permit holder's grazing privileges. Cancellations are the permanent revoking 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, or could be any combination of the three.

Permittees continually contend with a variety of circumstances that are often beyond their control. Gates are left open, trees fall on fences, livestock are harassed, fences are cut, and water tanks are vandalized. All of these events can influence the location and distribution of livestock. If they happen occasionally, and the permittee is responsive in correcting the situation, these kinds of events do not necessarily constitute violations of the terms and conditions of the permit when it is known or suspected that the permittee is not at fault. Common sense, experience, and a degree of flexibility are necessary in determining when a permittee has actually committed a violation.

The authorized officer must determine the appropriate action based on the severity of the current incident of non-compliance and the past performance of the permittee. The following factors should be considered when making this determination:

1. The extent of the violation.
2. The degree of resource damage, if any.
3. Failure by the permittee to follow instructions or to take corrective actions.
4. Past actions of the permittee.
5. Whether the action is willful or not willful.

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6. Whether the violation is repeated.
7. The number of concurrent violations.

Infrequent, minor, or first-time offenses can often be easily remedied by a telephone call or personal contact with the permittee. Such violations would not ordinarily justify issuance of a Notice of Non-Compliance (NONC) letter (section 16.3).

It should be recognized that some violations may be very minor in nature, inadvertent on the part of the permittee, and easily corrected. It is not the intention of these guidelines to formalize adverse permit action for every minor permit violation that may occur. Examples of such minor violations could include a minor number of livestock being in the wrong pasture due to a gate being left open or a fence segment in need of emergency repair, a minor number of livestock that may have wandered off the allotment, or finding a few stray livestock that could not be found when a pasture was cleared or at the end of the grazing season.

In these cases, a verbal contact with the permittee, followed by documentation to the file, is all that is necessary, provided the permittee takes appropriate action and it does not become a continuing problem. If the permittee does not take appropriate action or it becomes a chronic problem, then it is appropriate to formalize administrative action according to these guidelines.

Where permittee actions violate permit terms and conditions, a suspension of grazing permit privileges may be an appropriate tool 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 before it can be cancelled. A permit can be cancelled for severe violations; examples of such circumstances are detailed in section 16.4 below.

Under no circumstances should a temporary grazing or livestock use permit be issued to that permittee to restore reductions resulting from suspensions or cancellations.

When a total suspension action has been taken, notify the permittee in writing each year to remind them that maintenance of all range improvements for which they are assigned must still be completed prior to the time that any adjacent permittees place livestock on their allotments/pastures.

Since a term grazing permit with multiple allotments represents a consolidation of multiple permits for administrative efficiency (sections 11.3 and 15.42), suspensions or cancellations 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). Sanctions applied against the entire permit may only be taken where the violation is general in nature and cannot be tied to a specific allotment or it occurs on all allotments at the same time (failure to pay the grazing fee, providing false statements, etc.).

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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. A waiver in favor of the applicant was not received from the previous permittee.
2. 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 12.22).
3. The purchaser does not validate the permit by grazing 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 for approval not to stock the allotment might include, among others, the need for greater than normal replacement, culling, or controlling disease. 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 (see sections 14.11 and 15.1).
4. 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.
5. The ownership of livestock or base property reverts from the buyer back to the seller within two years before or after the date of the sale except under foreclosure proceedings (see sections 12.21, 12.22, and 18.8). Going through a third party to allow the land or livestock to revert back to the seller within 24 months is still an illegal transaction.

16.3 - Notice of Non-Compliance (NONC) Letter

Where non-compliance with permit terms and conditions has occurred that may warrant administrative action, such as suspension or cancellation of grazing privileges, in whole or in part, the authorized officer must issue a notice of non-compliance (NONC) letter to the permittee before initiating proceedings except where the permittee's conduct was willful or where immediate action is necessary to protect public health or safety (see section 16.35). The NONC letter is a result of the Ninth Circuit Court decision in *Anchustegui v. Department of Agriculture* 257 F.3d 1124, 1128 (9th Cir.2001) on July 17, 2001 and the Chief's letter dated October 30,

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2001, implementing the change in grazing permit suspension and cancellation procedures that resulted from that case.

The proper use and application of a Notice of Non-Compliance (NONC) letter should be reserved for significant, serious, or repeat violations. 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. If the authorized officer determines a formal NONC is not necessary, he/she should still make contact with the permittee, describe the permit infraction, and what is needed to correct it. The non-compliance incident, the follow-up discussion with the permittee, and the resolution should be documented in the allotment inspection notes or a letter and placed in the permittee's official 2230 case file.

NONC actions should be implemented with appropriate timing relative to when the non-compliance occurred to allow the permittee to correct the non-compliance. It is not appropriate to issue NONC letters months after the non-compliance problem is identified.

The requirement to issue NONCs, and what they must contain, are also to be followed by holders of Grazing Agreements when administering permit infractions by their members. This process should be inserted into or referred to in the Rules of Management for the organization as a matter of procedure for the Board of Directors to follow and to inform their members of requirements.

16.31 - Contents of the Notice of Non-Compliance (NONC) Letter

Because a NONC letter could later result in permit action, all NONC letters are to be sent **CERTIFIED MAIL – RETURN RECEIPT REQUESTED**, or other appropriate delivery methods which document delivery such as UPS, Federal Express, hand delivery, etc. In the rare case that a permittee refuses to accept the Certified Mail, efforts will need to be made to hand deliver the Notice.

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 fix the problem and achieve compliance with the grazing permit, including specifications for satisfactory accomplishment.
3. The specific timeframe within which the permittee must take the corrective action in order to remedy the violation.
4. A warning that suspension or cancellation proceedings may be initiated if the permittee fails to take the specified corrective action within the prescribed timeframe.

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Because this is a “notice” rather than a “decision” regarding the administration of a term grazing permit, it is not appealable and appeal rights language must not be included in the NONC.

As a matter of standard practice and professional courtesy, the NONC should also include a statement that encourages the permittee to contact or meet with the authorized officer at their earliest convenience if they believe that the NONC has been sent in error or that there are extenuating circumstances involved.

In the event the permittee and the authorized officer cannot work out their differences after a meeting, or the permittee does not request such a meeting, and refuses or fails to take the corrective action outlined in the NONC, the authorized officer shall proceed to initiate the proper suspension or cancellation action against the permit.

Suspension or cancellation actions are subject to appeal under 36 CFR 214 (see section 16.41) and subject to mediation in those States where applicable (see section 16.5).

In the event the permittee properly remedies the violation as indicated in the NONC, the authorized officer shall notify the permittee in writing that the violation has been remedied and place a copy of the letter in the appropriate 2230 permit file.

Exhibit 01 is a sample NONC letter for a permit infraction where an immediate opportunity to remedy the situation exists.

Note: Formal NONC letters must always be on USDA-Forest Service letterhead and signed by the authorized officer.

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16.31 - Exhibit 01

**Notice of Non-Compliance
for
Excess Use and Failure to Maintain Improvements**

Reply to: 2230

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. Fred Jones
P. O. Box ABC
Someplace, Utah 84321

May 21, 2016

NOTICE OF NON-COMPLIANCE

Dear Mr. Jones:

This letter is in regard to Term Grazing Permit No. 12345, issued to Fred Jones on February 15, 2015. The permit authorizes the grazing of 160 cow-calf pairs during the season of June 6 to September 30 on the Separation Flats Allotment.

This allotment was inspected on May 20, 2016, and the following management situations, which were discussed with you by telephone on May 20, 2016, do not comply with the terms and conditions of your term grazing permit:

1. Twenty-three of your cattle were observed grazing in the Sweetwater Gulch pasture of the Separation Flats allotment on that day, 17 days prior to your allowed entry date. This is a violation of Part 2, Section 8(d) of your term grazing permit.
2. 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 permit non-compliance:

1. All livestock must be removed from the Separation Flats allotment by May 23, 2016 (complete removal within 72 hours of notification) and controlled to prevent re-entry onto National Forest System lands prior to June 6, 2016.

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16.31 - Exhibit 01 - Continued

2. The Sweetwater Gulch pasture 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 bottom-wire height of no more than 18 inches, and appropriate break-away ties at each end) by May 31, 2016.

If you are unable to demonstrate that the cattle entering the allotment early was accidental or non-willful, you will be billed for the excess use.

If the required fence maintenance is not completed according to the specifications attached to your term grazing permit, and within the timeframe specified above, you will not be allowed to enter the Separation Flats allotment as scheduled (June 6, 2016) until maintenance is completed to standard.

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 with you 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,

CARL SMITH
District Ranger

cc: Forest Supervisor

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In some situations, such as those where exceeding allowable forage utilization guidelines occurs at the end of the growing and/or grazing season, the permit infraction cannot be remedied at that point since the excessive forage use has already occurred.

But remedy can be required in future grazing seasons instead. Examples specific to the previous years' infraction could include:

1. Delay entry date in that pasture, or allotment, until sometime after seed maturity the following year to initiate resource recovery.
2. Reduce the allowable use by 10% for the following grazing season.
3. Meet all AOI forage utilization guidelines for the next two seasons to avoid further permit action.

Exhibit 02 is a sample NONC letter for a permit infraction where an immediate opportunity to remedy does not exist.

Note: Formal NONC letters must always be on USDA-Forest Service letterhead and signed by the authorized officer.

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16.31 - Exhibit 02

**Notice of Non-Compliance
for
Failure to Follow Management Instructions**

Reply to: 2230

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. Fred Jones
P. O. Box ABC
Someplace, NM 67891

November 13, 2014

NOTICE OF NON-COMPLIANCE

Dear Mr. Jones:

This letter is in regard to Term Grazing Permit No. 12345, issued to Fred Jones on January 3, 2013. The permit authorizes the grazing of 160 cow-calf pairs during the season of June 6 to October 31 on the Separation Flats Allotment.

The allotment management plan (AMP) for the Separation Flats allotment identifies moderate forage utilization guidelines (40% - 50%) as important for meeting resource management objectives for the upland grassland areas in the allotment. The AMP is attached to, and made a part of, your Term Grazing Permit.

Post-season implementation monitoring of forage utilization on November 10, 2014 revealed use levels of about 65% for 2 of the 5 key areas in the Aspen Mountain pasture and over 70% for 2 of the 4 key areas in the Conifer pasture. Our inspections noted that allowable use levels were within acceptable limits in the other two pastures.

Utilization levels of this magnitude in excess of the guidelines established for these pastures in the AMP, and as stated in the 2014 annual operating instructions (AOI), are unacceptable. They constitute a violation of your Term Grazing Permit, Part 2, Section 8(a), for Failure to Follow Management Instructions, specifically the requirements set forth in the AMP and AOI.

At this point, current excessive use of these areas cannot be remedied since the use has already occurred. While exceeding utilization levels for one year may not harm the forage resource in the long run, these high levels cannot be allowed to occur again next year.

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16.2 - Exhibit 02 - Continued

My rangeland management specialist will be in contact with you soon to schedule a meeting to discuss these matters in more detail. In addition, at the annual spring permittee meeting next April, we will establish the required pasture rotation schedules and use dates to minimize the effects of the 2014 excessive use in the Aspen Mountain and Conifer pastures next year.

Among the options to remedy the heavy use that we will consider and discuss in that meeting are: 1) a delayed entry date for the entire allotment to allow time for the forage to recover from last year's overuse, 2) a reduction in days used for those two pastures, 3) complete rest for the two pastures without an increase in time in the other two pastures, 4) a reduced number of livestock but use of all pastures for the entire season, or 5) some combination of these options.

This Notice of Non-Compliance is to inform you that if similar use levels in excess of established allotment forage utilization guidelines occur in 2015, administrative measures in the form of permit suspension or cancellation action may be taken against your permitted numbers and/or season starting in the 2016 grazing season.

I am willing to discuss any issues or concerns with you related to this letter and to reach a common understanding and agreement where possible. You can contact me at (575) 826-5400.

Sincerely,

CARL SMITH
District Ranger

cc: Forest Supervisor

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16.32 - Time to Demonstrate or Achieve Compliance

The length of 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 non-compliance, the location of the infraction, and perhaps even the time of year when the non-compliance occurred or was detected.

16.33 - Permittee Actions Required to Demonstrate or Achieve Compliance

In situations where the non-compliance is ongoing, the corrective action is straightforward – the non-compliance 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).

Where compliance was achieved but a different infraction occurred, for example, monitoring at the end of the grazing season following the removal of livestock indicated forage utilization standards have been exceeded, the corrective action is more complicated. In this case, the NONC letter should describe the permit provision that was violated and explain that strict compliance with that provision is required during the upcoming grazing season or suspension or cancellation proceedings may be initiated (section 16.31, Exhibit 02).

16.34 - Forest Service Verification and Documentation of Compliance

As soon as reasonably practical after the time period specified in the NONC letter 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. It is highly advisable that the permittee be invited to accompany the forest officer for the allotment inspection.

The results of the compliance inspection shall be documented using certified mail delivery, return receipt requested, or other appropriate methods which document delivery such as UPS, Federal Express, hand delivery, etc. The method of delivery will be documented in the letter sent to the permittee. If all requirements specified in the NONC have been met, this document may signify resolution of this permit violation and no additional action may be needed.

In those instances where the permittee has failed to take the required corrective action within the prescribed timeframe, or has failed to complete the remedy to the specifications and/or within the timeframes specified in the NONC, the decision letter will state that administrative action to suspend or cancel the permit, in whole or in part, 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 administrative appeal of the decision under 36 CFR 214(c) (section 16.41) and subject to mediation in those States where applicable (section 16.5).

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In the instance that the permittee will not accept certified mail, send using regular mail, or hand deliver it (perhaps by law enforcement personnel, or by two people).

16.35 – Willfulness and Public Health and Safety Exceptions

Take action immediately in instances where the violation has an immediate impact on public health and safety and prompt action is necessary to avert the threat (*see* 5 U.S.C 558(c)). Examples might be where a break in the allotment boundary fence has occurred and livestock are discovered inside a fenced rural airport boundary, or within a fenced public thoroughfare right-of-way.

A NONC letter may not be required in cases involving willful conduct by the permittee which might include intentional concealment or misrepresentation of pertinent information about ownership of base property or livestock (*see* 5 U.S.C 558(c)).

In those instances when a determination is made to institute permit suspension or cancellation proceedings without first sending a NONC letter, the authorized officer must document the rationale for this decision in the letter instituting the proceedings. Authorized officers should consult with the forest and regional rangeland management specialists and the Office of General Counsel in making a determination that issuance of a NONC is not legally required or necessary.

Document all permittee behavior that serves as the basis of willful actions. Nothing precludes the issuance of a NONC letter in those instances where determinations of willfulness or threats to public health or safety are not clear-cut.

16.36 - Repeated Incidents of Non-Compliance

To the extent possible, rangeland managers should conduct field inspections with the permittee. On-site observations of suspected violations with the permittee present might provide the clarity needed in deciding non-compliance or not. Should non-compliance be verified then follow NONC procedures. The purpose of the NONC letter is to provide the 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 non-compliance that is considered to be willful or that detrimentally affects public health or safety (sec. 16.35), permittees are normally 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 non-compliance regarding the same or closely related permit terms or conditions. Such an approach could lead to a never-ending cycle of permittee violation, Forest Service issuance of a NONC, permittee corrective action, Forest Service verification, followed by another violation of the same or similar term or condition by the permittee, and so forth. Rather than issuing multiple NONCs for repeated violations of the same or related permit

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term or condition, the authorized officer should issue one NONC and then initiate suspension or cancellation proceedings if the same or a similar violation arises again within a relatively short time, e.g., a year or two.

However, in cases involving a violation of substantially different (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 unrelated violation. In other words, if the permittee commits a second violation unrelated to the one referenced in the first NONC letter, the authorized officer may need to issue a new NONC letter to address this new violation.

But neither can the permittee be allowed numerous chances to correct permit violations and perform as required for grazing livestock on public lands. The intent of taking permit action is to bring about immediate and long-term permit compliance and proper public land management.

16.4 - Uniform Suspension and Cancellation Guidelines

The first step in resolving any non-compliance issue is to contact the permit holder or agent by phone or in person when the non-compliance situation is determined and documented. This informal contact is the first opportunity to remedy the situation, by providing information regarding the non-compliance and instructions for resolution. These informal discussions must be documented.

Uniform suspension and cancellation guidelines are to be employed when informal attempts to resolve the non-compliance situation have not been successful based upon field inspections and further conversations with the permit holder. The guidance below generally assumes that informal resolution has not been successful.

If the formal non-compliance letters have not been successful, the necessary steps to resolve each type of infraction are detailed below.

Regions and Forests/Grasslands will *not* supplement the following guidelines for consistent actions in grazing permit administration for the categories listed. The objectives are to:

1. Promote compliance with the terms and conditions of the permit by all permit holders.
2. Obtain consistency on administrative actions for non-compliance with the terms and conditions of the grazing permit, regardless of where in the National Forest System the case of non-compliance occurred. The intent is that the same or similar infraction results in the same or similar penalty, regardless of the region, forest or grassland, the authorized officer, or the permit holder.

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3. Ensure consistency with relevant court decisions (*Anchustegui v. Department of Agriculture* 257 F.3d 1124, 1128 [9th Cir.2001]) and Administrative Procedures Act of 1946 (5 U.S.C. Subchapter II) requirements;
4. Provide a firm but fair approach. The intent of all permit actions is to correct current non-compliance and attempt to assure there are no future violations.

These uniform suspension and cancellation guidelines are also to be followed by grazing associations and grazing districts when administering all permits they issue to their members. They should be inserted into the Rules of Management for the organization as a matter of procedure for the Board of Directors to follow and to inform their members of requirements. At a minimum, all of the members need to know what the suspension and cancellation infractions and penalties are, and where they can be located in section 16.4 of FSH 2209.13 for review.

The following guidelines do not and cannot address all the various conditions and circumstances that will be encountered in administering term grazing permits. Nor do they address circumstances where multiple violations may have occurred. Forest and regional rangeland specialists should be consulted to assist the authorized officer in recommending appropriate actions in such circumstances.

Any and all recent, prior occurrences of the same or similar non-compliance with permit terms and conditions should be considered in determining the appropriate action for second and third offenses. Permit non-compliance instances in year one (1) should be considered in actions taken on non-compliance situations occurring in year two (2) or three (3). However, it may not be appropriate to consider an isolated non-compliance situation that occurred a number of years previous as evidence of a recurrent history of violations.

NOTE: 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 a separate authorization when violations of permit terms and conditions have occurred. In these cases, permit action may only be taken on 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 section 15.12c) or occurs on all allotments at the same time.

For virtually all situations of non-compliance, the letter of non-compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

In addition to cancellation or suspension action, require the permittee to pay the unauthorized use rate for excess use. Excess use is grazing livestock in greater numbers or at times or places other

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than authorized by the permit or the Bill for Collection. See sections 81.7 and 81.71 for additional discussion of excess use, and for billing procedures when excess use payment is warranted or required.

Follow the guidelines below for determining the extent of suspensions and cancellations for each type of infraction, unless the authorized officer determines and documents in a rare case that a different action is appropriate due to the specific circumstances of the violation.

16.41 - Serious Offenses that Warrant Immediate Permit Cancellation

There are four circumstances or permit violations that are generally so serious that there is little or no opportunity to correct the situation. These four infractions, listed below, nearly always result in cancellation of the permit in full. Successful enforcement depends on gathering evidence of willful non-compliance. The enforcement direction should follow what evidence is gathered. Consultation with OGC may be prudent when pursuing these enforcement actions.

1. *Failure to Validate the Grazing Permit.* The issuance of a bill for collection, payment of fees, and turning out 90 percent of the permitted livestock for at least a majority of the permitted grazing season the first year 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 (sec. 15.2) (Term Grazing Permit, Part 2, Section 1).

a. *Notice of Permit Action for Non-Compliance.* Unless specific circumstances indicate otherwise (see section 15.5 for approved phased-in validation), 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 permit action decision letter by the appropriate method as described in section 16.3 explaining the non-compliance and stating that the term grazing permit will be cancelled to the extent that validation did not occur.

The letter proposing to cancel the permit should contain an offer from the authorized officer to meet to discuss the situation. 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.

b. *Decision Letter.* If no further information is provided, notify the permittee that the permit is cancelled in full, or to the extent that it was not validated.

Cancelling a permit for failure to validate does not carry with it the right of appeal because the applicant does not hold a valid permit and technically become a permittee until validation has occurred.

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2. *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 cancelled (Term Grazing Permit, Part 1, Section 3). 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. If updated information provided by the permittee conflicts with previously furnished or other known information to the extent that the documentation shows that a deliberate misrepresentation has occurred, the permit may be cancelled.

a. *Notice of Permit Action for Non-Compliance.* Unless specific circumstances indicate otherwise, making false statements or providing fraudulent documents is considered willful and *no opportunity for remedy is provided.*

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 require the permittee to submit an updated application and supporting documentation. Establish a reasonable timeframe for furnishing of this information. Such requests will be made by letter sent to the permittee by the appropriate method as described in section 16.3.

Any proposed action based on false statements or fraudulent documents should include timely consultation with the forest and/or regional rangeland specialist and OGC.

b. *Decision Letter.* When any review of the files or documents provided indicates that a deliberate and material misrepresentation has occurred or falsified documents provided, notify the permittee with a permit action decision letter by the appropriate method as described in section 16.3 explaining the non-compliance and stating that the term grazing permit will be cancelled in full.

The letter proposing to cancel the permit should contain an offer from the authorized officer to meet to discuss the situation. This opportunity for the permittee to be heard and/or to provide additional documentation may take the form of a written letter or a personal meeting between the permittee and the authorized officer.

If no further information is provided to correct the apparent falsified information, notify the permittee that the permit is cancelled in full.

In the rare case when a term grazing permit is issued as a result of purchase of livestock or base property later found to be fraudulent or defective, *and the new*

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permittee had no knowledge of fraud or defect, that later discovery of defect or misrepresentation shall not be cause for automatic suspension or cancellation.

3. Grazing Livestock Not Owned by the Permittee. Only livestock owned by the permittee are authorized to graze under the term permit (except declared leased sires – see section 12.22). Livestock purchased and subsequently sold back to the original owner, within a 24-month period, are not considered evidence of valid ownership of the livestock (Term Grazing Permit, Part 2, Clause 7 (a) and (c)). Leased brands are not recognized as proof of ownership.

a. *Notice of Permit Action for Non-Compliance.* Unless specific circumstances indicate otherwise, grazing livestock not owned by the permittee is considered willful and *no opportunity for remedy is provided*.

When a documented inspection indicates that the livestock being grazed may not be owned by the permittee, call or meet with the permittee in person and require full removal of the livestock, or submission of positive proof of ownership, within 72 hours. This is a verification opportunity for the permittee to show that they do in fact own the livestock (if this is the case) and is not an opportunity to remedy if they cannot show ownership of the livestock in question. Document the discussion and instructions to provide conclusive proof of ownership such as cancelled check, bill of sale, brand inspection certificate, contract for purchase, etc. in a NONC letter to the permittee by the appropriate method as described in section 16.3.

b. *Decision Letter.* If acceptable proof of ownership is not provided within 72 hours, send the permittee a permit decision letter by the appropriate method as described in section 16.3 proposing to cancel the permit in whole. Require immediate removal of livestock.

The letter proposing to cancel the permit should contain an offer from the authorized officer to meet to discuss the situation. This opportunity for the permittee to be heard and to provide conclusive proof of livestock ownership may take the form of a written letter or a personal meeting between the permittee and the authorized officer.

If no further information is provided to show conclusive proof of ownership of all livestock or that a 24 month buy-back arrangement did not occur, notify the permittee that the permit is cancelled in full. Immediate removal of all livestock is required. Do not refund grazing fees paid.

Issue a Bill for Collection, at the unauthorized use rate, to the actual livestock owner from the time the unowned livestock were discovered until the last unauthorized livestock were removed.

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4. *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 NFS grazing privilege (Term Grazing Permit, Part 2, Section 11(e)).

While the permittee may decide to lease the base property (or entire ranch) under certain circumstances, the permittee *must* take non-use for personal convenience during this time (subject to the length of time allowed for personal convenience non-use), and the lessee *cannot* place livestock on the allotment.

The only other controlled circumstance whereby leasing is allowed (successional leasing) is described in Chapter 20 under the provisions of a grazing agreement.

a. *Notice of Permit Action for Non-Compliance.* When it is clear that the permit, base property, and/or livestock being grazed are being leased to someone else to allow the lessee to use the NFS Grazing Permit, the violation is considered willful and *no opportunity for remedy is provided*.

When there is evidence that the permittee may have leased or sublet the permit as specified above, send a NONC letter to the permittee by the appropriate method as described in section 16.3 requiring the permittee to provide evidence within a reasonable time period (such as 72 hours) that no leasing or subletting has occurred. This is a verification opportunity for the permittee to show that they were not leasing or subleasing the permit (if this is the case) and is not an opportunity to remedy if they cannot provide proof that no leasing or subletting has occurred.

b. *Decision Letter.* If the permittee does not present satisfactory evidence to indicate that leasing or subletting the permit has not occurred, send the permittee a permit decision letter by the appropriate method as described in section 16.3 proposing to cancel the permit in full.

The letter proposing to cancel the permit should contain an offer from the authorized officer to meet to discuss the situation. This opportunity for the permittee to be heard and to provide conclusive proof that the permit has not been leased may take the form of a written letter or a personal meeting between the permittee and the authorized officer.

If no further information is provided to show conclusive proof that the permit has not been leased, notify the permittee that the permit is cancelled in full. Immediate removal of all livestock is required. Do not refund grazing fees paid.

Issue a Bill for Collection, at the unauthorized use rate, to the actual livestock owner from the time the unowned livestock were discovered until the last unauthorized livestock were removed.

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16.42 - Offenses that Provide the Opportunity to Remedy and Comply

All permit violations are serious, and need to be dealt with firmly, fairly, and professionally. But the following circumstances and permit infractions are not as serious as the four listed above. The process for each of these gives permittees the opportunity to remedy the situation once they are informed of the violation by Forest Service personnel and given the opportunity to correct the non-compliance situation.

1. *Failure to Pay Grazing Fees – Failure To Pay By The Due Date, But No Livestock Have Entered National Forest System Lands.* Bills are to be issued no less than 40 days and no more than 60 days in advance of the on-date. Bills are to be due no later than 10 days before the allotment on-date, giving the authorized officer time to verify payment prior to allotment entry.

The permittee may not place owned or controlled livestock on Forest Service administered lands unless the fees specified in the bill for collection are paid. Failure to pay the grazing fees on or before the due date in the bill for collection may result in permit suspension or cancellation.

a. *Notice of Permit Violation and Opportunity to Remedy.* Contact the permittee by phone or in person and remind them it is a permit violation, Part 2, Section 3, if livestock are allowed to enter NFS lands before fees specified in the bill for collection are paid. If the permittee can demonstrate that they made appropriate effort to pay the bill on time provide an opportunity to remedy and inform the permittee the bill must be paid immediately.

If the permittee then pays the bill in full, no further action is required except to document the contact and the results that followed.

b. *Notice of Non-Compliance or Failure to Remedy.* If the non-compliance recurs, or has not been remedied as specified, contact the permittee by phone or in person specifying the non-compliance and the provisions of the term permit that are in non-compliance.

Follow up this contact with a NONC letter demanding payment of the bill, reminding them not to place livestock on the allotment and proposing to suspend at least 25 percent of the permitted numbers or seasons for at least one season. In addition, the turn-out date must be delayed until the bill is paid.

Follow up with the proposed suspension action, if appropriate.

c. *Repeat Offenses and Decision Letters.* If the non-compliance continues the next year or in following years and is not remedied as specified, or after suspension action

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has been taken, contact the permittee by phone or in person specifying the non-compliance and the provisions of the term permit that are in non-compliance.

Follow up this contact by sending a permit decision letter by the appropriate method as described in section 16.3 proposing to cancel at least 25 percent of the permitted numbers or seasons.

The permit decision letter should contain an offer from the authorized officer to meet to discuss the situation. 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.

If no further information is provided to show why the bill was not paid on time, notify the permittee that 25 percent or more of the permit is cancelled. The letter should also state that any future infractions may result in complete cancellation of the term grazing permit.

2. *Failure to Pay Grazing Fees - Allowing Livestock to Enter NFS Lands Before the Grazing Fees Have Been Paid.* Follow the billing timeframes specified in Number 1 above. The permittee must not allow owned or controlled livestock to be on Forest Service administered lands unless the specified grazing fees are paid on or before the due date in the bill for collection.

a. *Notice of Permit Violation and Opportunity to Remedy.* Contact the permittee by phone or in person and remind them that it is a permit violation, Part 2, Section 3, if livestock are allowed to enter NFS lands before fees specified in the bill for collection are paid. If the permittee can demonstrate that the bill has been paid. Document the results of the verbal discussion and that compliance was achieved.

If the permittee cannot demonstrate that the bill has been paid, require removal of the livestock within 72 hours.

b. *Notice of Non-Compliance or Failure to Remedy.* Unless specific circumstances indicate otherwise, and if the bill has not been paid and the livestock not removed, this violation is considered willful and *no further opportunity for remedy is provided*. Further opportunity to remedy through issuance of a NONC letter is no longer possible. Proceed directly to issuance of a permit decision letter.

c. *Repeat Offenses and Decision Letters.* The permit decision letter sent by the appropriate method as described in section 16.3 proposing to cancel the permit in full should contain an offer from the authorized officer to meet to discuss the situation. 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.

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If no other information is provided, follow up with a letter cancelling the permit in whole.

3. *Failure to Request Non-use or Taking Non-use without Approval.* Term Grazing Permits may be suspended or cancelled, in whole or in part, if the term permit holder fails to graze at least 90 percent of permitted numbers without obtaining prior approval for non-use (Term Grazing Permit, Part 2, section 9).

a. *Notice of Permit Violation and Opportunity to Remedy.* In the AOI, and during the annual permittee meeting, permittees must request and obtain approval for personal convenience non-use if they do not intend to graze at least 90 percent of the permitted livestock. If non-use was not requested, but the bill was paid, and a documented inspection indicates the permittee has failed to stock the allotment, contact the permittee by phone or in person and remind them that failure to request non-use in advance is a permit violation.

Send a follow-up letter documenting the contact and notifying the permittee that they can remedy the situation by 1) applying for personal convenience non-use if the deciding officer approves it or 2) placing at least 90 percent of the permitted stock on the allotment for the remainder of the season. Do not allow credit or refund of grazing fees paid.

b. *Notice of Non-Compliance or Failure to Remedy.* If non-use is not approved and at least 90 percent of the permitted stock are not placed on the allotment, send the permittee a NONC letter proposing to suspend for 1 year or more, the number equal to the required number not placed on the allotment.

The letter of non-compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

c. *Repeat Offenses and Decision Letters.* When documented inspections indicate that a repeat offense has occurred, or when the permittee fails to fully stock the allotment after personal convenience non-use has been exhausted, send the permittee a letter by the appropriate method as described in section 16.3 that cancels the permit to the extent of unapproved non-use. Do not allow credit or refund of grazing fees paid.

The letter should also state that any future infractions may result in complete cancellation of the term grazing permit.

4. *Excess Use.* Any livestock owned by the holder of a NFS grazing permit and grazing on NFS 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

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modifications made by the authorized officer, constitutes excess use. Failure to remove livestock by the end of the permitted grazing season or when instructed by the authorized officer is also excess use, (Term Grazing Permit, Part 2, Section 8(c), 8(d), and 8(e)).

Before taking *any* permit action for excess use, refer to chapter 80, section 81.7 for how the amount of excess use is calculated, and whether the amount of use results in the excess use fee being added to the next year's grazing bill or if a separate bill for collection is to be issued at the time of the offense.

a. Notice of Permit Violation and Opportunity to Remedy. After becoming aware of the excess use, 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 AOI are in non-compliance; and, require excess livestock removal in full within 72 hours. Document the results of the verbal discussion, including the specific violation(s), what action is expected of the permittee to remedy the situation, to what standard, and by when.

Follow up with an inspection to determine compliance; if at all possible have the permittee in attendance.

b. Notice of Non-Compliance or Failure to Remedy. If the situation has not been remedied, prepare and send a NONC letter by the appropriate method as described in section 16.3 documenting the inspection and the need to fully comply within a specified timeframe.

The letter of non-compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

Once all of the animals are removed, calculate the amount of excess use. Issue a bill for collection for excess use at the unauthorized use rate at that time only if it equals or exceeds the total calculated amount of 10 head-months (see section 81.7).

c. Repeat Offenses and Decision Letters. When documented inspection indicates that the initial non-compliance has not been remedied as discussed above, send a permit decision letter by the appropriate method as described in section 16.3 proposing to suspend at least 25 percent of the permitted numbers or season for a period of at least 2 years.

If no additional information is provided, implement the suspension decision.

When documented inspections indicate that excess use has occurred again, send a permit decision letter by the appropriate method as described in section 16.3 proposing to cancel at least the portion of the permit that was suspended, as appropriate to the circumstances. Issue a new

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bill for collection as appropriate at the time of permit cancellation for any amount of calculated excess use.

For all infractions involving excess use for bid allotments in Regions 8 and 9, the following unauthorized use rate procedures should be followed:

1. When grazing fees for an allotment are at the sub-regional minimum, the published annual unauthorized fee will be applied to any excess use (FSM 2238.6).
2. In cases where bid fees are higher than the sub-regional minimum, unauthorized use rates applied to any excess use will be twice the permittee's bid for that particular allotment.
3. Charges to the permittee will be in addition to the annual bill and will not be a part of any fee credit agreement.
4. *Failure to Follow Management Instructions.* This applies to the requirements in the allotment management plan (AMP), the annual operating instructions (AOI), and/or any other management requirements for the land described on Page 1, Part 1 of the permit. The permittee must carry out all permit provisions as well as specifications for improvement construction as issued by the authorized officer for the area under permit, and require employees, agents, contractors and subcontractors to do likewise (Term Grazing Permit, Part 1, Section 3, Part 2, Section 8 (a-h)).
 - a. *Notice of Permit Violation and Opportunity to Remedy.* Contact the permittee by phone or in person to notify him/her of the non-compliance, including what provisions of the AMP and/or AOI are in non-compliance, and require correction within 72 hours. Specify precisely what action is required to bring the permit back into compliance.

Document the results of the verbal discussion, including what parts of the term permit, AMP, and/or AOI are in non-compliance, what action is expected of the permittee to remedy the situation, to what standard, and by when.

Follow up with an inspection to determine compliance; have the permittee in attendance if at all possible.

If the violation is grazing beyond allowable use guidelines, the permittee can, and should, move the livestock to the next pasture scheduled for use; if it occurs in the last pasture, the livestock should be removed from the allotment. Remedy may carry over to the future year(s).

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b. Notice of Non-Compliance or Failure to Remedy. When documented inspection indicates that the initial non-compliance has not been remedied as specified, or if a second situation of non-compliance has occurred, prepare and send a NONC letter by the appropriate method as described in section 16.3 proposing to suspend at least 25 percent of the permitted numbers or seasons for at least two years. If there has been a separate and unrelated violation, a second opportunity to remedy within 72 hours may be warranted, and another field inspection required to document compliance.

The letter of non-compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

If no additional information is provided, implement the suspension decision.

c. Repeat Offenses and Decision Letters. When documented inspections indicate repeated non-compliance with the AMP and/or AOI and with corrective action not being taken, send a permit decision letter by the appropriate method as described in section 16.3 documenting the repeat non-compliance finding and proposing to cancel at least the portion of the permit that was suspended.

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

a. Notice of Permit Violation 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 non-compliance. Specify what action is required to remedy the non-compliance, to what standard, and within what timeframe.

Document the results of the verbal discussion.

Follow up with an inspection to determine compliance; have the permittee in attendance if at all possible. If the required maintenance has not been completed according to specifications, and within specified timeframes, require the permittee to keep their livestock off, or remove their livestock from, the allotment within 72 hours, until maintenance is completed to standard. Document the inspection, with photographs if possible.

b. Notice of Non-Compliance or Failure to Remedy. Follow up with a NONC letter proposing to suspend 25 percent or more of the permitted numbers or season for a

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minimum of 2 years and stating that livestock will not be allowed back on the allotment until the improvements are maintained to standard.

The letter of non-compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

When a documented inspection indicates that the initial non-compliance has not been remedied as specified, and the improvements still not maintained, send the permittee a letter implementing the proposed suspension. Do not permit livestock on the allotment during the period of suspension until inspections determine the annual improvement maintenance has been completed to standard.

c. Repeat Offenses and Decision Letters. For repeated failures to maintain improvements, send a permit decision letter by the appropriate method as described in section 16.3 documenting the repeat non-compliance finding and proposing to cancel at least the portion of the permit that was suspended.

6. Failure to Notify the Authorized Officer within a Reasonable Time (30 days) of any Change in Qualifications to Hold the Term Grazing Permit. (Term Grazing Permit, Part 2, Section 11).

a. Notice of Permit Violation and Opportunity to Remedy. The authorized officer finds that the permittee's qualifications to hold the permit have changed, such as no longer owning livestock, or the brand registration is not current or correct, or the official records show the declared base property is owned by a different entity.

b. Notice of Non-Compliance or Failure to Remedy. After determining the facts of the matter, and contacting the permittee, the authorized officer shall issue a NONC letter by the appropriate method as described in section 16.3 requesting the permittee to remedy the situation by providing necessary documentation to requalify to hold the permit within a reasonable time, normally 30-60 days.

The letter of non-compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

c. Decision Letter. If the permit holder fails to fully remedy the situation to meet qualification requirements within the defined timeframes, or a negotiated extension of time, send the permittee a permit decision letter by the appropriate method as described in section 16.3 cancelling the permit in whole.

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7. Failure to Conform with Base Property Requirements (Term Grazing Permit Part 2, Sections 7(b) and 11(b)).

a. Notice of Permit Violation and Opportunity to Remedy. The authorized officer finds that the permittee has failed to conform to base property requirements, has lost control of the declared base property, or has failed to notify the authorized officer of the sale or disposal of the base property on which the permit is based.

b. Notice of Non-Compliance or Failure to Remedy. The authorized officer shall issue a NONC letter by the appropriate method as described in section 16.3 to the permittee informing them that they have one year from the date of the NONC letter to acquire and provide proof of ownership of suitable replacement base property.

The letter of non-compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

c. Decision Letter. If the required documentation to prove ownership of suitable replacement base property is not provided by the end of the 1-year period, send the permittee a permit decision letter by the appropriate method as described in section 16.3 cancelling the permit in whole.

8. Conviction for Failure to Comply with Federal, State, or Local Environmental Laws. The permit may be cancelled in full or in part after receiving notification that the permittee or the permittee's agents, managers, or other permit representatives have been 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 directly related to the grazing use authorized by the Grazing Permit, Part 1, Section 3.

Examples of such a violation might be killing an eagle or other raptor on a sheep allotment, poaching a big game animal, an unauthorized taking of a species listed under the Endangered Species Act (ESA), or using the cow camp for an illegal guiding and outfitting operation. Examples that are not applicable are conviction for domestic abuse of a family member or a sheep herder, for grand theft, or income tax evasion. For all violations for failure to comply with Federal, State, or local laws, consult immediately with forest or regional rangeland specialists. Any proposed permit actions should be undertaken with the advice of regional rangeland program leaders and counsel of OGC.

a. Notice of Permit Violation and Opportunity to Remedy. Contact the permittee by phone or in person. State the specific violation, and the resulting conviction, and the provisions of the term permit that are in non-compliance. The authorized officer will

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need to exercise discretion in such cases as the nature or severity of the infraction will dictate the nature of the permit action.

Send a NONC letter documenting the discussion and proposing to suspend or cancel the permit, unless the conviction is for a knowing and willful offense such as the taking of an ESA-listed species, and OGC has recommended going directly to a decision letter proposing to cancel the permit.

The Letter of Non-Compliance should contain an offer from the authorized officer to meet to discuss the situation. 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.

b. *Decision Letter.* If the infraction, and conviction, is of a less-severe nature, such as taking a big game animal out of season or running an illegal outfitter-guide business, other penalties will have already been enforced by other agencies, and permit cancellation may not be warranted. After consultation with OGC, follow up with a letter suspending at least 25 percent of the permitted numbers or seasons for a period of at least 2 years.

If the infraction, and conviction, is for something as severe as shooting or poisoning a predating eagle or illegal taking of an ESA-listed species, the violation is considered willful and no opportunity for remedy is provided. Follow up with a letter cancelling the permit in full.

If the conviction occurs during the time livestock are already on the allotment, consider making the cancellation effective at the end of the current authorized grazing season.

16.43 - Decision to Suspend or Cancel a Portion or All of a Term Grazing Permit

A decision to suspend or cancel a term grazing permit in whole or in part shall be sent to the permittee using certified mail delivery, return receipt requested, or other appropriate delivery methods which document delivery such as UPS, Federal Express, hand delivery, etc. The method of delivery will be documented in the letter. The letter should be preceded by a documented phone call or personal conversation with the permittee advising them of the action.

If a total suspension action has been taken, notify the permittee each year, in writing, that all fences, water developments, etc. that they are assigned in the permit must be maintained prior to the earliest date that livestock will be entering any of the adjacent pastures or allotments. See Exhibit 01 for an example of a letter to suspend or cancel all or a portion of a term grazing permit, should suspension or cancellation action be necessary.

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16.43 - Exhibit 01

Suspension or Cancellation Letter

Reply to: 2230

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Date: August 27, 2017

Mr. Mathew Gibbs
P.O. Box 1200
Right There, Utah 65432

DECISION TO SUSPEND

Dear Mr. Gibbs:

Term Grazing Permit No. 12345 was issued to Mathew Gibbs on March 15, 2014. The permit authorizes 160 cow-calf pairs on the Highline Allotment from June 1 through August 10.

On August 19, 2017, I notified you through a certified NONC letter, hand delivered by Chuck Drew, regarding management situations that did not comply with the terms and conditions of your Term Grazing Permit. That letter informed you of the corrective actions and the timeframes within which you were required to become compliant; including removal of all livestock from the allotment by August 22, 2017. I also informed you that failure to correct these violations within the required timeframes might result in the initiation of permit suspension or cancellation procedures.

On August 24, Range Specialist Chuck Drew inspected the Highline Allotment and discovered 35 pair of cattle still on that allotment and the required fence repair had not been done. He saw cattle in Sweetwater Gulch, Cow Camp and Bull Run Canyons, Pinyon Draw, and Barber Basin.

You have not removed 100 percent of your cattle or repaired the fence as required in the August 19 NONC letter, nor have you provided me with justification for your continued noncompliance.

You are to remove all your cattle from the allotment immediately. In addition, you will be receiving an additional Bill for Collection for excess use as soon as I verify that all the cattle have been removed and have calculated the amount of excess use that has occurred.

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16.43 - Exhibit 01 - Continued

Therefore, it is my decision to suspend 25 percent of your term grazing privilege (40 head of cattle) for the 2018 and 2019 grazing seasons on the Highline C&H Allotment.

As a result of your failure to meet the requirements stated in the August 19th, 2017 Notice of Noncompliance letter, you will only be allowed to graze 120 head of cattle on the allotment for the next two years. And until all of the fences are repaired to FS standard, no cattle will be allowed on the allotment.

This decision is subject to appeal pursuant to Department of Agriculture regulations 36 CFR 214. Appeals filed under 36 CFR 214 must be in writing and submitted to: Appeal Deciding Officer, Forest Supervisor Josh Moore, Big Tree National Forest, 1200 Main St., Goodnews, Utah 22233.

Appeals must be filed within 45 days following the date of this decision (36 CFR 214.9(a)). Appeals may be filed in person or by courier, by mail or private delivery service, by facsimile, or by electronic mail. Office business hours for those submitting hand-delivered appeals are 8:00 a.m. through 4:30 p.m. Monday through Friday, excluding Federal holidays. Parties to an appeal are responsible for ensuring timely filing of appeal documents (36 CFR 214.9(b)).

The notice of appeal must meet the appeal content requirements at 36 CFR 214.8 or <https://www.ecfr.gov>.

An appellant may include in the appeal a request for oral presentation with the Appeal Deciding Officer (36 CFR 214.16). An appellant may also request in the appeal a stay of implementation of the decision pending decision on the appeal (36 CFR 214.13).

In accordance with 36 CFR Part 222, subpart B, this decision is subject to mediation in accordance with the United States Department of Agriculture certified mediation program for the State of Utah. Request for mediation must be made concurrently with the filing of an appeal. Mediation is not automatic; if you request it, the appeal deciding officer will 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 to notify all parties to the appeal that mediation has been requested. Once an appeal is filed, with a copy simultaneously sent to the Utah Agricultural Mediation Program, 350 N Redwood Road, PO Box 146500, Salt Lake City UT 84114-6500, (801) 538-4976, agriculture@utah.gov, the State mediation program manager will provide you with the information necessary and will arrange to proceed with mediation. *(Insert the address of your State's mediation program office. If your State does not have a certified mediation program, or a formal mediation agreement with a neighboring State, this paragraph is not included).*

Law requires that all mediation sessions and dispute resolution communications are confidential and private. Any mediation agreement signed by a Forest Service official and the holder of a

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16.43 - Exhibit 01 - Continued

term grazing permit is subject to public disclosure. *(If your State does not have a certified mediation program, or a formal mediation agreement with a neighboring State, this paragraph is not included).*

If you have questions, or wish to discuss any issues related to my decision, please feel free to contact me at the above address, or by calling me at (xxx)-xxx-xxxx.

If no further violations of the terms and conditions of your grazing permit occur, the 25 percent suspension will be restored in 2020. However, if additional violations occur, the 25 percent suspension will be reviewed for cancellation, and additional administrative action may be taken.

Sincerely,

BARBARA VANDERHORST
District Ranger

cc: Forest Supervisor

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16.5 - Legal Background Regarding Mediation

Disputes regarding suspension or cancellation of grazing permit privileges on NFS lands are eligible for mediation under State mediation programs certified by the Secretary of Agriculture.

Section 282 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (P. L. 103-354) amended section 501 of the Agricultural Credit Act of 1987 to expand the number of issues in Department of Agriculture (USDA) programs that are subject to mediation under State mediation programs that have been established (63 FR 9987, February 27, 1998) and (64 FR 37843, July 14, 1999).

In order to participate in the mediation program, the dispute must have originated in a State where a certified mediation program exists. Under the Secretary's regulations at 36 CFR Part 222, Subpart B, mediation is available only for decisions which result in the suspension or cancellation of term grazing permits, in whole or in part, based on/when:

1. The permittee's refusal to accept modifications to permit terms and conditions (36 CFR part 222.4(a)(2)(i)).
2. The permittee's refusal or failure to comply with eligibility or qualification requirements (36 CFR part 222.4(a)(2)(ii)).
3. The permittee's failure to restock the allotment following the exhaustion of personal convenience non-use (36 CFR part 222.4 (a)(2)(iv)).
4. The permittee's failure to pay grazing fees within established time limits (36 CFR part 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 part 222.4(a)(4)).
6. The permittee knowingly and willfully makes a false statement or representation in the grazing application or amendments thereto (36 CFR part 222.4(a)(5)).
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 the permit (36 CFR part 222.4(a)(6)).
8. Grazing agreements may be canceled for non-compliance with Title VI of the Civil Rights Act of 1964, amendments thereto, and Department of Agriculture regulations promulgated thereunder (36 CFR 222.4(b)).

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16.51 - Expectations of Mediation

The process of mediation is only able to be requested when permit suspension or cancellation action has been taken. The authorized officer and the district staff have generally tried several different ways to achieve permittee and permit compliance before ever getting to the need to take formal permit action.

Often times the severity of this action is what finally convinces the permittee of the seriousness of the infractions. But it is common that the permittee will arrive at the mediation session expecting that the penalties will be reduced or dropped.

The certified mediator serves as an objective third party but may often arrive at the meeting hoping that some compromise can be reached.

Despite the best intentions of all parties involved, it is not at all unusual that a compromise cannot be reached because of all the previous unsuccessful attempts to gain permittee compliance.

16.52 - Mediation Process

Any time a permit suspension or cancellation action is taken, the decision maker must inform and involve the regional range program leader, if they have not been informed previously.

If eligible permit holders request mediation, they must do so in the notice of appeal filed with the appeal deciding officer. Once this occurs, the regional range program leader should inform the regional OGC representative of the receipt of the appeal and the request for mediation.

When mediation is requested, the appeal deciding officer shall immediately notify all parties to the appeal that all appeal deadlines are automatically stayed for 45 days to allow for mediation. If a mediated agreement is not reached in 45 days, an additional 15 days may be added to the process if it appears to the appeal deciding officer there is a reasonable possibility that a mediated agreement can be reached in that timeframe. All parties must be notified that the mediation period has been extended (36 CFR Part 222.22).

If mediation is successful, the appellant will request in writing that the appeal be terminated (withdrawn). The mediated decision will be implemented after being signed by both parties.

If an agreement is not achieved at the end of the 45- or 60-day mediation process, the appeal deciding Officer shall immediately notify all parties to the appeal that mediation was unsuccessful, that the stay has expired, and that the time periods and procedures applicable to an appeal under 36 CFR Part 214 are reinstated.

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All mediation sessions conducted between the decision maker, the mediator, and the permittee are confidential. Notes taken or factual material shared during a mediation session shall not be included in the appeal record (36 CFR 222.24). However, any mediation agreement signed by a Forest Service official and the holder of a term grazing permit is subject to public disclosure (36 CFR 222.23).

There are no intervenors allowed in the mediation process. Only the following may be parties to mediation of a term grazing permit dispute: the mediator, the decision maker (or designee), and the term grazing permit holder, the permit holder's creditors (if applicable), and the permittee's legal counsel if retained (36 CFR 222.21(a)-(e)). The Forest Service can have a legal representative present (OGC) only if the permittee has a legal representative present.

Both parties may have official agency or entity representatives in attendance only if both parties agree in advance to do so. Both parties must also agree, with consent of the mediator, on the role that the representatives can perform (for example, be available outside the room for approved consultation if requested, allowed to speak only if asked direct questions by either party, etc.). Representatives are not allowed to play an active role in the discussions unless all parties agree to that procedure in advance.

In some States, the permittee pays for the cost of the State-certified mediator; in others, there is no charge for the service provided. The Forest Service covers only those costs incurred by its own employees in mediation sessions because the agency provides funding at the national level to the State Departments of Agriculture who participate in and provide State-certified programs for the mediation of grazing disputes.

To avoid any appearance or possibility of ex parte communication, the authorized officer who made the decision being mediated, or his or her designee, shall not discuss mediation with the Appeal Deciding Officer, except to request an extension of time or to communicate the results of the mediation (36 CFR 222.26).

16.53 - Informal Dispute Resolution

Section 8 of the Public Rangelands Improvement Act (PRIA) of 1978, as it amends Section 402 of the Federal Land Policy and Management Act (FLMPA) of 1976, allows for consultation and cooperation in the development and execution of allotment management plans for grazing permits from both the Forest Service and the Bureau of Land Management (BLM).

Some States have entered into agreements between the agencies, the State Departments of Agriculture, and the State livestock industry group(s) to carry out the provisions of Section 8 of the Federal law.

Under the provisions of the agreement, the Commissioner of Agriculture acts as the facilitator for consultation when it is determined that a dispute pertaining to an allotment management plan

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cannot be resolved at the local level. At that time, a request for Section 8 consultation may be submitted in writing by either party to the local office of the Federal agency.

In some States with active Section 8 agreements, the working relationships between the Department of Agriculture and the State livestock organizations have evolved into opportunities to meet on the ground and discuss grazing permit disputes and allotment management situations with the permittee and agency managers before they become confrontational permit actions.

The process generally works like this:

1. There should be a preliminary effort to resolve the dispute at the local level before seeking action by the Commissioner of Agriculture through the Section 8 process, a permittee is requested to:
 - a. Consult with the local rangeland management specialist and the authorized officer for the agency.
 - b. Contact the leadership of the appropriate State livestock agency and inform them of the livestock management situation and any communication difficulties at the local level.
 - c. Request that the livestock agency personnel contact the agency office and discuss the situation and determine if a field visit is warranted.
 - d. An allotment meeting with all of the parties concerned usually occurs to discuss grazing permit and allotment management concerns. The communication efforts at this point often develop some proposed solutions or identify steps to improve the management and communication situations.
2. If it is determined that a dispute cannot be resolved at the local level, either party has the right to request consultation and recommendations from an objective review team through Section 8 process. That process follows these steps:
 - a. Request a Section 8 review in writing, submitting the request to either the local Federal agency office, the States Cattlemen's Association or Wool Growers Association, or the State Department of Agriculture.
 - b. That request must be forwarded by the recipient to the Commissioner of Agriculture.

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- c. The Commissioner of Agriculture will evaluate the facts presented in the request to determine the need for a visit by an objective review team and if the personnel and funds are available for the needed visit.
- d. If it is determined that an on-site consultation will occur, the parties are contacted and a date arranged to attempt to resolve the dispute at that point.
- e. If the dispute cannot be resolved during the on-site visit, the review team will draft a report and recommendation, forwarding it to the Commissioner of Agriculture, the permittee, and the local office of the appropriate Federal agency.
- f. The Agency will review the recommendation and make the final decision as to any management or permit changes that may be warranted. If the dispute was resolved during the on-site visit, the report will document the decision and recommendations.

16.6 - Permit 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 NFS lands to another public purpose that precludes grazing by permitted livestock. Examples of devoting lands to another public purpose are expansion of an existing military reservation or training ground, expansion of a coal mine, development of a rare earth minerals mine, or a decision to vacate an allotment or portion of an allotment due to conflicts with other resource uses such as documented contacts with bighorn sheep.

Devoting lands to another public purpose also 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 once the exchange appears likely to proceed. The permit holder shall be contacted as this provides the permittee the opportunity to object to the proposal during the public comment period for the proposed land exchange. This early notice should provide the permittee with sufficient time to make alternative arrangements in the event that the exchange occurs. Since land exchanges typically take several years 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.

If changes on NFS lands may affect grazing on ranges administered by the Bureau of Land Management or other Federal or State agencies, the authorized officer has the responsibility to notify the agency representative(s) well in advance about what is being planned or considered.

Except in an emergency, do not cancel a permit without the 2-year notification required in (36 CFR 222.4(a)(1)). The 2-year notification is required unless the permittee waives the time requirement in writing. Provide such notification in all cases where reductions in permitted

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numbers and/or season of use is anticipated. Changes that do not require reduction in permitted number or season do not require the 2-year notification.

Under Section 402(g) of FLPMA, the permittee is entitled to reasonable compensation for the adjusted value of their interest in authorized permanent improvements on NFS lands that are to be devoted to another public purpose that precludes livestock grazing. This only applies if it was the current permittee who contributed to construction of the specific improvements. See chapter 70 and FSM 2248.

16.7 - Cancellation of a Term Grazing Permit to Address Rangeland Resource Conditions

Cancel the term grazing permit when the *no grazing* alternative in an environmental assessment or environmental impact statement is selected to address rangeland resource conditions (see chapter 90). Provide 2-year advance notice of the cancellation to the permittee following the decision to cancel provided no emergency condition(s) exist.

The permittee can object to the decision under 36 CFR 218 and then appeal the decision to cancel the permit under 36 CFR 214; however, providing relief under the 36 CFR 214 appeal once the decision has become final may not be possible.

Permittees are entitled to reasonable compensation for the adjusted value of their interest in authorized permanent improvements on NFS lands (43 U.S.C § 1752(g), FSM 2248.1) when the permit is cancelled due to resource conditions, but not when the permit is cancelled due to non-compliance.

17 - NON-USE OF TERM GRAZING PERMITS

Non-use of a term grazing permit, in whole or in part, may be approved for the following:

1. Personal convenience of the permittee.
2. Resource protection or development.
3. Range research.

17.1 - Non-use for Personal Convenience of the Permittee

Permittees must graze at least 90 percent of the number of livestock under term permit each year unless the authorized officer approves nonuse. A permittee is in non-use status when less than 90 percent of the permitted number of livestock are planned to be grazed that year.

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Non-use status for personal convenience for full or partial numbers may be approved by the authorized officer for no more than three consecutive years, and for no more than four total years in any 10-year rolling period (which starts with the first year of personal convenience non-use). After three consecutive years, the permit must then be stocked with at least 90 percent of the permitted numbers on that fourth year or the permit will be permanently reduced to the actual numbers stocked on the allotment (see section 16.42). If the permit is then used for only that one year (year four), a subsequent application for non-use for personal convenience can only be approved for any one additional year in the following six years.

The rolling 10-year period transcends renewed 10-year term grazing permits; it does not start over with the issuance of a new 10-year term grazing permit to the same permittee.

Requests for non-use of term grazing permits for personal convenience must be made annually, by the permittee, in writing. Unless the timeframe is shortened as in the case of year-round allotments, the permittee must submit requests for personal convenience non-use sufficiently in advance of the start of the permitted grazing season (normally 40-60 days; see section 81.3 for timeframes for billings) 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 NFS lands within 10 days after the authorized on date without approved non-use (or without approval from the authorized officer for a delayed turn-on date) may result in suspension or cancellation of the permit (section 16.42).

Non-use is applied only to numbers of animals. Non-use can be requested for all or part of permitted numbers.

Regions that have year-round permits have established procedures to determine how and when non-use should be applied for.

The authorized officer should discuss the reasons for a request of non-use with the permittee, making sure the permittee understands the policy and limitations on use of personal convenience non-use. Approval of requests for personal convenience non-use is approved or disapproved on an annual basis. The authorized officer must approve the request for non-use in a formal letter or through use of a local form signed by both parties. If the non-use is not requested and approved in writing, failure to stock the allotment becomes a permit non-compliance issue (see section 16.42).

Exhibit 01 is a sample optional form to apply for taking personal convenience non-use.

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17.1 - Exhibit 01

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

NATIONAL FOREST/GRASSLAND
RANGER DISTRICT

APPLICATION FOR NON-USE OF ESTABLISHED TERM GRAZING PERMIT NUMBERS:

I, _____ (Name)

_____ (Address)

hereby apply for personal convenience non-use during the _____ grazing season.

Non-use is to be taken as follows:

| Number of Livestock | (Number of AUMs/HMs) | Season | Allotment |
|------------------------|-------------------------|--------|-----------|
| | | | |
| | | | |
| | | | |

This is the **1st / 2nd / 3rd** (circle one) year of non-use.

This is the 4th and final year of non-use in the rolling ten-year period that began in _____.

Permittee remarks (or reason for non-use): _____.

X _____ Date: _____
Permittee Signature Permittee Number

Rangeland Management Specialist Recommendation: _____.

Rangeland Management Specialist : _____ **Date:** _____

Authorized Officer Approval: _____ **Date:** _____

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On allotments with intermingled land ownerships, if non-use is applied for and approved on the allotment, it will be authorized in proportion to the NFS and the private owned/leased lands in the allotment. For example, if 80 percent of the allotment capacity is on NFS lands and 20 percent is on waived private lands, 20 percent of the approved non-use numbers will be applied to the private land and 80 percent will be applied to the NFS lands and the bill will be issued accordingly.

The limitations for personal convenience non-use apply to the permittee and total permitted numbers regardless of how many allotments the permittee is authorized to graze. A permittee with multiple allotments, whether issued as separate permits by separate authorized officers or issue as separate lines on one permit, are cumulatively tied to a single permittee who is restricted to three consecutive years of personal convenience non-use. In such cases, the non-use may be applied to an individual allotment or to the total permitted numbers.

But the permittee should not be allowed to manipulate the privilege of personal convenience non-use by taking three consecutive years on one allotment, and then by taking three more years non-use on another allotment, and then three more on a third allotment. Accordingly, running less than 90% of the permitted livestock on any one of the allotments, regardless of numbers on the other allotments, counts as a year of personal convenience non-use. The authorized officer is entitled to the flexibility to stock behind personal convenience non-use if so needed or desired.

Approval letters for personal convenience non-use will include a statement that notifies the permittee of the non-use restrictions. The letters authorizing the non-use for the third year and for any fourth year in the rolling 10-year period (as defined above) must advise the permittee that at least 90 percent of the permitted livestock numbers must be grazed during the next grazing season(s) to avoid permit reduction or cancellation of the portion of the permitted numbers not grazed (see 16.42).

The annual approval letter must explain that the term permit holder remains responsible for the maintenance on all assigned improvements on the permitted allotment(s) during the non-use period unless the authorized officer assigns a third party (for example, a term permittee on an adjacent allotment or the holder of a temporary grazing permit filling in behind the approved non-use) improvement maintenance responsibilities. Authorized officers need to verify that improvement maintenance has been completed as required annually; if it has not, the permittee should be issued a NONC letter for failure to maintain improvements.

Approved non-use will be reflected in the bill for collection and AOI (or similar document).

Approval of 100 percent non-use for personal convenience will preclude a waiver based on sale of livestock because there were no permitted livestock for the previous grazing season. 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, the permittee must have or acquire replacement livestock, owned and legally branded by the permittee, and must place those livestock on the

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allotment during the permitted use season in order for the authorized officer to receive and confirm a waiver and take action on an application based upon sale of permitted livestock.

Personal convenience non-use would require restocking of at least 90 percent of the permitted numbers in order for the waiver to be confirmed for 100 percent of permitted numbers and as shown on the bill of sale. Livestock placed on the allotment for this purpose must be branded with the permittee's brand.

Livestock and/or base property purchased and subsequently sold back to the original owner, or to an agent, assignee, or anyone representing or acting in concert with the original owner, within a 24-month period before, during, or after a waiver does not constitute a bona fide transaction or valid ownership of the livestock or base property (see sections 12.21, 12.22, 16.21, 18.4, and 18.8 as well as Term Permit Part 2(7a)).

Going through a third party to allow the land or livestock to revert back to the seller within 24 months is still an illegal transaction and authorized officers will not allow exceptions to this 24-month requirement.

17.11 – Decisions to Authorize Grazing to Fill In Behind Approved Personal Convenience Non-use.

The permittee requesting personal convenience non-use will not be a party in any determination related to authorizing grazing to fill in behind the authorized non-use other than offering suggestions relative to whom might be interested in applying.

The authorized officer should consider the following when filling behind non-use for personal convenience on a case-by-case basis:

- Requests from other term permittees on the same allotment.
- Requests from other Forest Service term permittees.
- Any need to rest or resolve short-term resource issues on this or other allotments.
- Term permittee compliance history.
- Permittee willingness and ability to maintain assigned improvements.
- Potential for incurring additional administrative workload and cost.

Refer to chapter 30, section 33.3 to issue a temporary permit or to section 35 to authorize the use to an existing term permit holder.

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17.2 - Non-use for Resource Protection

The authorized officer may need to implement or require non-use for resource protection to facilitate the protection, proper use, or recovery of NFS lands and resources such as in cases of severe or prolonged drought, recovery from wildfire or other severe weather events, or protection of vegetation treatments.

The need for resource protection non-use should be made on an allotment by allotment basis. But the need may be influenced by resource concerns which cover larger areas such as a watershed or possibly a ranger district depending on the scale of the rangeland resource needing protection.

There are basically three categories of non-use needed for resource protection:

1. The first is driven by annual climatic conditions, most often during periods of severe or prolonged drought, effects from wildfire, or other weather events such as tornadoes, hailstorms, heavy rains, mudslides, or floods;
2. The second is for unusual or infrequent catastrophic weather events such as large landscape wildfires, hurricanes, or late spring or early fall blizzards, often where large numbers of livestock are lost or displaced; and
3. The third is where trial periods or changes in livestock use levels, durations, seasons, or kind/class may be needed to achieve desired resource conditions or objectives.

17.21 - Non-use for Resource Protection Primarily Due to Drought or Other Climatic Conditions

Two of the more common or wide-spread examples of resource issues that can drive the need for non-use for resource protection are severe/persistent drought limiting normal forage production and catastrophic wildfire with subsequent loss of forage and permanent and/or temporary damage or loss of structural improvements needed for proper management and use of the forage resource.

The approval of resource protection non-use in the case of drought, wildfire, or other severe weather events allows the permittee to avoid using personal convenience non-use during these normally short-term recovery periods. The non-use for resource protection is nearly always based on communication and negotiations between the permittee and the authorized officer.

In extreme circumstances, the authorized officer may need to require resource protection non-use associated with these events without permittee agreement.

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This reason for non-use for resource protection purposes will be shown in the approved annual application, and reflected in any bill for collection and AOI that may be issued. These decisions agreed to through communication will seldom require additional formal written approval.

Exhibit 01 is a sample optional application for non-use for resource protection.

17.21 - Exhibit 01

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

NATIONAL FOREST/GRASSLAND
RANGER DISTRICT

APPLICATION FOR RESOURCE PROTECTION NON-USE OF ESTABLISHED TERM
GRAZING PERMIT NUMBERS and/or ALL OR PART OF THE GRAZING SEASON:

I, _____ (Name)

_____ (Address)

hereby apply for resource protection non-use during the _____ grazing season.

Non-use is to be taken as follows:

| Number of Livestock | (Number of AUMs/HMs) | Season | Allotment |
|------------------------|-------------------------|--------|-----------|
| | | | |
| | | | |
| | | | |

This is the _____ year of non-use for resource protection.

Permittee remarks (or reason for non-use): _____.

X _____ Date: _____
Permittee Signature Permittee Number

Rangeland Management Specialist Recommendation: _____

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Rangeland Management Specialist : _____ **Date:** _____

Authorized Officer Approval: _____ **Date:** _____

Form FS-2200-26 should be completed only if the need for non-use persists for more than two or three years in order to properly protect both the interest of the agency, the interest of the grazing permittee, and to remain in compliance with the terms and conditions of the grazing permit. In cases where Memorandums of understanding (MOUs) have been used for this purpose, phase them out as they expire, and new agreements should use the Form. See sections 17.22 and 17.23 below.

In cases where response to drought or other weather event has resulted in sale of all or part of the permitted livestock, the authorized officer may authorize partial resource protection non-use for an appropriate time period, generally three years or less, to allow the permittee to build back livestock numbers sufficient to fully stock the permit. This not only provides needed flexibility for the permittee but is better aligned with other agencies. Please see the following for a description of emergency response approaches taken by other Federal agencies:

1. National legislation for Farm Services Agency (FSA) and cooperating Federal agencies in 2005 allowed for the two-year period to pay capital gains to be extended to four years if the permittee's county of residence (or adjacent county) was declared as eligible for emergency assistance due to drought or other disaster. This allows the producer to replace liquidated breeding animals within four years instead of the IRS-required normal two years. Thus the permittee required to destock due to drought or other disaster could postpone or eliminate any capital gains tax (refer to IRS publication 225).

Exhibit 02 is a sample optional application for non-use for resource protection for unusual or infrequent catastrophic weather events.

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17.21 - Exhibit 02

NON-USE AGREEMENT FOR CATASTROPHIC LOSSES

This Agreement is between the U.S. Department of Agriculture, Forest Service and

_____, Grazing Permittee on the _____
("x" appropriate box) ☐ National Forest ☐ National Grassland. It is mutually understood and agreed by the parties, that:

1. The Forest Service approves non-use, as specified below, up to 5 consecutive years for the purpose of providing the Grazing Permittee the opportunity to build back a herd depleted by _____, beginning at the start of the ____ grazing season in and ending at the close of the ____ grazing season. The level and amount of time of non-use may be reduced through the 5 year period, depending on how quickly the permittee rebuilds the depleted herd.

| PERMIT | | | | NON-USE APPROVED | | | |
|--------|------|-------|---------------|------------------|------|-------|---------------|
| Number | Kind | Class | Period of Use | Number | Kind | Class | Period of Use |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

2. The permittee will graze a minimum number of livestock, as specified below, in accordance with a management plan prescribed by the Forest Service.

| Authorized Use | | | |
|----------------|------|-------|---------------|
| Number | Kind | Class | Period of Use |
| | | | |
| | | | |
| | | | |

3. The Forest Service, in cooperation with the permittee, or his/her representative, will determine if the permittee is making sufficient progress toward full permit numbers. If it is evident that insufficient progress is being made towards full permit numbers, by the ____ grazing season, the permit will be reduced. If sufficient progress is being made, but the permittee is not at full permit numbers by the ____ grazing season, this agreement can be extended ____ years, not to exceed the ____ grazing season.
4. This agreement shall become effective as soon as signed by both parties and shall continue in force until _____, unless terminated sooner by both parties.

Authorized Officer

Permittee

Date

Date

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Term grazing permits in non-use for resource protection may be waived for full numbers based on the sale of base property based on standard procedures specified in sections 18.2 and 18.4.

Approval of resource protection non-use will preclude a waiver based on sale of livestock for full numbers if full permitted livestock numbers are not currently on the allotment (if the waiver takes place during the permitted grazing season) or were not run on the allotment the previous grazing season per the established resource protection non-use. Additionally, requirements for resource protection non-use may preclude the option of placing livestock on the allotment for all or part of the grazing season in order to establish a basis for a waiver based on the sale of permitted livestock. Permittees desiring to waive permits which have established resource protection non-use direction should meet with the authorized officer to determine if a waiver based on the sale of livestock can be an option by stocking for a short period of time.

A Non-use Agreement for Resource Protection provides the only exception to the requirements of permit validation (see section 15.2). Validation will be postponed or staged in incrementally over time consistent with the required resource protection non-use. See section 15.21.

If permitted livestock are once again placed on the allotment, livestock purchased and subsequently sold back to the original owner, or to an agent, assignee, or anyone representing or acting in concert with the original owner, within a 24-month period will not be considered a bona fide transaction or valid ownership of the livestock (see sections 12.22 and 18.4 as well as Term Permit Part 2(7a)).

17.22 - Non-use for Resource Protection during Landscape-Scale Vegetative Treatments and Rangeland Developments to Increase Grazing Capacity

There are many areas of the National Forest System where desired vegetative conditions cannot be met due to severe disturbance (catastrophic wildfires) or due to lack of disturbance (no longer able to be grazed to needed levels). Total permitted livestock use has declined by almost 50 percent since the 1960s. There are numerous cases where livestock grazing needs to be reinstated at increased levels across large landscapes to improve vegetative composition and seral stage to meet the needs of numerous resource programs and values.

There are also numerous cases where other resource uses and values – unmanaged recreational pursuits, exurban developments, loss of open space, restricted public access, and reluctance of private landowners to meet State laws regarding fence maintenance – are restricting or preventing the agency's ability to manage for desired vegetative conditions and/or prevention of an increased frequency of catastrophic wildfires.

Some management treatments and rangeland developments – increased use of prescribed fire, control of invasive or non-native species, seeding, meadow enhancement, occasional soil disturbance, or new or replaced fences and/or water developments in vacant allotments – may

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require some amount of short-term livestock non-use while the vegetative treatments are implemented and the improved vegetative conditions are achieved.

A decision to implement resource protection non-use under these circumstances will be made in writing to the affected permittee(s), or a new applicant, through a Non-Use Agreement for Resource Protection (Form FS-2200-26).

The form shall:

1. Explain the rationale and need for the non-use. Discuss what desired resource conditions are not being met at the current time and what treatments are needed.
2. Specify the period of non-use (not to exceed the term of the current permit, if applicable).
3. Describe the objectives to be accomplished by the non-use trial period.
4. Identify any vegetative treatments and any range improvement construction, including any required NEPA, which must be completed to help achieve the objectives of the non-use.
5. Include monitoring requirements and timeframes in order to determine whether the non-use has been effective in accomplishing its objectives. If monitoring indicates that objectives have been met, the timeline could be reduced or the non-use agreement can be terminated.

The existing term permit can now be modified to increase numbers and/or seasons needed, or a new permit issued, to achieve and maintain desired vegetative conditions.

17.23 - Non-use for Resource Protection Designed to Achieve a Changed Resource Condition through Trial Reductions of Forage Use

Occasionally, changing or continuing resource conditions on the allotment may indicate that a change in livestock use levels is needed. The authorized officer may require a trial period of reduced numbers or different seasons to attempt to bring about an improvement or change in vegetative conditions. The permittee may or may not be in agreement with the proposed changes; sometimes the permittee is the one suggesting the proposed trial period in order to determine if the changes in numbers or seasons can bring about the desired results.

A decision to implement resource protection non-use under these circumstances will be made in writing to the affected permittee(s) through a Non-Use Agreement for Resource Protection (Form FS-2200-26).

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The form shall:

1. Explain the rationale and need for the non-use. Discuss what desired resource conditions are not being met at the current time.
2. Specify the period of non-use (not to exceed the term of the current permit).
3. Describe the objectives to be accomplished by the non-use trial period.
4. Identify any range improvement construction or vegetative treatments, and any required NEPA, that must be completed to help achieve the objectives of the non-use.
5. Include monitoring requirements and timeframes in order to determine whether the non-use is effective in accomplishing its objectives. If monitoring indicates that objectives have been met, the timeline could be reduced or the non-use agreement can be terminated.

Non-use periods may be extended if the authorized officer determines that recovery or other non-use objectives have not yet been achieved and further protection or improvement of rangeland resources is necessary.

The benefits of using this form for resource protection non-use is that the term grazing permit remains in effect during the trial period of non-use agreed to; no permit modification is needed. If at the end of the trial period(s) the desired resource improvement has been achieved the term grazing permit can again be stocked in full.

However, if monitoring over the term of the trial period(s) indicates that long-term adjustments are necessary and periodic resource protection non-use is not achieving desired resource conditions, then the permit will be modified to reflect the needed changes in numbers and/or seasons. The decision to modify the term permit is appealable under 36 CFR part 214. If an escrow waiver is in effect the lender must be notified in writing of the modification to the term grazing permit.

If the permittee elects to waive the permit during the trial period, the established resource protection non-use will be made a part of the permit issued to a new applicant following the waiver unless the objectives of the non-use have been achieved.

17.3 - Non-use for Rangeland Research

This section applies only to bona fide research institutions such as universities and Federal and State agencies which are typically involved in rangeland research. It does not apply to individuals or permittees for trial application of rangeland management practices, and rarely for private research entities.

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Occasionally, a research institution may desire to use an allotment, or portion of an allotment, as a study area and graze it with livestock not owned by the permittee. This should be done with the concurrence of the permittee, under written agreement or memorandum of understanding between the Forest Service, the permittee, and the research institution, following guidelines established by the appropriate authorized officer.

Term permits in non-use for research purposes may be waived in full based on the sale of base property. They can only be waived based on the sale of permitted livestock once the research project has ended and owned livestock have been placed back onto the allotment to qualify as permitted livestock.

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

18.1 - Forest Service Notifications Associated With Sale of Permitted Livestock, Base Property, or Both

The permittee should notify the Forest Service when they intend to waive the permit based on the sale of base property and/or permitted livestock prior to execution of the sale. Failure to do this may result in the waiver action not meeting Forest Service procedural requirements and in the preferred applicant not understanding and consequently not meeting qualification requirements. It may also result in delayed issuance of the permit to the preferred applicant and may not allow for normal allotment on-dates.

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 application for term grazing permit from 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.

The authorized officer should also notify both the seller and the buyer that the Forest Service does not recognize the purported sale of a grazing permit (section 18.3).

As part of this discussion, the authorized officer should advise the seller and the buyer about the current condition of rangeland resources and anticipated changes to the grazing capacity or management systems, if any, 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:

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

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2. Changes that allotment monitoring indicate are or may be necessary.
3. Applicable direction in LMPs, allotment-level decisions, and AMPs.
4. Any existing non-use agreement for resource protection.
5. Limitations affecting waivers based on the sale of livestock related to personal convenience non-use, resource protection non-use, permit suspensions, pending resource conflict resolutions, or land exchanges.
6. Other changes that may become necessary as the result of changes in law, regulation, LMPs, AMPs, NEPA analysis and decisions, ESA consultation, or other similar and legally binding requirements.

In cases of a sale that was consummated before the authorized officer received notification, the authorized officer shall provide the purchaser with the above information before confirming the waiver and preparing to issue a new term permit.

18.2 - Transactions without Permit Waiver

A buyer who purchases base property or permitted livestock from a term permit holder without a waiver executed in favor of the buyer shall receive no special consideration over other applicants.

18.3 - Transactions with Permit Waiver

The term grazing permit is always waived back to the United States by the permittee (seller) with preference to the buyer for applying for the waived term grazing permit. If all conditions are met, the authorized officer issues a new permit to the qualified preferred applicant (buyer).

Any time the name of the entity holding the term grazing permit changes, a waiver of term grazing permit (FS-2200-12) must be completed. This requirement not only applies between unrelated buyer and seller but also when an entity adds a new individual or member and also within families involved in estate planning (for example when Mom and Dad add a son to the operation, or when Mom and Dad change from individuals to an entity such as a partnership or LLC). If the name of the entity stays the same, but membership in the entity changes, only a replacement form FS-2200-25 may be needed.

Subject to eligibility and qualification requirements (and upper and lower limit restrictions, where applicable (section 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 qualified applicant.

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18.31 - Sales

The most common type of transaction typically involves a contract reflecting a transaction between a seller and a buyer under which the former transfers title to the base property, permitted livestock, or both, to the latter, based upon the latter's payment of money and/or other good and valuable consideration either as a one-time payment (resulting in a warranty deed) or by installment payments (resulting in a contract for deed).

Quit claim deeds are often submitted as a basis or as one document as a basis for permit waivers. A quit claim deed may not warrant ownership as they only release whatever interests the drafter actually holds. It does not give clear title or warrant that no other entity holds any ownership in, or encumbrances on, the property. Where accepted, they should be verified by a title company or attorney for legality prior to agency use as the basis of issuance for a new term grazing permit. Their use can vary by State statute. Generally, quit claim deeds should not be accepted as the basis for a permit waiver. If used, the authorized officer should require a notarized statement from the seller stating that no other individual or entity holds any ownership interest in the property being sold. See the full discussion of quit claim deeds in section 12b.

18.32 - Contracts to Purchase with Waiver

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 (i.e., the seller cannot retain ownership until all payments are made; "rent-to-own provisions" are not allowed).

The contract should spell out the payment terms and will normally result in a contract for deed on the land and include a change of ownership of the livestock validated by a brand inspection. The contract must be recorded with the appropriate county. A cancelled check should be submitted to verify partial payment (at least) has been made for the livestock and/or base property prior to the issuance of a new term grazing permit. The seller should consider holding an escrow waiver to guarantee full payment of the loan (see section 18.7 below).

18.33 - Transactions or Transfers within Family

Children or grandchildren (adults or minors, section 12.1) who purchase or otherwise acquire base property or permitted livestock from their parents or grandparents who are permittees may be issued a permit. The term grazing permit holder may waive the entire permit to his or her children in order to encourage continuation of family operations (see section 12.22 if children or grandchildren have been previously running any of their livestock under the parents'/grandparents' permit). The child/grandchild must then meet the requirements to hold a term grazing permit.

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Quit claim deeds are often submitted as the basis or as one document of proof for permit waivers within a family. See the discussion in “Sales” above regarding cautions for accepting quit claim deeds. They can vary by State statute and should be verified by a title company or attorney for legality prior to agency use as the basis of issuance for a new term grazing permit.

If the permit holder wishes to bring other family members such as nieces or nephews into the livestock operation, they should pursue other options such as creating other legal entities to involve those family members (see section 12).

18.34 - Inheritance

Term grazing permits may be issued to parties who inherit base property and/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.

In the event the will, estate settlement agreement, or probate provides for different owners of the base property and permitted livestock, the term grazing permit is considered to follow the base property unless otherwise specified or agreed to by the parties. See section 13.1.

Strict compliance with the qualification requirements may not be appropriate during settlement of an estate. The 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 or why a longer time period is required.

Waivers associated with estate settlements should be reviewed or coordinated through the regional rangeland program leader. These may require OGC review to ensure they are implemented consistently with State legal requirements.

18.35 - Divorce

Normally in the case of a divorce all assets and management aspects regarding the permit are suspended in time. The status of the permit and the management of the allotment(s) will remain as is pending the issuance of the divorce decree.

The two parties will both need to sign a waiver in compliance with the terms of the decree. See section 13.1.

Waivers associated with divorce decree may need to be reviewed or coordinated through the regional rangeland program leader and/or OGC.

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18.36 - Corporation, Partnership, or Other Legal Entity Formation

Permittees may enter into partnership agreements or establish corporations or other legal entities among themselves or with other legal entities/individuals who are not currently permittees. In either case, arrangements which result in a change in the entity holding the permit will require the waiver of the permit to the Forest Service and the issuance of a new permit 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, and nearly always between direct family members, two separate entities, comprised of the same individuals, are formed – one to own the base property and one to own the livestock. While the individuals comprising each entity must be the same, their ownership percentages in the two entities may be different. In such cases, issue the permit in the name of the entity owning the land.

Another single exception to the land and livestock being owned in identical names can be where livestock commissions and public sale yards require all individuals named on the brand registration to be present for signature(s) when livestock are sold at public auction. In order to have only one of the individuals be present at the sale yard, some permittees choose to separate all persons named on the brand registration certificate with the word “or” instead of “and.”

In such cases, it may be necessary to allow the land ownership documents (and the names on the permit) to be separated by the word “and” while the names on the brand registration are separated by the word “or.” See a detailed discussion of this in section *12.3 Livestock Branding*, and possible ways to resolve the situation for both parties – based on the State statutes involved.

See section 12.21(a) concerning base property on which a conservation easement has been executed. If the easement specifies that later subdivision, or division, of the base ranch cannot occur, there may be cases where more than one child or grandchild may qualify to hold a term grazing permit but the livestock of both (or all) children or grandchildren have to utilize the same declared base property. In such cases, there may be more than two entities involved. There may also be several different ways to issue more than one term permit using the same base property.

Formation and documentation of partnerships, corporations, and other legal entities must be in accordance with applicable State laws and regulations. There is considerable variation between the States regarding these requirements.

For example, some States may require that a member of a Limited Liability Company (LLC) must own at least 1 percent of that entity. In other States, a member of a Family Limited Partnership (FLP) may be allowed to own as little as 1/10th of a percent but, as a limited

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member, may not be allowed to vote in business decisions, participate in annual profits or losses (with no resultant income tax forms), and be unable to inherit base property or other capital.

The latter case might apply to children of the permit holder who have long since moved away and have no involvement in the ranch except for their family background. The brand registration and livestock ownership would be in the name of the Family Limited Partnership (FLP), but as limited partners they would not hold or complicate livestock ownership interest.

Some States authorize use of Close LLCs, with very specific requirements of family ownership.

It is legal, and not unusual, that one entity such as an LLC or a trust may be a member of a different or parent corporation, partnership, or LLC.

It is highly recommended that employees consult their forest and regional range staff personnel regarding status of legal documents presented to them, who may in turn consult OGC attorneys as well before confirming the waiver and issuing a new term grazing permit.

18.37 - Corporation, Partnership, or Other Legal Entity 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 entity, or in accordance with the terms of the dissolution agreement. However, each former partner or shareholder seeking a permit must submit an application and demonstrate that they meet the requisite eligibility and qualification requirements for term grazing permits. Normally, the term grazing permit is considered to follow the ownership of the base property unless otherwise specified in the dissolution agreement. If one partner or shareholder accepted a cash buyout as the share of the dissolution, rather than ownership of land or livestock, that member would only be entitled to apply for a new permit if the dissolution decree so stated.

If the dissolution document proposes to result in numerous permittees on community allotments, which may not be in the best interest of the Government or resource, additional discussions with the parties may need to take place to attempt to simplify or consolidate the number of permits.

If the regional forester or forest/grassland supervisor has established lower limits, the dissolution of the entity must conform to those requirements.

These situations may be very complicated and may need assistance and review through the regional rangeland management program leader and OGC.

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18.38 - 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 percentage or number of shares owned by the shareholders, waiver of the existing permit is unnecessary as there is no change in the actual permittee (entity). However, an updated Ownership Statement of Corporation, Partnership, or Other Legal Entity form, FS-2200-25, is then required.

Waiver would be appropriate only when the corporation, partnership, or other legal entity merges with or is acquired by a separate entity and thereby loses its identity.

18.39 - 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 – without preference or “in favor” of any other entity.

In such cases, the Waiver of Term Grazing Permit (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” or state “waived back to the United States without preference.” If there is an escrow waiver on file, the former permittee needs to secure the release of the escrow waiver for the authorized officer.

The waived amount of permitted use, either on an individual or community allotment, then becomes available for allocation through the grant process. Following that process, the capacity may or may not be allocated to another qualified permittee. A vacant allotment could also be maintained as a forage reserve and 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 analysis and resultant decision that is current for the active allotment, unless there is a compelling reason to maintain it as a vacant allotment or pasture.

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

When you see a real estate listing or newspaper/magazine advertisement or receive a call from a real estate agent or other interested party listing a ranch for sale and declaring that it has a grazing permit attached to it, contact the selling and listing parties. Inform them of the legal status and requirements of the grazing permit privileges and that there can be no declaration or assumption of transfer, assignment, or sale of a grazing permit; ask them to withdraw and correct the improper document.

If you receive a contract for deed or other document that purports to assign or transfer a grazing permit from the seller of base property and/or permitted livestock to the purchaser, the

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authorized officer should notify the seller, the 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.”

Since such wording has no legal consequence to the Government, we cannot accept such a document. Inform both parties as to the legal status and require that the document must be withdrawn and written properly prior to consideration for use as a legal document as the basis for a waiver of a term grazing permit.

If a contract for deed or other legal document states that the sale is “contingent upon” the issuance of the term grazing permit, that document cannot be accepted as written. Contingent means that if the buyer is found to not be eligible or qualified to hold a term grazing permit, the transaction will no longer be valid.

A new term grazing permit cannot be issued without a confirmed waiver of term grazing permit to accompany it. The only exception to this requirement is if the permit was previously waived back to the Government without preference (see section 18.39 above).

18.5 - 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, to meet State requirements wherever appropriate, with canceled check or receipt (e.g. conclusive proof of a monetary transfer) to document sale of permitted livestock.
4. Copy of State-required brand inspections for sale of livestock.
5. Properly executed and recorded deeds or contract to purchase must be provided for waivers based upon sale of base property.

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6. Any additional documents deemed necessary by the authorized officer to provide acceptable evidence of a legal transaction.

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, but the permit or other documents may require correction.

When an applicant for a term grazing permit furnishes the required information that is later determined to be fraudulent, the permit will be cancelled in whole. See section 16.4 as well as term grazing permit Part 1(3).

Base property and/or livestock purchased and subsequently sold back to the original owner, or to an agent, assignee, or anyone representing or acting in concert with the original owner, within a 24-month period before, during, or after the waiver will not be considered a bona fide transaction (see section 12 as well as Term Permit Part 2(7a)).

18.6 - Waivers When the Permit is in Full or Partial Non-use

Term grazing permits in non-use for personal convenience can be waived based on the sale of base property or by restocking the allotment to full permitted numbers. See section 17.1 for other possible requirements or limitations.

Term grazing permits in non-use for resource protection may also be waived for full numbers based on the sale of base property but will have similar requirements or limitations for waivers based on sale of permitted livestock. See section 17.2

Term grazing permits in non-use for research purposes may be waived in full based on the sale of base property. They can only be waived based on the sale of permitted livestock once the research project has ended and the owned livestock have been placed back onto the allotment to qualify as permitted livestock. See section 17.3.

18.7 - Escrow Waivers

The Escrow Waiver of Term Grazing Permit Privileges (FS-2200-13) is completed only upon the request of the permittee where it is required of him by the lending institution in recognition of a loan made by the lender to the permit holder. The escrow waiver establishes preferred applicant status of the lender in the event of foreclosure. It 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/her loan obligations with the lender and the lender's release of the escrow waiver.

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The escrow waiver documents a loan arrangement between a lender (mortgagee) and the permit holder (mortgagor). Previous permittees may act as a lender and as such are treated the same as any other lending institution provided they have executed an escrow waiver.

Any lender may require execution of an escrow waiver in their loan agreements; however, a request for execution of an escrow waiver must come through the permittee. If a lender makes a request to the authorized officer for execution of an escrow waiver, they will be directed to work through the permittee because use of the escrow waiver is solely for the benefit of the lender, not the Forest Service. Both parties must sign the escrow waiver prior to submission to the authorized officer.

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. 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 that the loan has been satisfied and 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.

Original escrow waiver forms (both active and released) must be retained in the official permit files.

One function of an escrow waiver is to alert the authorized officer that they shall notify the lending institution in the event that any action to cancel or suspend or modify a term grazing permit in whole or in part is proposed or undertaken. However, it is not necessary for the authorized officer to defer taking permit action or making a modification reducing numbers or season because a term grazing permit is held in escrow.

The permittee has the primary responsibility to notify the lender of changes in their grazing permit relative to the requirements of their loan agreement.

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. Escrow waivers are applied to specific allotments. Permits listing more than one allotment may have escrow waivers associated with each allotment. See sections 11.3 and 15.

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. That MOU has been canceled. A new MOU was executed in December, 1990 by the Farm Credit Banks (whose Farm Credit loans have been absorbed and administered by the

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Farm Service Agency (FSA) since 1995) and the Forest Service. This MOU clarified the Forest Service's ability to take action on violations of grazing permit terms and conditions held in escrow.

The 1990 MOU updated terminology used in the 1938 agreement, including reference to Farm Credit Banks. 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 Federal Government. See Exhibit 01.

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18.7 - Exhibit 01

Memorandum of Understanding with Farm Credit Banks

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

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 therefor 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.
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

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18.7 - Exhibit 01 - Continued

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.

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.

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

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effect until the mortgage is satisfied or the Lender formally indicates that it no longer relies upon the escrow arrangement.

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 & (Title)
General Counsel

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)

FARM CREDIT BANK OF TEXAS

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

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18.7 - Exhibit 01 - Continued

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)

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18.8 - Foreclosure in Connection With Term Grazing Permit

18.81 - Foreclosure with Waiver of Term Grazing Permit

A mortgagee (lender) at a forced sale, who presents the authorized officer with a duly executed Waiver of Term Grazing Permit on Form FS-2200-12, shall have preferred 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 term grazing permit.

This one year grace period applies both to financial institutions as well as to previous permittees with signed and approved escrow waivers. See section 18.7 above and 18.84 below.

18.82 - Foreclosure with Escrow Waiver

Escrow waivers conform to the procedures described in the MOU between the Forest Service and the Farm Credit Banks dated December 21, 1990 (whose Farm Credit loans have been absorbed and administered by the Farm Service Agency (FSA) since 1995). See 18.7 Exhibit 01 above. These procedures apply to all foreclosures (including a Sheriff's sale, Special Master's sale, etc.; see section 13.1) with an escrow waiver regardless of whether the Farm Service Agency is the lending institution or some other entity. The word privilege as used in the MOU has the same meaning as term grazing permit. Use Form FS-2200-13, Escrow Waiver of Term Grazing Permit Privileges.

18.83 - Foreclosure by Any Lending Institution or Individual without Escrow Waiver

A lending institution or an entity that acquires livestock or base property through foreclosure proceedings, but without an escrow waiver, shall receive no special consideration over an ordinary purchaser.

It is the responsibility of the seller (the former permittee) to request an escrow waiver if they are using the land and/or livestock as collateral and/or carrying the financial note or loan for the buyer (the new permittee). See 18.84 below. A completed escrow waiver is required in order for the seller to receive priority for re-issuance of the grazing permit back to the seller in the event of a foreclosure.

18.84 - Repossession by Previous Permit Holder

Repossession by the previous owner through legal foreclosure is not considered a sale. Consequently, the 24-month 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 not

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applicable if the repossession is determined to be valid by the authorized officer (sec. 12.21, 12.22, and 18.4d).

Once foreclosure forces the previous permittee (the seller) to become the permit holder again, they are then able to waive the permit through sale of base property to another entity. If they have not found a new buyer within the first year, the previous owner will need to purchase livestock, be issued a new permit, and stock the allotment to validate the permit, while continuing efforts to find a new buyer.

18.85 - Redemption

Redemption is a process under State law that allows an individual to recover property that has been foreclosed upon and subsequently sold or reverted back to the previous owner. Generally, a party that was foreclosed upon may redeem the property by paying into the court the amount that was due and owed at the time of the foreclosure. If this is done within the timeframe prescribed by the various State laws, 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 (for example, 12-13 month redemption period) and therefore it is recommended that the authorized officer consult with the regional range management specialist or an attorney in the local OGC to become more familiar with the specific requirements in a particular State.

18.9 - Bankruptcy

If unable to pay their debts, a term permit holder may file a petition with the United States Bankruptcy Court under one of the chapters of the Bankruptcy Code (see section 18.93 below) to gain relief from the collection of these debts.

Filing bankruptcy results in an automatic stay, and violation of the stay may be treated as contempt of court by the bankruptcy court. Normal communications with the permittee are no longer possible or appropriate. Use caution and ensure you are communicating with the individual appointed by the court.

Very few employees will ever be required to deal with bankruptcy proceedings. However, if one occurs, these cases are very complicated and the following direction should be followed very closely.

When the authorized officer learns of the possibility of bankruptcy by a term grazing permit holder, the following actions should be taken:

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1. Confirm, with the permittee and/or the Clerk of the Bankruptcy Court, that a bankruptcy proceeding has been filed. Immediately cease all collection activities, including any demand letters for payment of fees, until directed otherwise by OGC.
2. If a bankruptcy petition has been formally filed with the Bankruptcy Court, determine the amount of any outstanding debts owed to the Forest Service by the permittee at the time of the bankruptcy filing and, if directed by OGC, prepare a proof of claim for filing with the Bankruptcy Court.
3. Notify the forest and regional rangeland programs leaders and OGC of the bankruptcy filing and provide a copy of the bankruptcy petition or other notice of bankruptcy, or request confirmation from OGC to determine if a bankruptcy case has been initiated.

18.91 - OGC Procedures for Bankruptcy Proceedings

Bankruptcy is a highly specialized field and specific questions should be directed to the appropriate attorneys in OGC.

1. OGC initiates 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.
2. OGC provides counsel and direction for management of the permit and interactions with the Bankruptcy Court during bankruptcy proceedings.
3. OGC or the Forest Service should obtain the following information from the Clerk of the Bankruptcy Court:
 - a. The date bankruptcy was filed.
 - b. A copy of the petition and, if applicable, the deadline for filing proofs of claim.
 - c. The chapter the bankruptcy was filed under.
 - d. The name and address of the trustee in bankruptcy or debtor-in-possession.
 - e. Whether the term grazing permit(s) is listed as one of the assets of the debtor's estate.
 - f. Whether outstanding grazing fees are listed as a debt and in what amount.
 - g. A copy of any proposed re-organization plan, if applicable.

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4. OGC or the authorized officer should determine if the debtor-in-possession or the trustee will 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 Bankruptcy Court should be notified 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.

When a permittee files a petition for bankruptcy, the Bankruptcy Court appoints 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, representing 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.
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 the stay order.
4. In some bankruptcies, the debtor may file a plan of re-organization which may propose to reduce or affirm certain debts, may propose to assume or release a grazing permit, and may propose other future actions on the part of the debtor as part of the re-organization that may involve or rely on future actions by the Forest Service. As directed by OGC, staff may be asked to review any proposed re-organization plan to determine

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legality or feasibility and, if necessary, provide objections to the proposed plan before the bankruptcy court takes action to approve or reject the plan.

If a bankruptcy results in an approved plan of reorganization that contains provisions relating to the term grazing permit, permit fees, or future actions of the permittee in relation to their grazing activities, a copy of the approved plan of reorganization should be requested from OGC and should be maintained in the 2230 permit file for future reference.

18.92 - Status of the Permit During Bankruptcy Proceedings

It should be understood that the Forest Service's responsibility to administer livestock grazing activities on NFS 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.

The term grazing permit does not automatically become 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, and the case is closed by the bankruptcy court, neither the estate nor the debtor has any remaining privileges under the permit, and it reverts back to the Forest Service.

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 they are 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. This may require that additional informal discussions between local Forest Service employees and the Trustee are completed to ensure these differences are clear. Failing to do so could result in official OGC documents with the court to reverse or vacate illegal actions or proposals concerning the term grazing permit when said actions were erroneous regarding the fact that grazing permits are privileges and not rights/contracts.

All correspondence concerning the term grazing permit and the actions required to maintain the permit in good standing should be addressed to the trustee or the debtor-in-possession. The name and address of trustee or the debtor-in-possession can be obtained from the Clerk of the Bankruptcy Court.

When a bankruptcy case is filed, the United States is represented by the United States (U.S.) Attorney who is located and practices in the State where the bankruptcy case is filed. That U.S. Attorney serves to represent the United States throughout the court proceedings and related

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actions in Bankruptcy Court. All actions involving the Bankruptcy Court must be coordinated with the regional range management specialist, who works with OGC. To ensure all parties remain coordinated, OGC also works with the U.S. Attorney to ensure the interests of the United States are protected.

18.93 - Types of Bankruptcy Filings

Bankruptcy filings are made under various chapters of the bankruptcy code (Title 11 of the U.S.C.). Specifically, those chapters are:

1. Chapter 7 (11 U.S.C. §§701-784). 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(11 U.S.C. §§1101- 1195). 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 NFS lands. Communications with the Clerk of the Bankruptcy Court will determine whom the authorized officer should be dealing with in regard to grazing of livestock on NFS lands.
3. Chapter 12 (11 U.S.C. §§1201- 1232). 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/rancher 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 (11 U.S.C. §§1301 - 1330). 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, communications with the Clerk of the Bankruptcy Court will determine what authority the debtor-in-possession has to deal with the Forest Service.