

# Chapter 80 - Grazing Fees

<b>Type of Directive:</b>	Handbook
<b>Amendment / Supplement / Interim:</b>	2209.13-2023-1
<b>Approved By:</b>	Christopher French, Deputy Chief, NFS
<b>Date Approved:</b>	2023-02-28
<b>Effective Date:</b>	2023-03-06

## Digest

**Explanation of changes:** Following is an explanation of the changes throughout the directive by section.

**Section 81.1** - Defines “other lands under Forest Service control” and gives examples of where this situation might result in assessing a grazing fee for use on those lands.

**Section 81.2** - Clarifies when offspring reach the age of maturity and must be charged the grazing fee for occupancy. Eliminates Exhibit 02 showing calculations for grazing seasons less than one month in length; the computation example used was incorrect. One example fits all seasons.

**Section 81.3** - Removes the old requirement for the existing all-electronic billing system, to issue grazing bills 30-35 days in advance of the allotment on-date and changes it to require that all bills are issued no less than 40 days, and no more than 60 days, prior to the allotment on-date. Updates the methods of payment currently allowed and available to permittees. Eliminates installment billings (split bills) for all permits except for Grazing Associations on National Grasslands and for National Forests with year-round permits. Clarifies the procedures for issuing installment billings to Grazing Associations.

**Section 81.5** - Adds clarifying direction on the limited use of refunds and credits.

**Section 81.51** - Establishes code, caption, and sets forth direction for “Requests for Refunds Based on Waiver During Grazing Season.”

**Section 81.71** - Communicates updated fee charged for excess and unauthorized use on all National Forests and National Grasslands in the 16 Western States, as well as on the National Grasslands in Texas. Communicates the updated fee charged for excess and unauthorized use on all National Forests and Land Utilization Projects in the Eastern Regions (R-8 and R-9).

**Section 83.2** - Provides an expanded discussion of how grazing fee receipts are collected, deposited, and managed in the U.S. Treasury account and returned as Range Betterment Funds to carry out range improvement work on National Forests in the Western Regions.

**Section 84.3** - Establishes code, caption, and sets forth direction for “Fee Credit Criteria.”

**Section 84.4** - Establishes code, caption, and sets forth direction for “Fee Credit Carried Forward for Approved Conservation Practices,” contained in the 2017 Consolidated Appropriations Act and subsequent appropriations acts to support the completion of large or expensive approved conservation practices in future years.

**Section 85** - Incorporates additional language from Region 8 and Region 9 supplements regarding noncompetitive fair market bid procedures and competitive bid procedures.

**Section 86** - Provides examples of limited situations where grazing permits may be issued free of charge.

## **Table of Contents**

81 - Grazing Fees

81.1 - Payment of Grazing Fees

81.2 - Unit of Charge

81.21 - Animal Equivalency Ratio

81.22 - Lambing, Calving, Kidding, Foaling

81.23 - Livestock without Offspring

- 81.24 - Grazing Fee Year
- 81.3 - Bills for Collection
  - 81.4 - Unpaid Bill for Collection
    - 81.41 - Fee for Grazing When Bill for Collection is Unpaid
    - 81.42 - Interest Charges, Penalties, and Permit Action for Failure to Pay Bill for Collection
    - 81.43 - Administrative Costs
  - 81.5 - Refunds and Credits
    - 81.51 - Requests for Refunds Based on Waiver During the Grazing Season
- 81.6 - Billing for Temporary or Annual Changes in Number, Kind or Class of Livestock, or Areas Grazed
- 81.7 - Excess Livestock Use
  - 81.71 - Billing for Excess Livestock Use and Related Permit Actions
- 81.8 - Unauthorized Livestock Use
  - 81.81 - Billing for Unauthorized Livestock Use and Related Administrative Actions
  - 81.82 - Impoundment and Disposal of Unauthorized Livestock
- 81.9 - Local Agreements with the Bureau of Land Management and Other Lands under Forest Service Control
- 82 - Grazing Fee Systems
  - 82.1 - Annual Grazing Fees
- 83 - Grazing Fees for National Forests and Land Utilization Projects in the Sixteen Contiguous Western States
  - 83.1 - Grazing Fee Formula
  - 83.2 - Use of Grazing Fee Receipts for Rangeland Improvements under the Range Betterment Fund (RBF)
  - 83.3 - Use of Appropriated Monies as Supplemental Funding for Rangeland Improvements
- 84 - Grazing Fees for National Grasslands
  - 84.1 - Grazing Fee Formula
  - 84.2 - Fee Reductions for Authorized Land Use Practice Expenditures
    - 84.21 - Administrative Costs and Conservation Practices
    - 84.22 - Conservation Practice Approval Criteria
    - 84.23 - Fee Reduction Criteria
  - 84.3 - Fee Credit Criteria
  - 84.4 - Fee Credit Carried Forward for Approved Conservation Practices
- 85 - Grazing Fees for National Forests in Regions 8 and 9 except for Oklahoma or the National Grasslands in Texas
  - 85.1 - Noncompetitive, Fair Market Value Grazing Fee

- 85.11 - Noncompetitive Grazing Fee Formula
- 85.2 - Competitive Bid Grazing Fee
  - 85.21 - Fee Computation, Applying Grazing Adjustment Factor
  - 85.22 - Competitive Bid Fee Procedures
  - 85.23 - Duties and Responsibilities
  - 85.24 - Competitive Bid Process - Prospectus Contents
  - 85.25 - Prospectus Distribution and Notice
  - 85.26 - Applicant Bid Package
- 85.3 - Bid Opening
  - 85.31 - Receiving Bids
  - 85.32 - Late Bids
  - 85.33 - Posting the Bid
  - 85.34 - Records
  - 85.35 - Unsuccessful Bidder Letter
  - 85.36 - Determination of Winning Bid
  - 85.37 - Priority for Issuance
  - 85.38 - Selection of Additional Bid Applicants
  - 85.39 - Appeal Rights for Non-Winning Bid Applicants
- 85.4 - Grazing Fee Credits for Required Rangeland Improvements
  - 85.41 - Rangeland Improvement Fee Credit Requirements
  - 85.42 - Determination of Fee Credit Value
  - 85.43 - Fee Credit Carry-Over
- 86 - Grazing Without Charge
  - 86.1 - No Charge for Tribal Treaty Grazing

## **81 - Grazing Fees**

### **81.1 - Payment of Grazing Fees**

Except in very limited situations where free grazing is expressly approved by the authorized officer (see sec. 86 for examples, and ch. 30 of this handbook for details regarding livestock use permits), it is the policy of the Forest Service to charge a fee for grazing of domestic livestock on National Forest System (NFS) lands or other lands under Forest Service control (see 36 CFR

222.50(a)). Virtually all use authorized by grazing permits is a charged use.

*NOTE:* All free use authorized by livestock use permits must be entered in the Rangeland Management Information System (RIMS) database. For entries where there is no charge for the permitted use, the program is designed to prevent a bill for collection being generated.

All fees for livestock grazing or livestock use of NFS lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use (see 36 CFR 222.50(g)).

Fee Credits are allowed on National Forests within Regions 8 and 9 (see sec. 85.4). When the approved fee credit amount equals the grazing fees due for any given year, a Rangeland Improvement Agreement (see sec. 85.41) must be completed and signed by the permittee and the authorized officer in advance of the opening date of the grazing period, entry, or livestock use. Other lands under Forest Service control are defined in 36 CFR 222.1(b) as “non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.” See examples in sec. 81.9, below.

### **81.2 - Unit of Charge**

Grazing fees shall be charged for each head month (HM) of grazing by adult animals, if the grazing animal is 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 (see 36 CFR 222.50(c)). The latter usually occurs on allotments with year-round permits (see below).

Since most term permittees calve or lamb in the spring, and most NFS allotments have a permitted use season of less than 6 months, calves and lambs are not charged a fee since they are less than 6 months of age upon entering the allotment.

Yearlings are those weaned animals 6 to 18 months of age and are charged at the adult or mature animal rate.

Where year-round grazing is authorized, the livestock might never leave the allotment.

Forests/grasslands already have a process to determine when during the year the offspring “becomes an adult” and will need to be charged for as a mature animal. Offices may issue a separate line on the permit for yearlings by estimating a number of calves that will become yearlings each year, based on the individual permittee’s operation; under limited circumstances offices may choose to issue a supplemental bill for collection as the calves reach the age of maturity.

Regions and/or forests may need to issue a supplement to state at what point in time the offspring reach the age to be charged as an adult. Year-round permits are nearly always confined to the 17 western States; see grazing fee formulas and processes in secs. 83 and 84.

Forests will use the corporate RIMS database to generate grazing bills. Grazing fees are automatically calculated using computations described in 81.2 – Exhibit 01.

### **81.2 - Exhibit 01: Calculation of Head Months for Which Payment Is Due**

To calculate the number of head months for which payment is due:

1. Determine the day of the year for the on-date (numbered 1 to 365),
2. Determine the day of the year for the off-date (1-365);
3. Subtract the on-date day from the off-date day;
4. Add 1 day (to include the on-date day of use); and
5. Divide this number by 30.416667 to determine the head months for which payment is due. (Note: the divisor 30.416667 is the result of dividing the number of days in a year (365) by the number of months in a year (12).)

Example: Season of use is June 6 through October 10<sup>[1]</sup>; the number of animals (head) is 125.

Off-date October 10 calendar day: 283

Minus on-date June 6 calendar day: -157

Subtotal: 126

Plus 1 day of use for on-date of June 6: + 1

127

$$127 \div 30.416667 = 4.175 \times 125 \text{ head} = 522$$
$$127 \div 30.416667 = 4.175 \times 125 \text{ head} = 522 \text{ head}$$

months

(521.875 rounded up <sup>[2]</sup>)

Multiply the total number of head months (522 in this example) by the grazing fee for that year for that type of livestock.

This fee computation works whether the season is many months long or only a portion of a month.

#### **81.21 - Animal Equivalency Ratio**

For fee purposes only, five adult sheep or goats are equivalent to one cow, bull, steer, heifer, bison, horse, or mule. The database calculates the fee to be charged on the HM basis, and the annual HM rate for sheep/goats is different than (one-fifth of) the HM rate for cattle/horses. There are additional types of livestock included in the database menu.

#### **81.22 - Lambing, Calving, Kidding, Foaling**

Additional charges shall not be assessed for lambing, calving, kidding, or foaling on NFS lands.

#### **81.23 - Livestock without Offspring**

The absence of lambs, calves, kids, or foals in a band or herd does not qualify for reductions in the grazing fee.

#### **81.24 - Grazing Fee Year**

The grazing fee year begins on the first day of March and ends on the last day of the following February.

### **81.3 - Bills for Collection**

Livestock grazing is not allowed prior to payment of grazing fees for the current grazing year. Bills for collection should be sent to the permittee at least 40 days but not more than 60 days before the authorized on-date, to assure verification of payment. Billing too early can complicate records and may increase the chance of the permittee forgetting to pay the bill on time.

Grazing fees for the Western States and the National Grasslands are released on January 31 each year. The fees for the Eastern and Southern Regions are not released until the last day of February. These dates are unlikely to change due to the calculations, processes, and timeline being controlled and issued by the National Agricultural Statistics Service (NASS). Accordingly, allotments in the Eastern Regions with March 1 on-dates and other units with year-round grazing have developed acceptable billing procedures that give the permittee a shorter period of notification and time to pay the bill for collection. In very few cases of early on-dates, the permittee is issued a bill at the previous year's rate in order to meet legal requirements. In limited cases where authorized grazing spans both grazing fee years, one bill is issued at the beginning of the winter use season, and a second bill is issued prior to the start of the new grazing fee year.

A payment may be made by check or credit card; by mail; electronically; or in person to a Collection Officer at the local Forest Service office (Point of Service-POS) with the bill for collection. Regardless of the payment method, this gives the permittee time to pay, and the authorized officer time to verify payment, prior to allotment entry.

The bill includes the total number of livestock, the kind and class of livestock, the season of use, the allotment(s) authorized for grazing, the total grazing fee, the due date for payment, and the bill number. Payments must reference the bill number to ensure that the payment is tied to the issued bill for collection.

Subject to the express written approval of the authorized officer, grazing fees may be paid in installments (split bills), but this is only allowed on National Grasslands operating with grazing agreements issued to grazing associations and sometimes on National Forest units with year-



round grazing allotments. However, because of the cost of generating bills and tracking payments, if the total grazing fee is less than \$1,000 for the year, only one bill will be issued. One exception to this requirement is for bills issued to grazing associations where split bills are used to make adjustments relative to fee reductions to accomplish conservation practices where mid-and/or end-of-year adjustments may be needed.

When split bills are allowed, each payment must be made prior to the grazing use period covered by the respective installments. Based upon when grazing begins and as stated in the Grazing Agreement and the Rules of Management, the dates of payment are most frequently shown as about April 1<sup>st</sup> and the second about August 15<sup>th</sup>.

When split bills are allowed for grazing associations, there should be two installments and then one final payment to reconcile the accounting at the end of the fee year. This accounts for any unplanned non-use and the possibility of early livestock removals, thus eliminating the need for any refunds or credits.

The first two installments should each be for 40% of the total estimated fee, and then the final bill at the end of the fee year will be for the amount to bring the fee credit to zero.

#### **81.4 - Unpaid Bill for Collection**

An unpaid bill for collection is classified as delinquent debt (see FSH 6509.11h, ch. 20, sec. 25) if the grazing fees are not paid by the due date specified. See section 81.42 for guidance on when to contact the Albuquerque Service Center's debt management team for assistance with unpaid bills. In addition, failure to pay the grazing fees on or before the authorized on-date may result in an action to suspend or cancel the permit (see sec. 16.4 of this handbook).

##### **81.41 - Fee for Grazing When Bill for Collection is Unpaid**

Any grazing that occurs before the payment of the bill for collection constitutes excess use, which shall be assessed at the excess and unauthorized use rate (see sec. 81.7). The excess use may also result in an action to suspend or cancel the permit in whole or in part (see sec. 16.4 of this handbook).

#### **81.42 - Interest Charges, Penalties, and Permit Action for Failure to Pay Bill for Collection**

The Forest Service requires payment of grazing fees in advance of use. Do not allow livestock onto the allotment until the bill is paid. Failure to pay prior to placing or allowing livestock on the allotment(s) is a permit violation and will result in suspension or cancellation of the permit, in whole or in part, unless specific circumstances indicate otherwise. If livestock have been placed on the allotment, and the bill is not paid, follow the guidelines in sec. 16.4 to address the permit violation.

The original bill must be paid in full. In addition, all grazing use that occurs until the bill has been paid will be assessed at the excess use rate. See section 81.71 for required billing procedures. If any bill is still unpaid after permit actions have been taken, turn the unpaid bill over to the Albuquerque Service Center's debt management team who may apply penalties and interest to the unpaid bill as appropriate.

#### **81.43 - Administrative Costs**

The authorized officer has the authority to assess a charge for reasonable administrative costs incurred by the Forest Service to process a delinquent debt until the bill for collection is paid. If a grazing bill remains unpaid after permit actions have been taken, the unpaid bill will be turned over to Albuquerque Service Center's debt management team. At that time, administrative costs may be assessed and added to the unpaid bill along with any penalties or interest that may be warranted.

#### **81.5 - Refunds and Credits**

Requests for refunds of grazing fees paid, or credits towards the payment of the following year's grazing fees, must be made in writing and approved by the authorized officer. If a permittee overpays a grazing bill, a refund will be issued. For administrative efficiencies only, requests for credit may be approved; if approved, the credit should be applied to the grazing fee for the next authorized grazing season.

Credits may be available in situations where the total amount of grazing by the permittee's

livestock during a grazing year was less than the amount assessed in the bill for collection. Requests for credits may only be approved when the basis for the request is related to the condition of NFS rangeland resources: for example, the forage was not ready for grazing at the beginning of the grazing season, or the utilization level was reached prior to the end of the grazing season. Credits may only be approved when the authorized officer requests or agrees, and the following situations occur because of resource conditions:

1. The permittee delays placing permitted livestock on the designated allotment(s) at the beginning of the grazing season;
2. The permittee places fewer permitted livestock on the designated allotment(s) than authorized by the permit; or
3. The permittee removes permitted livestock from the designated allotment(s) prior to the end of the permitted grazing season.

Requests for refunds or credits that are based on permittee convenience, livestock management needs, or for marketing purposes shall be denied.

#### **81.51 - Requests for Refunds Based on Waiver During the Grazing Season**

If the permittee presents a waiver based on the sale of permitted livestock during the current grazing season, and the purchaser (preferred applicant) requests issuance of a permit during the season in order to validate with the purchased livestock and avoid the need to rebrand, do not issue a refund to the former permittee. The bill was paid for the entire season, but both parties benefitted by not being required to remove and rebrand the purchased livestock. Instead, issue a new bill to the new permittee for the number of permitted livestock for the remainder of the current grazing season.

#### **81.6 - Billing for Temporary or Annual Changes in Number, Kind or Class of Livestock, or Areas Grazed**

Permittee requests to adjust numbers or season of use (early on dates or extensions) to take advantage of favorable forage conditions or meet resource management objectives must be made in writing and submitted to the authorized officer in advance of the time when the

adjustments are sought. Advance request is required to allow time for the adjusted numbers or season of use to be paid for prior to the use being made.

The allotment and/or pasture should be inspected to determine resource conditions warrant the temporary adjustment in numbers or season of use and the findings documented before recommending approval. The authorized officer may approve the temporary adjustments in a bill for collection issued at the time of the decision. All extensions to the authorized season of use must be paid prior to the use being made. See FSH 2209.13, chapter 10, sections 15.31 and 16.12 for more direction on how requests for temporary adjustments may be approved.

### **81.7 - Excess Livestock Use**

Any livestock use by a grazing permittee (including members of grazing associations permitted under a grazing agreement) that exceeds permitted/authorized numbers and any livestock grazed outside the permitted/authorized grazing season or area assigned in Part 1 of the permit constitutes excess use. When excess use occurs, refer to sections 16.3 and 16.4 for determining appropriate noncompliance actions.

See also section 81.71 below for possible permit actions and billings after determining the nature and extent of the excess use.

Examples of excess use include grazing before the permitted on-date, placing or allowing more livestock on the allotment than authorized, and not removing all permitted livestock from the allotment by the permitted/authorized off-date. The latter example is perhaps the most common.

In nearly every instance, excess use will be managed by the authorized officer and the district rangeland managers through grazing permit administration. Normally, law enforcement will not become involved in these permit administration situations unless specifically requested to provide assistance (such as in accompanying an employee to deliver a certified letter to a permittee, when there is cause to believe that risk to employees may occur).

Grazing allotments vary tremendously by elevation, topography, vegetation (including amounts

of heavy timber), ease or difficulty of access, even weather patterns. The off-date shown on the face of the grazing permit is designed to meet resource management objectives as well as livestock management logistics. The off-date is when all permitted livestock are to have been gathered and removed from the allotment. The off-date is not when the gathering starts. There is no written or unwritten grace period. If the allotment is difficult to gather, permittees should begin their efforts earlier than on an allotment where it is easier to locate the animals.

Given the varying complexities of grazing allotments and their management, it is understandable on any given year that some livestock might still be found scattered in isolated pockets of the allotment after the off-date. This is the type of consideration that can be used by the deciding official in applying the criteria in 36 CFR 222.50(h). However, if the situation occurs in future years, consider whether billing for excess use or a suspension/cancellation action against the term permit may be warranted.

Actions taken are situationally dependent. Complete follow-up investigation and documentation to determine if the criteria in 36 CFR 222.50(h) are met to constitute a waiver of excess use fees. For example, it may be that the use appears to be a result of unforeseen or uncontrollable circumstances on behalf of the permittee such as when a gate is left open by a member of the public that should have been closed. If the criteria are not met, bill for the excess use and implement non-compliance actions as appropriate (see sec. 16.4 of this handbook).

When the permittee's livestock are on NFS lands within an area not authorized by the permit, refer to the excess use policies. If the livestock are in the adjacent pasture on an allotment in which they are permitted and are within the normal permitted use season for the allotment refer to excess use policies. Similarly, if the livestock are in the adjacent pasture, but outside the permitted use season for the allotment, follow the excess use policies. Additional permit action may or may not be required, depending upon the circumstances.

If the permittee places or allows more animals on the allotment than are authorized, bill for the excess use made and permit action may be warranted. If there are repeated cases, permit suspension or cancellation action will be taken.

As in all situations involving grazing permit actions due to permittee non-compliance, all cases of excess use will be documented in writing and placed in the permittee's 2230 permit file.

#### **81.71 - Billing for Excess Livestock Use and Related Permit Actions**

##### **For Regions 1-6:**

The excess and unauthorized use rate on all NFS lands (forests and grasslands) in the 16 contiguous western States, *as well as* on the National Grasslands in Texas, is the average private grazing land lease rate (PGLLR) for the 17 States reported from the previous year which reflects the commercial value of forage in any given year. This updated method of calculation serves to deter excess and unauthorized use. The excess and unauthorized use rate is updated within RIMS annually. The excess and unauthorized use rate does not consider permittee contributions towards rangeland improvements (see 36 CFR 222.50(h)).

This information is compiled for those 17 States by January 31 of each year and is readily available for the coming grazing fee year that begins on March 1. The PGLLR is annually computed by the USDA's National Agricultural Statistics Service (NASS), and provided to the Forest Service, in order to calculate the Forage Value Index component of the grazing fee formula for the current year's grazing fee. Generate bills for excess use in the RIMS database system. Appropriate fee values are updated annually for this purpose.

##### **For Regions 8 and 9:**

The excess and unauthorized use rates for the National Forests and land utilization projects in the eastern United States (Regions 8 and 9) were originally calculated by multiplying the Base Fair Market Value for a head month (established in 1989) times the current year's Hay Price Index (HPI). HPI is calculated annually to reflect the average hay prices (dollars/ton) for the previous three years and dividing that average by hay prices for the base period (1986 to 1988). The resulting "index" measures the relative percent change in the cost of hay between the base period and the current period.

NASS computes the hay price indices, by sub-region, by February 28 of each year. These same

figures are used to calculate the current year’s grazing fee for noncompetitive permits and the minimum bid price for competitive permits.

The excess and unauthorized use rate on all NFS lands in the eastern regions (except for NFS lands in Oklahoma and the National Grasslands in Texas) is double that year’s grazing fee as calculated for each sub-region plus the offending permittee’s current annual fee (such as, the adjusted competitive bid rate). For those individuals who hold a non-competitive bid permit and in instances of unauthorized use where no permit is in place, the rate applied will be double that year’s grazing fee as calculated for each sub-region. This updated method of calculation prevents the excess and unauthorized use rate from being lower than the grazing fee and serves to deter excess and unauthorized use. The excess and unauthorized use rates are updated within RIMS annually.

The following table displays the base information used to calculate the annual grazing fees for Regions 8 and 9 (except for the National Grasslands in Texas), which then determines the excess and unauthorized use rates for that year:

Appalachia: Kentucky, North Carolina, Tennessee, Virginia, West Virginia

Corn Belt: Illinois, Indiana, Missouri, Ohio

Florida: Florida

Lake States: Michigan, Minnesota, Wisconsin

Northeast: Maine, New Hampshire, New York, Pennsylvania, Vermont

Southeast/Delta: Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, Texas

<i>Eastern Sub-regions</i>	<i>1989 Base Fair Market Grazing Value</i>	<i>1987-1989 Hay Price</i>	<i>Current 3-Year Hay Price</i>	<i>Hay Price Index</i>	<i>Current Year Grazing Fee</i>	<i>Excess and Unauthorized Use Rate Cattle</i>	<i>Excess and Unauthorized Use Rate Sheep</i>
Appalachia	\$ 4.38	\$ 64.70	N/A	N/A	N/A	N/A	N/A

<i>Eastern Sub-regions</i>	<i>1989 Base Fair Market Grazing Value</i>	<i>1987-1989 Hay Price</i>	<i>Current 3-Year Hay Price</i>	<i>Hay Price Index</i>	<i>Current Year Grazing Fee</i>	<i>Excess and Unauthorized Use Rate Cattle</i>	<i>Excess and Unauthorized Use Rate Sheep</i>
Corn Belt	\$ 8.12	\$ 67.50	N/A	N/A	N/A	N/A	N/A
Florida	\$ 2.44	\$ 67.20	N/A	N/A	N/A	N/A	N/A
Lake States	\$ 6.11	\$ 55.80	N/A	N/A	N/A	N/A	N/A
Northeast	\$ 6.27	\$ 71.80	N/A	N/A	N/A	N/A	N/A
Southeast/Delta	\$ 4.11	\$ 55.90	N/A	N/A	N/A	N/A	N/A

Where an incident of excess use occurs, and the authorized officer determines the facts in the matter, the permittee is notified immediately and informed of the time frame required by the Line Officer to correct the situation. The timeframe required should be reasonable as determined by the Line Officer based on the facts of the situation (normally not to exceed 72 hours).

A minimum of one HM of use will be charged for each day that *any* excess animals occupy the allotment. This is also true for each day in between inspections by the authorized officer or rangeland management specialist because the burden of proof is on the permittee to remove the permitted animals and prevent them from re-entering the allotment. This method of calculation will be used until all excess animals have been removed from the allotment or other NFS lands.

In addition to billing for excess use, a non-compliance action should be implemented as appropriate, following the procedures found in sections 16.3 and 16.4 of this handbook.

In cases of repeated excess use, a new bill for collection for any amount of excess use is issued immediately.

If the permittee refuses to pay the bill for excess use, additional permit action may be taken. At the very least, the permittee will not be allowed to place any livestock on the allotment(s) in the future, until the bill is paid in full.

If the permit has been cancelled in full and the permittee refuses to pay the bill for excess use, seek assistance from the Office of the General Counsel (OGC), law enforcement, and the



administrative officer, as needed.

All instances of excess use must be documented. The applicable excess and unauthorized use rate for the sub-region where the excess use occurred must be charged, regardless of intent, unless all three conditions described in 36 CFR 222.50(h) are met. All fee waivers along with rationale for why each of the conditions have been met must be documented in the Rangeland Information Management System before the excess and unauthorized use fee can be waived. An example of the information that must be recorded within the Rangeland Information Management System is shown in 81.71 - Exhibit 01.

### **81.71 - Exhibit 01: Excess and Unauthorized Use Fee Waiver Documentation**

Allotment information required:

1. Forest
2. District
3. Allotment ID
4. Allotment Name and/or NFS Land Location Description

Permittee information required:

1. Name
2. Address

Excess and Unauthorized information:

1. Date Discovered
2. Date Permittee/Non-permittee Notified

### 3. Date Livestock Removed

#### Head Month and Fee Calculations:

1. Livestock Kind
2. # of Head
3. Total HMs
4. Excess/Unauthorized Use Rate
5. Calculated Fee
6. Fee Calculated By

#### Are all the following conditions satisfied?

1. Is the excess or unauthorized use a result of unforeseen or uncontrollable circumstances on behalf of the permittee and the livestock associated with such use removed by the permittee within the timeframe required by the authorized officer?
2. Was the forage consumed by the excess or unauthorized use significant?
3. Have National Forest System lands been damaged significantly by the excess or unauthorized use?

In order for a fee to be eligible to be waived, question 1 must be Yes and questions 2 and 3 must be No. If any questions are not answered as described, the fee cannot be waived.

#### **81.8 - Unauthorized Livestock Use**

The definition of unauthorized livestock in the regulations (see 36 CFR 261.2) means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by 36 CFR 222.60(b)(13), which is not authorized by permit to be upon the land on which the livestock is located and which is not related to use authorized by a grazing permit; provided, that noncommercial pack and saddle stock used by recreationists, travelers, other Forest visitors for occasional trips, as well as livestock to be trailed over an established driveway when there is no overnight stop on Forest Service administered land, do not fall under this definition.

In short, any livestock use by someone who does not hold a grazing permit to use and occupy NFS lands constitutes unauthorized use (see FSM 2205).

The intent of managing unauthorized use is to obtain timely resolution of the situation to prevent resource impacts and to ensure proper land management. Corrective action will normally be interpreted as the removal of offending livestock in a full and timely manner, and correction of the problem that led to the unauthorized use to prevent a reoccurrence.

If the appearance of a violation occurs, and the authorized officer determines during the initial investigation livestock on NFS lands appear to be owned by a non-permittee, standard procedure is to coordinate with law enforcement personnel to conduct all additional investigations of the matter and attempt to determine the nature of the unauthorized use.

See section 81.81 below for information on billing for unauthorized livestock use and related administrative actions.

There are two pertinent sections within 36 CFR Subpart A - General Prohibitions, that deal with unauthorized use (see 36 CFR 261.7). Those sections are as follows:

The following are prohibited:

1. Placing or allowing unauthorized livestock to enter or be in the NFS or other lands under Forest Service control.
2. Not removing unauthorized livestock from the NFS or other lands under Forest Service control when requested by a forest officer.

Intent is not an element of these offenses (see 36 CFR 261.1(c)). If there is reason to believe that the livestock were placed or allowed onto NFS lands, contact the local law enforcement officer or patrol captain. The local law enforcement officer or patrol captain will contact the regional office law enforcement personnel for incident review, additional action coordination, and/or assignment to a special agent. Appropriate feedback should be provided to authorized officers to keep them informed regarding findings and any decisions pertaining to their ability to

work under the “placing or allowing” language.

Normally it will be more effective to apply 36 CFR 261.7(b) regarding a failure to remove unauthorized livestock as follows:

1. In first documented instances of unauthorized use, the appropriate action is for field personnel to document the occurrence in writing, showing number of animals, kind and class, brands or other markings, locations, dates observed, and observers. High quality photographs or video can also be beneficial.
2. The owner of the livestock can often be determined from State brand records. The livestock brand inspector may be requested to assist with identifying a brand and in determining ownership. Local private parties (permittees, adjacent landowners, and so forth) may also be contacted to assist in determining ownership. Any action taken should generally be against the legal owner of the livestock and should not normally be taken against a landowner, manager, or other party who may be peripherally involved in some manner with the unauthorized livestock.
3. When the livestock owner is identified, the authorized officer should notify them by the most expedient means (usually a telephone call). The authorized officer will provide a reasonable time frame for resolution (normally not to exceed 72 hours) and should specify exactly what will be considered to be a satisfactory resolution (normally full removal of all unauthorized livestock within the specified timeframe and correction of the problem that allowed the unauthorized use to occur). This notification should be followed up with a letter to the livestock owner clearly stating what was found, what CFR violations are involved, what actions are required to resolve the situation, by when, and what *may* be the next step if the situation is not satisfactorily resolved. A copy of this letter should be provided to the local law enforcement officer.
4. If the situation is resolved in a satisfactory manner, file the documentation, and retain for possible future use. Notify the law enforcement officer that the situation is resolved.
5. If the offending incident is not resolved in a satisfactory manner, the authorized officer should request assistance from the local law enforcement officer, either verbally or in writing, as may be appropriate for the local situation. At this point, the law enforcement staff will assume the lead in resolution of the unauthorized use situation, working within law and regulations, while continuing to interact with the authorized officer and the unit rangeland managers.

In the case of repeated violations by the same livestock owner, either within the same or recent years (not necessarily consecutive), law enforcement should be requested by the authorized

officer to take the lead on the violation. The authorized officer and rangeland managers will provide such assistance as may be requested, to include inspections, identification of animals and brands, case records, and so forth. Law enforcement personnel should ensure that as the investigation and resolution proceeds, the authorized officer remains informed.

The process used from this point forward will follow standard investigative procedures such as those listed in chapter 20 of FSH 5309.11, and appropriate sections of Regional Law Enforcement Plans.

#### **81.81 - Billing for Unauthorized Livestock Use and Related Administrative Actions**

Where an incident of unauthorized use occurs, and the authorized officer and law enforcement personnel determine the facts in the matter, the livestock owner, when known or determined, is immediately notified, and informed of the time frame required by the Line Officer to remove the livestock. The timeframe required should be reasonable as determined by the Line Officer based on the facts of the situation (normally not to exceed 72 hours).

A minimum of one HM of use will be charged for each day that *any* unauthorized animals occupy NFS lands using the excess and unauthorized use rate as described in section 81.71. This is also true for each day in between inspections by the authorized officer or Forest Service employee because the burden is on the owner to remove the unauthorized livestock and prevent them from re-entering NFS lands. This calculation will be used until all unauthorized animals have been removed from NFS lands.

Once all the animals are removed, issue a Bill for Collection to the livestock owner for the full number of head months (HMs) of unauthorized use. Charge according to the excess and unauthorized use rate in effect for that grazing year.

Records related to all cases involving unauthorized use will be maintained in separate case folders. The file should be created in the name of the legal owner of the livestock involved in unauthorized use. Ensure the name matches the livestock owner's legal name and is consistent with the name used in RIMS when a bill for collection is created and issued or when documenting

an excess and unauthorized use fee waiver. Initial documentation should include applicable forms and notes about number of animals, kind and class, brands or other markings, locations, dates observed, and photographs or video, along with geospatial information (GPS points) that document the locations and times of observations. Document all actions taken such as coordination with law enforcement personnel and correspondence with the livestock owner, witnesses, and so forth.

In instances where the situation is resolved in a satisfactory manner, place the documentation in the separate case folder established under the livestock owner's name and file under 2200 file designation to be retained for possible future use. If the situation is not resolved, the case will be turned over to law enforcement staff. Provide copies of applicable records to law enforcement staff who will then initiate their actions and record keeping procedures.

All instances of unauthorized use must be documented. The applicable excess and unauthorized use rate for the region where the excess use occurred must be charged, regardless of intent, unless all three conditions described in 36 CFR 222.50(h) are met. All fee waivers, along with rationale for why each of the conditions have been met, must be documented in the Rangeland Information Management System before the excess and unauthorized use fee can be waived. An example of the information that must be recorded within the Rangeland Information Management System is shown in 81.71 - Exhibit 01.

#### **81.82 - Impoundment and Disposal of Unauthorized Livestock**

As defined above, unauthorized livestock are those owned by someone who is not a holder of a Forest Service grazing permit.

The simplest and most desirable resolution of a case of unauthorized use is when the livestock are marked and/or branded, a check of the brand book or a call to the state brand board identifies the owner, a telephone call informs the owner of the location of the animals, and the owner removes the livestock from NFS lands as requested, takes actions necessary to prevent a recurring problem, and timely pays the bill in-full for collection for unauthorized use.

Even though many livestock owners are cooperative in resolving unauthorized use, there are examples of where unauthorized use is flagrant. The area where unauthorized use is occurring should be inspected and all use documented, and the instances should be addressed accordingly.

When the livestock are not branded or otherwise easily identified, the authorized officer notifies law enforcement personnel and requests their assistance. Checking with area permittees or following local information leads may or may not identify the owner. Contacts will be made with county sheriff's office personnel and local brand inspectors.

Impoundment of the unauthorized livestock has long been an option available to agency personnel, but the decision to proceed with this action should never be taken lightly. See FSH 2209.16, chapter 10, section 13 for more instruction on what initial actions should be taken to address unauthorized livestock and when to request Law Enforcement and Investigations staff assistance.

The regulations in 36 CFR 262.10 provide for the use of impoundment in cases of unauthorized or excess livestock use. Generally, impoundment should only be undertaken after reasonable efforts to control or remove unauthorized livestock through other means (for example, enforcement actions) have been unsuccessful, or when removal is necessary to avoid resource damage. The decision on when to initiate impoundment actions remain at the discretion of the responsible Line Officer in consultation with OGC.

When livestock impoundment and/or disposal is appropriate, the District Ranger under the direction of the Forest/Grassland Supervisor, (with approval and close coordination with the Regional Office) shall initiate actions. Close and careful coordination must occur with the law enforcement personnel who will actually implement impoundment and livestock disposal procedures (detailed procedures are found in FSH 5309.11, ch. 20). Both of these parties will work together and, with their appropriate counterparts, develop an impoundment plan. OGC may be requested to review the plan and to provide any needed counsel.

The Agency has standard forms to be used in all impoundment actions:

1. FS-2200-28 Notice of Intent to Impound Unauthorized Livestock (owner is unknown)
2. FS-2200-29 Notice of Intent to Impound Unauthorized Livestock (known owner)
3. FS-2200-30 Notice of Sale of Impounded Livestock
4. FS-2200-31 Bill of Sale of Impounded Livestock

Impoundment and disposal have specified procedures, timelines, and opportunity for owner redemption. Authorized officers, law enforcement personnel, and rangeland management specialists will inform and involve their regional office specialists in the event that an impoundment action must be undertaken.

### **81.9 - Local Agreements with the Bureau of Land Management and Other Lands under Forest Service Control**

Where allotments include lands under the jurisdiction of both the Forest Service and the Bureau of Land Management, the Agency responsible for administering grazing may collect the grazing fees using the correct accounting codes and billing units for each agency. The administering agency may deposit grazing fees with each agency based on the permitted or annual authorized use for each agency's land.

Work with Forest Service budget and finance personnel when this process is needed. The local unit needs to fill out the proper form and know where to send it at the end of the fiscal year so that Budget and Finance personnel have the pertinent information as to where to transfer the funds that were collected.

Other lands under Forest Service control are defined in 36 CFR 222.1(b) as "non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise." Interagency agreements provide the Forest Service the authority to charge for grazing on these lands. One example is where portions of a State Wildlife Management Area are fenced into an active grazing allotment and managed for rangeland/wildlife objectives; another example might be intermingled lands with The Nature



Conservancy managed for mutual benefits. Any fees due are usually collected, through agreement, on behalf of the other agency.

## **82 - Grazing Fee Systems**

The system used to determine the fee charged for grazing is dependent on whether the permitted grazing occurs on:

1. National Forests and land utilization projects in the sixteen contiguous Western States (see 36 CFR 222.51 and sec. 83 below).
2. National Grasslands (see 36 CFR 222.52 and sec. 84 below).
3. National Forest System lands in the Eastern United States except those in Oklahoma or the National Grasslands in Texas (see 36 CFR 222.53, 222.54 and sec. 85 below).

### **82.1 - Annual Grazing Fees**

The grazing fee is normally announced on January 31 each year for the National Grasslands and the Western Forests and on the last day of February for the Eastern and Southern Forests. The grazing fees are updated within RIMS soon after the respective grazing fees are announced.

## **83 - Grazing Fees for National Forests and Land Utilization Projects in the Sixteen Contiguous Western States**

Grazing fees are calculated in accordance with Executive Order 12548 (E.O. 12548), issued on February 14, 1986. E.O. 12548 specifies that the fee for livestock grazing must not be less than \$1.35 per animal unit month (per HM, for the Forest Service) in any grazing fee year. In addition, E.O. 12548 provides that the grazing fee in any given year may not be more than 25 percent higher or lower than the previous year's fee. The sixteen contiguous States are defined in the Public Rangeland Improvement Act of 1978 (PRIA) and include Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (43 U.S.C. §1902(i)).

### **83.1 - Grazing Fee Formula**

The formula in 83.1 - Exhibit 01 is used to determine the grazing fees for National Forests in the

sixteen contiguous Western States. The formula shown within 83.1 - Exhibit 01 was set out in E.O. 12548.

### **83.1 - Exhibit 01: Grazing Fee Formula**

$$GF = BV \times (FVI + (BCPI - PPI)) / 100$$

where:

GF = Grazing fee charged by the Forest Service to the permittee.

BV = Fair market base value of \$1.23. The \$1.23 base value was established in a 1977 study by the Secretaries of Agriculture and the Interior and is based on an analysis of data in the 1966 Western Livestock Grazing Survey. Items considered in the development of the base value included costs associated with grazing on public lands versus costs associated with grazing on private lands. Among the items considered as costs were lost animals, association fees, veterinary fees, moving livestock to and from grazing areas, herding, salt, feed, water, horses, permittee travel to and from grazing areas, fence maintenance, water development maintenance, and development depreciation.

FVI = Forage Value Index (annually computed from data supplied by the U.S. Department of Agriculture (USDA), National Agricultural Statistics Service (NASS)). The FVI, an index of annually surveyed private grazing land lease rates, 1964-1968 = 100.

BCPI = Beef Cattle Price Index (Source: NASS). The BCPI, an index of USDA annually reported prices of beef cattle over 500 pounds, 1964-1968 = 100.

PPI = Prices Paid Index (Source: NASS). The PPI, indexed prices that livestock producers

pay for selected production items, 1964-1968 = 100.

### **83.2 - Use of Grazing Fee Receipts for Rangeland Improvements under the Range Betterment Fund (RBF)**

Congress established the RBF in the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751(b)(1)), (see FSM 2201.1, para. 17) to finance the construction of rangeland improvements on public lands administered by the BLM and on National Forests administered by the Forest Service in the eleven contiguous Western States. It was amended by PRIA in 1978 to include the National Forests in the sixteen contiguous Western States (Pub. L. 95-514). RBF monies are not collected from, nor authorized for use on, National Grasslands because of the specific language in 43 U.S.C. 1751(b)(1).

These National Forest grazing receipts are deposited into a separate account to finance on-the-ground rangeland rehabilitation, protection, and improvement projects. It is used to arrest rangeland deterioration and improve vegetation conditions on rangelands.

All fees collected for grazing livestock on public lands (43 U.S.C. 1751(b)(1) states "50 per centum or \$10,000,000 per annum, whichever is *greater*") are credited to a separate account in the United States Treasury, one-half of which is authorized to be appropriated and made available for range improvement; these monies constitute the Range Betterment Fund. The remaining 50 per cent of the fees are deposited in the United States Treasury as miscellaneous receipts. The RBF monies are distributed for use in the district, region, or National Forest from which such monies were derived.

As authorized in 43 U.S.C. 1751(b)(1), long-standing and current practice is that each Region must distribute 50 percent of those funds to the individual National Forest that collected them. The remaining 50 percent is likewise usually returned to the unit that collected the fees but, as determined by the regional forester, can be allocated to rangeland improvement projects as needed anywhere within the Region. Consult with permittees and other interested parties to evaluate rangeland improvement projects that are proposed for financing under the RBF.

Money from the RBF must be utilized only for on-the-ground rangeland improvement expenditures (see 36 CFR 222.10(b)). RBF may be used for rehabilitation, protection, and improvements including, but not limited to: seeding, restoration, fence construction, invasive plant control, noxious weeds control, water development, and fish and wildlife habitat enhancement.

Priority is assigned to those rangeland improvement projects eligible for funding under the RBF, based upon the relative contribution of each project to:

1. The protection of rangeland from deterioration,
2. The rehabilitation of deteriorated rangeland, and
3. The improvement of forage quality and quantity.

Costs associated with general administration, rangeland program management, and allotment management planning are always paid with appropriated funds and must not be assessed to RBF. Use of range betterment funds for administrative expenses associated with on-the-ground range rehabilitation, protection, and improvements must follow appropriations law and Forest Service budget policies.

Money from the RBF may be used for new construction, replacement of existing structures that have outlived their normal life expectancy, or reconstruction of needed structural rangeland improvement(s). RBF should never be used to replace or reconstruct needed improvements if the reason for the degraded condition is due to lack of required maintenance by the grazing permittee.

Grazing permittees are expected to cost-share, generally 50:50, for all RBF projects. All improvements constructed with these funds, including those with cost share, will be owned by the United States Government.

Money from the RBF must not be used for maintenance of any structural improvements, including labor and/or materials. All improvement maintenance costs are the responsibility of

the permittee. Refusal to maintain assigned rangeland improvements to standard is grounds for suspension or cancellation of the grazing permit (see sec. 16.4).

The requirement that all assigned improvements must be maintained by the grazing permittee, and solely at his/her expense, was one of the many factors considered in establishing the grazing fee formula.

### **83.3 - Use of Appropriated Monies as Supplemental Funding for Rangeland Improvements**

Congressionally appropriated funds (using current Budget Line Items such as NFRG, NFVW, NFRR, or NFWF) can be used to supplement Rangeland Betterment Funds, if needed and as approved. The authorized officer shall evaluate if the improvement need is important enough to reduce appropriated dollars needed to accomplish many other regular program duties and targets.

Appropriated funds can be used to maintain improvements and exclosures necessary for rangeland vegetation management if the Forest Service is responsible for the maintenance of those improvements.

Appropriated funds will not be used to assist a permittee with maintenance of any structural improvements, including providing labor and/or materials. All improvement maintenance costs are the responsibility of the permittee.

Funds should not be used to replace or reconstruct needed improvements if the reason for the degraded condition is due to lack of required maintenance by the grazing permittee.

Grazing permittees are expected to cost share, generally 50:50, for all types of rangeland improvement projects. All improvements constructed or reconstructed with these funds, including those with cost share, will be owned by the U.S. Government.

### **84 - Grazing Fees for National Grasslands**

Forest Service regulations require that the fee for National Grasslands be established under concepts and principles similar to those used for National Forests in the sixteen contiguous

Western States (see 36 CFR 222.52). The formula used to calculate the annual fee for grazing on National Grasslands and land utilization projects in all States (other than California, Idaho, and Oregon) is the same as the formula used to calculate the grazing fee for National Forests in the sixteen contiguous Western States. Historically, the base value and the private grazing lands lease rate have been calculated based on information from only those States in which the affected Grasslands or land utilization projects are located. In 2017, the fee formula indices calculated by NASS resulted in an unusual situation where the grazing fee went down for National Forests but increased for the National Grasslands. This was largely due to the private grazing land lease rates in the nine Great Plains States being higher than the rates for the rest of the West.

As a result of industry concerns and congressional inquiries into the disparity, the agency elected to utilize the wording in 36 CFR 222.52 regarding the Grassland fee being similar to the fee for National Forests in the 16 Western States and apply the grazing fee for all National Forests in the 16 Western States to all National Grasslands as well. This approach was initiated in 2017 and has continued since that time.

As on National Forests in the sixteen contiguous Western States, the grazing fee on National Grasslands and land utilization projects must not be less than \$1.35 per HM in any year and the grazing fee in any one year must not be more than 25 percent higher or lower than the previous year's grazing fee.

#### **84.1 - Grazing Fee Formula**

The formula in 83.1 - Exhibit 01 is also used to determine the grazing fees for all National Grasslands.

#### **84.2 - Fee Reductions for Authorized Land Use Practice Expenditures**

The authorized officer may reduce the grazing value (see FSM 2205) assessed for grazing on National Grasslands and land utilization projects covered by this section in consideration of expenditures incurred by the permittee to carry out certain authorized land use practices. These

land use practices include conservation practices and, in some circumstances, administrative costs as well. Fee reductions for administrative activities are only available to Grazing Associations and Grazing Districts (hereinafter called Associations) for routine costs incurred by the Association to administer the livestock grazing activities of its members under a Grazing Agreement issued by the Forest Service. Fees may be reduced by up to 50 percent where only conservation practice expenditures are involved; fees may be reduced by up to 75 percent where conservation practices and administrative costs are involved except as provided for in sec. 84.21(2) below.

#### **84.21 - Administrative Costs and Conservation Practices**

There is no fee reduction for administrative costs for grazing permits issued directly by the Forest Service to individuals, since the Forest Service still performs these administrative functions. Allowable land use practices include:

##### 1. Administrative Costs.

- a. Administrative costs are costs that would otherwise be borne by the Forest Service if it were directly administering the grazing permits of the Association members. Administrative costs may include routine administrative and clerical expenses incurred by the Association related to activities such as issuance of Association-issued grazing permits, collection of grazing fees, monitoring livestock use, enforcement of permit terms and conditions, and record keeping. Administrative costs must be approved in advance by the authorized officer, and may include, but are not limited to, expenses incurred by the Association for salaries and benefits, payroll taxes, postage, copying, depreciation, office space, utilities, legal and accountant fees, and directors' expenses related to administering the agreement.
- b. Administrative costs shall not include any expenses related to legal or administrative challenges against the Forest Service (including attorney fees). Association costs for memberships in, dues for, or contributions to advocacy groups are also not allowable administrative expenses.

2. Conservation Practices. Conservation practices are structural and non-structural rangeland treatments and improvements on NFS lands that are approved in advance by the authorized officer and are necessary to properly administer a grazing agreement or grazing permit. Conservation practices must always be designed and implemented to protect and, where applicable, enhance other resource values and uses. Examples of conservation practices include fences, water developments, rangeland restoration, vegetation manipulation, watershed protection, wildlife habitat improvement, and studies

to determine rangeland health and stocking rates.

Under a grazing agreement, the total amount of expenses allowed for both conservation practices and administrative costs normally cannot exceed 75 percent of the grazing value. Conservation practices may be less than 50 percent of the grazing value, but normally may not exceed 50 percent of the grazing value, with the balance of up to 75 percent of the grazing value allowed for administrative costs. No less than 25 percent of the fee should normally be returned to the United States Treasury, a portion of which is distributed to counties where the fees were collected, to assist with funding schools and roads.

In the rare case (an example might be where numerous miles of fences are destroyed by a wildfire) where the authorized officer decides to allow greater than the 50 percent of the value to be used for conservation practices that year, and/or greater than 75 percent of the value for a combination of conservation practices and administrative costs, the approval and rationale for doing so should be documented in a letter to the Association (see sec. 25.4).

For grazing permits issued directly by the Forest Service to individuals on National Grasslands, fee reductions for conservation practices cannot exceed 50%; this limit may be applied to each individual permit, but can be applied across an administrative area, such as an entire National Grassland, Ranger District, or county.

#### **84.22 - Conservation Practice Approval Criteria**

In order to qualify for a reduction in the grazing value based on approved land use practices, expenditures incurred for those practices shall be documented in writing and verified by the authorized officer. Prior to approving a conservation practice for a fee reduction, the authorized officer shall:

1. Ensure that conservation practices are located on National Grasslands, land utilization projects, or lands over which the United States holds an easement. Required conservation practices may be located on private intermingled lands in the allotment, but in such cases no fee reduction would be allowed, and the improvement would be privately owned.
2. Ensure that the primary purpose of the conservation practices is to improve resource



conditions related to grazing and vegetation management activities on the National Grasslands covered by the grazing agreement.

3. Ensure that the conservation practice meets resource management objectives as set forth in the applicable LMP, AMP, or project decision.
4. Ensure that the development and implementation of the conservation practice is conducted in compliance with applicable Federal laws and regulations.
5. Ensure that the costs incurred by association, the member, or the permittee in developing or implementing the conservation practice would otherwise be borne by the Forest Service.
6. Standard cost-share principles shall be applied to the total cost of all projects approved for completion under this authority. With grazing associations, the general 50:50 cost-share may be paid by the benefitting member or from funds assessed of all members annually for all improvement projects based on the Grazing Association's preference.
7. Ensure that title to the conservation practice on NFS lands is in the name of the United States.
8. Ensure that the policies outlined at FSM 2541 are followed relative to water rights that may be associated with the conservation practice on NFS lands. When possible, a possessory interest in water rights in the name of the United States should be obtained for water uses on National Forest System lands.

#### **84.23 - Fee Reduction Criteria**

Fee reductions are not available for rangeland improvement practices where a grazing agreement covers a National Forest. On National Forests, structural and non-structural range improvements must be funded under the Range Betterment Fund and/or other appropriated funds (see sec. 83.2).

Only National Grasslands and land utilization projects are eligible for fee reductions. Per Title III of the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. 1012), 25% of grazing fee receipts collected must be sent to the United States Treasury to then be provided to the respected county(ies). Per 1950 Comptroller General's opinion, up to 75% of the grazing value may be reduced to fund land use practice expenditures.

**D.C.**

B-77467          November 8, 1950

The Honorable

The Secretary of Agriculture

My dear Mr. Secretary:

Reference is made to letter of October 24, 1950, from the Assistant Secretary in response to request of August 24, 1950, for your views with respect to the practice of the Soil Conservation Service of leasing lands covered by Title III of the Bankhead-Jones Farm Tenant Act at reduced rentals in return for the performance by the permittees or lessees of improvements, etc., to the lands, thus resulting in what appeared to be an augmentation of your Department's annual appropriation for "Land Utilization and Retirement of Marginal Land," and resulting, also, in what appeared to be a diversion of funds otherwise payable to the county or counties in which such lands are situated.

The letter of October 24, cites particularly as authority for such practice the provisions of section 32(c) of the act, supra, 7 U.S. Code 1011(c), which authorizes the Secretary "To sell, exchange, lease, or otherwise dispose of, with or without a consideration, any property so acquired, under such terms and conditions as he deems will best accomplish the purposes of sections 1010-1013 of this title."

The said letter indicates that the condition of the land determines whether certain land use practices--it being understood that fencing and the providing of water tanks properly may be classified as land use practices--are to be imposed upon permittees or lessees, and that the fees or rentals are established in relation to the value of the use of the land as it may be used under the required land use practices. In that connection, it is pointed out that the lands which can be used under the act without the necessity of imposing additional land use practices have a greater value than lands which, because of their condition, require the imposition of special land

use practices upon permittees or lessees at their own expense.

Considering the broad purpose of Title III of the Bankhead-Jones Farm Tenant Act, and especially the authority vested in the Secretary by section 32(c) thereof to lease lands, with or without consideration, under such terms and conditions as will best accomplish the purpose of the act, no further question will be raised by this office with respect to what had appeared to be an augmentation of funds resulting from the leasing practices referred to in Office letter of August 24, 1950.

Moreover, in view of the foregoing, it now appears that no diversion of funds otherwise payable to the counties in which the lands are situated would result from the above-mentioned leasing practices. Section 33 of the act, 7 U.S. Code 1012, requires that 25 per centum of the "net revenues received by the Secretary" from the use of the land shall be paid to the county or counties in which the land is held by the Secretary. As stated in your Department's letter, it seems obvious that said section 33 requires payments to counties of no more than 25 percent of what the Secretary actually receives. Accordingly, no further objection will be interposed by this Office in that respect.

Sincerely yours,

(Signed) Lindsay C. Warren

Comptroller General of the United States

### **84.3 - Fee Credit Criteria**

Fee credits for required rangeland improvements are an integral part of managing rangelands on the National Grasslands where direct permittees are involved. The permittee can fund an

approved rangeland improvement up-front, and then receive fee credits in future years to replenish personal funds used for the Government's cost-share portion of the project. Credit should not be allowed, or work plans approved, for more than the number of years remaining of the permittee's 10-year grazing permit. In some cases, involving large or expensive projects, it may be prudent to issue a new 10-year permit at the beginning of the project to allow for maximum fee credit toward the expense of the large project.

Fee credits can also be used on National Grasslands in similar, but more limited, situations involving grazing associations. Working in conjunction with all their benefitting members, associations can secure and obligate larger amounts of monies to complete large or expensive conservation practice rangeland improvements. Project examples might be drilling a one-time expensive water well or installing an extensive water pipeline system, often by coordinating with a rural water system provider.

Such projects require advance funding prior to conservation practice work plan approval and construction. When total project costs exceed conservation practice funds available in that one year, fee credits can be allowed in future years under approved work plans to credit the Association for their initial advance funding provided to complete the project. Credit should not be allowed, or work plans approved, for more than the number of years remaining of the 10-year Grazing Agreement.

Accurate records of the running fee credit totals must be kept.

Fee credit criteria are also discussed in chapter 20, section 25.43.

#### **84.4 - Fee Credit Carried Forward for Approved Conservation Practices**

The authority to carry National Grassland fee credits forward to complete approved conservation practices in the future was first provided by the Consolidated Appropriations Act of 2017. Similar provisions have been contained within subsequent appropriation acts (see note to 43 U.S.C. 1751). The following is an example of the Credit on Grazing Fee for Approved Conservation Practices provision:

“That notwithstanding section 33 of the Bankhead Jones Farm Tenant Act (7 U.S.C. 1012), the Secretary of Agriculture, in calculating a fee for grazing on a National Grassland, may provide a credit of up to 50 percent of the calculated fee to a Grazing Association or direct permittee for a conservation practice approved by the Secretary in advance of the fiscal year in which the cost of the conservation practice is incurred. And, that the amount credited shall remain available to the Grazing Association or the direct permittee, as appropriate, in the fiscal year in which the credit is made and each fiscal year thereafter for use on the project for conservation practices approved by the Secretary.”

Even though the provision has continued to be provided through annual appropriations acts in recent years, the provision is not permanent (see note to 43 U.S.C. §1751). As such, prior to authorizing fee credits to be carried forward, units must confirm with their Forest/Grassland and/or Regional Rangeland Management Program leads that the authority has continued to be available during the fiscal year in question.

Fee credits carried forward as a result of passage of the Consolidated Appropriations Act of 2017 and the subsequent appropriations acts containing similar provisions only apply to National Grasslands and have no effect on management of fee credits carried over on the National Forests in the Forest Service Eastern and Southern Regions, as discussed in section 85.43 below.

The provision provides another avenue for Grazing Associations to be able to build up an account to pay for large, expensive rangeland projects that cost far more than the funds they have available for improvement construction in any one year. Examples of such projects might be drilling a water well to a deep formation or installing an extensive water distribution pipeline system. In all cases, a timeline (including key milestones and target completion date) related to carrying over fee credits for specific, high cost approved conservation practices must be approved by the authorized officer before the opportunity to carry forward fee credits may be approved.

The provision also provides this capability to direct permittees on Grasslands who do not have the advantage of “pooling” funds as do Associations, and this authority may assist when

constructing more expensive projects on their allotments. But direct permittees have routinely been in the habit of funding their needed projects up-front and then being allowed to follow standard fee credit procedures to be reimbursed over time for the Agency's cost-share portion of those needed rangeland improvements (see sec. 84.3). This fee credit process has been available to, but little-used by, Grazing Associations in the past.

The following requirements must be met before any requests for fee credits to be carried forward may be approved:

1. The provision providing the authority to carry over fee credits must be available for the fiscal year the unit is intending to initiate the fee credit carry over. Availability is determined by ensuring the provision was included within the applicable appropriations act or other legislation in effect for the fiscal year in question.
2. A percentage of the annual grazing fees can be credited to the approved conservation practice in the year they are collected and each grazing year thereafter (so long as the authority is provided by Congress) until the cumulative amount is large enough to complete the approved project. The authorized officer must determine the percentage allowed by the legislation in effect during the fiscal year the conservation practice work plan is approved. The percentage carried forward must not exceed the maximum percentage allowed in the respective legislation. For example, in recent years legislation has allowed up to 50 percent of annual fees to be credited to the approved conservation practice.
3. A specific conservation practice work plan must be approved in writing, and in advance, with estimated project costs by the grazing association, or direct permittee, and the Forest Service with key milestones and a specific planned completion date. This expensive project has become the Association's or permittee's highest priority project for completion.
4. The project's importance requires that every effort be made by the Forest Service and the Association/permittee to have the approved project 100 percent ready to be installed (environmental analysis, project decision, any needed surveys, and so forth) once the total funding needed has been collected and deposited.
5. Because of the project's importance, no expensive second-priority conservation practice work plan will be established as a contingency plan. Nor can the funds be diverted to cover range improvement reconstruction needs brought about by a large wildfire or other act of nature without prior written approval by the Forest/Grassland Supervisor.
6. Standard cost-share percentages (for wells, water developments, fences, and so forth) shall be applied to the total cost of all projects approved for completion under this

authority.

7. A separate bank account for this specific project must be established and maintained by the grazing association, or direct permittee in which these fee-credit funds will be deposited.
8. The fees credited must be deposited in the account at the beginning of each grazing year when they are collected by the grazing association, or when the bill for the remainder of the fee due is issued to, and paid by, the direct permittee. Tracking of these funds in a separate account is necessary as they represent uncollected fees for the grazing value received. Once assessed, the U.S. Government views these funds as federal dollars, and they must be managed accordingly. A standardized form will need to be developed and used as the association and authorized officer approve such a project in order to maintain a clear record of all account transactions for the auditors.
9. Any and all interest accrued in the account shall remain in the account and shall be applied to the total cost of completing that approved project.
10. The bank records will be made available to the Forest Service annually for review and at other times if requested.
11. As with all other approved conservation practice work plans, detailed records must be kept for each project, including itemized receipts for all purchases and work performed. In addition, since several years may be involved in fee credit projects, the records must show fees deposited, interest accrued, and approved expenses, by year, for each year fees are deposited into the account. These records will be monitored periodically by Forest Service staff, including financial auditors.
12. If the project is cancelled or not completed, or is finished under-budget, all funds in the bank account, including all accrued interest, will be remitted to the U.S. Treasury. The only exception to this requirement is if a second-priority project had previously been approved and can be completed in full by the same approved completion date. Even in that case, all funds remaining in the account will be sent to the U.S. Treasury by the end of that grazing fee year.

## **85 - Grazing Fees for National Forests in Regions 8 and 9 except for Oklahoma or the National Grasslands in Texas**

There are two different methods for determining grazing fees on National Forests in the Eastern United States; the first is a noncompetitive, fair market value grazing fee and the second is a grazing fee established by a competitive bidding process.

The term Eastern United States generally refers to any state in which National Forests are

located, other than the sixteen contiguous Western States identified in 43 U.S.C. §1902 . Consequently, with the exception of Oklahoma (which is one of the designated sixteen contiguous Western States), the Eastern United States encompasses all the states located in the Southern and Eastern Regions (R-8 and R-9) of the Forest Service.

### **85.1 - Noncompetitive, Fair Market Value Grazing Fee**

Noncompetitive, fair market value grazing fees apply only to livestock use permits, term permits with on-and-off provisions, and permits first issued prior to 1990. The permittee must remain in good standing, fully compliant with the terms and conditions of the expiring permit, to retain the noncompetitive grazing fee. As long as the individual remains the permittee, the noncompetitive, fair market value grazing fee will apply. It also applies if the permittee waives the livestock or base property to a family member, if the permittee reorganizes as some other legal entity such as a limited liability company or trust for estate planning purposes, or if the permitted livestock or base property is inherited by a direct family member and that family applies for a grazing permit.

A permit that has been waived for any reason, or cancelled by the Forest Service, is then subject to competitive bidding. This includes, but is not limited to, conveyance, sale, or other transfer of livestock or base property by or to another party.

A “bid” permit may be transferred to a new applicant before expiration 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.

The preferred applicant that the permittee is waiving to has the option to match the high bid.



### 85.11 - Noncompetitive Grazing Fee Formula

This paragraph explains how the noncompetitive fee formula is determined. It is first based on fair market value determined by rates for grazing on comparable private lands, adjusted for the difference in the costs of grazing comparable private lands and NFS lands, or prevailing prices in competitive markets for other Federal or State leased lands. As directed in 36 CFR 222.53 the annual grazing fee must equal the base grazing value adjusted by the current period's hay price index for the relevant sub-region, less the value of any agency-required range improvements.

The noncompetitive grazing fee formula is shown below in 85.11 - Exhibit 01.

#### 85.11 - Exhibit 01: Noncompetitive Grazing Fee Formula

$$GF = BFMV \times HPGF = BFMV \times HP$$

where:

GF = Grazing Fee, which is the estimated economic value of livestock grazing to the user, and where annual increases or decreases may not exceed a 25 percent increase or decrease over the previous year's fee.

BFMV = Base Fair Market Value. Title 36 CFR 222.53 directs the Forest Service to establish a base market value of grazing use. The regulation was finalized in 1990 and the Agency utilized the 1989 base fair market values for livestock grazing by sub-region as calculated by the National Agricultural Statistics Service. Those values have continued to be used for the BFMV for noncompetitive permits and minimum bid price for competitive permits. The BFMVs for each sub-region are as follows:

<b>Sub-region</b>	<b>States</b>	<b>1989 Base Fair Market Values (in \$ per Head Month)</b>
Northeast	Maine, New Hampshire, New York, Pennsylvania, Vermont	3.38
Lake States	Michigan, Minnesota, Wisconsin	3.41
Corn Belt	Illinois, Indiana, Missouri, Ohio	4.40

<b>Sub-region</b>	<b>States</b>	<b>1989 Base Fair Market Values (in \$ per Head Month)</b>
Appalachia	Kentucky, North Carolina, Tennessee, Virginia, West Virginia	3.68
Southeast/Delta	Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, Texas	3.50
Florida	Florida	1.75

Should local situations merit, an authorized officer may present market data to the Washington Office that may justify different base grazing values and/or fees.

HPI = Hay Price Index, which is derived for sub-regions by dividing the current, 3-year average hay price by the base average. The base price was determined during the years of 1987-1989. This index measures the relative percent change in the cost of alternative livestock feed between the base period and the current period. Hay prices used are classified as *other hay* in the annual publications distributed by the National Agricultural Statistics Service, an agency of the USDA.

FC = Fee credits for agency-required improvements which may result in a reduction in the total fee charged (see 36 CFR 222.53 through 222.54).

### **85.2 - Competitive Bid Grazing Fee**

Grazing fees will be established by competitive bid for all term grazing permits issued after 1990 to an individual other than the individual who held the term grazing permit prior to 1990 following a waiver or cancellation of a competitive or noncompetitive permit by the Forest Service. Grazing fees will also be set by competitive bid for new grazing allotments, including special use pasture conversions.

The only term grazing permits not subject to a competitive bid grazing fee are those that are issued to individuals to replace expiring permits originally issued to that same individual prior to 1990 and term grazing permits with on-and-off provisions.

If no qualified sealed bids are received the authorized officer may choose to hold an oral auction. Minimum acceptable bids during an auction must be equal to the current grazing fee for noncompetitive permits. On rare occasions, the forest officer, upon presentation of sufficient market data that shows local prevailing lease rates for similar private grazing lands, may accept bids lower than the noncompetitive grazing fee.

#### **85.21 - Fee Computation, Applying Grazing Adjustment Factor**

The base grazing value for a respective competitive bid permit is equal to the highest bid received (winning bid) in the initial year of the grazing permit. Grazing fees for competitive bid permits are calculated annually by adjusting the base grazing value by current period's hay price index (calculated by the National Agricultural Statistics Service [NASS]) for the relevant subregion where the permit is located. Forest Service policy is to adjust annual fees to be based on the fair market value of forage. The hay price index, as computed by the NASS, is the index that best represents fair market value within Regions 8 and 9. The annual adjustment using the hay price index is done automatically within the RIMS. As a result, the correct grazing fee for authorized HMs is automatically applied to each respective term grazing permit. The competitive grazing fee formula is shown in 85.21 - Exhibit 01.

#### **85.21 - Exhibit 01: Competitive Grazing Fee Formula**

**The Original Highest Bid Received = The Base Grazing Fee**

Divided by the Hay Price Index (for that year)

As a **2011** example in the Appalachia Sub-region:

**\$10.51/Head Month (the original highest bid) = \$7.30 Base Grazing Fee**

Divided by \$1.44 Hay Price Index

**Result:** \$7.30 is entered into RIMS as the Original Grazing Fee on the Authorized Use Screen.

#### **85.22 - Competitive Bid Fee Procedures**

In case of identical bids, the selection of the successful applicant shall be made through a drawing (36 CFR 222.54(f)(2)). The authorized officer may elect to use an oral auction to break the tie if all identical bidders agree to that process and outcome in advance.

#### **85.23 - Duties and Responsibilities**

The Bid Opening Officer or the District or Forest Program Manager is a Forest Officer delegated the responsibility of allotment and permit administration through job description and manages the task of assembling prospectus, opening bids, and awarding permits.

The bid custodian is a person delegated responsibility for receipt and custody of sealed bids. A person designated as a timber sale bid custodian may serve as a grazing permit bid custodian and is qualified to receive, store, and hold sealed bids for grazing allotments.

#### **85.24 - Competitive Bid Process - Prospectus Contents**

The authorized officer must prepare and advertise a prospectus for all permits, subject to competitive bidding, and make a determination whether to continue grazing, including permits to occupy and use new allotment(s), allotment(s) involved in permit waivers, allotments where the permit has been cancelled, or when a competitive permit expires. The prospectus must include the following:

1. Terms and conditions of the permit.
2. A list of the rangeland improvements on the permitted allotment(s) and their condition.
3. A statement that includes the minimum bid price the Agency will accept as well as figures showing a range of the current fair market values.
4. The type of permit to be issued and its duration.
5. A list of range improvements to be constructed on the permitted allotment(s).
6. The circumstances under which the allotment(s) may be split or operated as a common allotment.

7. Other information about the allotment that may affect the bid price including, but not limited to, the AMP, annual operating instructions, improvement maintenance requirements, and the previous permit.
8. The eligibility and qualification requirements that must be satisfied by a Forest Service grazing permit holder.
9. The procedure, location, and deadline for bid submissions.
10. Supplementary documents that must be submitted along with the bid.
11. The criteria by which the winning bid will be determined.
12. The time, date, and location of bid opening.
13. The appeal rights of individuals who submitted non-winning bids.

#### **85.25 - Prospectus Distribution and Notice**

The authorized officer shall ensure that the prospectus is

1. Published in the official newspaper of record.
2. Posted in a conspicuous location at the offices of the District Ranger and the Forest Supervisor responsible for administering the permit.
3. Sent to permittees or other parties who may be interested in grazing the subject allotment(s).
4. Posted on the forest's electronic media site available to the public.
5. Displayed in other locations where information can be posted and shared such as post offices, feed stores, and farm equipment stores.

The prospectus must be posted for an adequate time to ensure any interested parties have sufficient time to submit a bid. In general, the prospectus must be posted for not less than 30 and not more than 60 days prior to the closing of the bids.

#### **85.26 - Applicant Bid Package**

Bids for the permit identified in a prospectus must be in writing and must include the following:

1. A written application for the grazing permit (Form FS-2200-16).

2. A sealed bid for the grazing fee that must be equal to or greater than the minimum bid identified in the prospectus and must specify the HM bid, the HM use, and the total bid price (HM use multiplied by HM bid price).
3. A statement from the applicant that the contents of his/her bid were not disclosed to anyone else.
4. A bid deposit of 10 percent of the total amount of the bid.

### **85.3 - Bid Opening**

All bids must be opened at the same time, not later than seven days following the close of the bid period. The time, date, and location of the bid opening shall be clearly identified in the bid prospectus. The opening may take place at the office of the District Ranger or the Forest Supervisor or some other suitable public facility, during regular business hours. Those who submitted bids and members of the public are welcome to attend the bid opening.

Receiving, opening, reviewing, and posting bids should follow protocol in Timber Sale Bid openings outlined in FSH 2409.18. Section 85.31 provides appropriate guidelines.

#### **85.31 - Receiving Bids**

Prospective permittees usually submit sealed bids by mail or deliver them by hand. Electronic and facsimiles bids are not acceptable unless provided for in the prospectus. Accept all bids that are received within the advertised time limits.

If a bidder alleges a mistake in a sealed bid or wishes to change a bid for any reason prior to the time set for bid opening, the bidder may recall the bid and correct or withdraw the bid or substitute another bid. The bidder may modify the bid not later than the exact time set for opening of bids (see 48 CFR 14.303). A bid may be withdrawn in person by the bidder or his authorized representative if the identity of the person requesting withdrawal is established, and it is before the time set for bid opening.

The bid custodian shall deliver the bids received to the district grazing program manager or bid opening officer at the time of the bid opening and this person shall disclose receipt and number

of the bids to the persons present at the bid opening at the appointed time.

The only acceptable evidence to establish the time of receipt of a bid is the time and date stamp on the bid envelope (see 48 CFR 14.304-1).

#### **85.32 - Late Bids**

The Forest Service cannot consider a late bid for award. The District Program Manager shall promptly notify the bidder that the Forest Service received the bid late and cannot consider it, (see 48 CFR 14.304(b)(1) and 48 CFR 14.304(f)).

Late bids that are not considered for award must be held unopened, unless opened for identification or to obtain the bid guarantee, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned (see 48 CFR 14.304(g)).

#### **85.33 - Posting the Bid**

The District Program Manager or bid opening officer designated to open bids shall, after reviewing them for responsiveness and mistakes, post the responsive bids:

1. Read the bids aloud to the persons present;
2. Have the bids recorded;
3. Determine the apparent high bidder; and
4. Prepare an abstract of the bids to be distributed to bidders and other interested parties.

Use something similar to 85.33 - Exhibit 01 below to post the bids received.

Allow bidders or other interested parties to inspect posted bids under the supervision of the bid opening officer, but do not allow the removal of the original bid from the bid opening site.

#### **85.33 - Exhibit 01: Grazing Bid Documentation Sheet**

Date:

Time:

Bid Opening Officer:

Bid Custodian:

<b>Allotment</b>	<b>Name of Bidder</b>	<b><i>Bid per Head Month (Min. \$X.XX)</i></b>	<b><i>Head Months</i></b>	<b>Total Bid</b>

**85.34 - Records**

Prepare an abstract of the bids to be distributed to bidders and other interested parties. The abstract will document the date and time of bid opening, the grazing allotment, name of bidder, amount of bid, and the signatures of the bid opener and witnesses. Mail the abstract to all bidders. Notify the highest qualified bidder to verify his application and to receive his permit.

**85.35 - Unsuccessful Bidder Letter**

Send a letter to all unsuccessful bidders returning their bid guarantees and providing other information as needed.

**85.36 - Determination of Winning Bid**

The authorized officer must first determine whether any bid packages are incomplete. Incomplete bid packages must not be considered for the winning bid and shall be returned to the applicant with a written statement explaining in what respect the bid package was found to be deficient.

The authorized officer should determine whether any bid applicants fail to meet the eligibility and qualification requirements for holding a grazing permit as prescribed in 36 CFR part 222. Bids from ineligible or unqualified applicants shall not be considered for the winning bid and



shall be returned to the applicant with a written statement explaining the basis for the disqualification.

The authorized officer should then evaluate the bids and reject any that are less than the minimum bid price identified in the prospectus.

Of those applicants who submitted complete bid packages, who satisfy the Forest Service eligibility and qualification requirements, and who submitted bids that are equal to or greater than the minimum bid price, the authorized officer shall select the winner as the applicant with the highest total bid price. In cases of identical bids, see section 85.22(a) above.

When all bids are below the minimum bid price identified in the prospectus, the authorized officer shall notify the applicant with the bid closest to the minimum bid that he or she may receive the permit, provided they are willing to meet the minimum bid price or are willing to submit sufficient market data showing that their bid is within the local prevailing lease rates for similar private grazing lands. Situations involving two or more applicants with the highest below minimum bid must be resolved as in the preceding paragraph.

The bid submissions of the unsuccessful applicants must be retained for three years, but their deposits must be returned.

The highest bid received establishes the base grazing value in the initial year of the grazing permit. The annual grazing fee equals the base grazing value, adjusted by the current hay price index for the relevant sub-region, less any fee credits from any agency-required improvements. Refer to 36 CFR 222.54 and 85.21 - Exhibit 01. Annual rates and competitive bid adjustment factors are updated within RIMS annually.

#### **85.37 - Priority for Issuance**

On allotments where a current permit is expiring and competition has been held or is going to be held on the new grazing permit, the current grazing permittee shall have priority for retaining the permit. An applicant who holds the permit on the allotment, who has a satisfactory record of performance under that permit, and who is not the highest bidder for the future grazing

privileges in the specified allotment, shall be offered the opportunity to match the high bid and thereby retain the permit. Should there be more than one existing permittee in the allotment under bid, each shall be offered the option of meeting the high bid; if only one current permittee opts to meet the high bid, the remaining allowable grazing use, if any, shall be awarded to the initial high bidder. The current permittee(s) must submit a bid to qualify for the opportunity to match the high bid (see 36 CFR 222.54(f)(1)).

#### **85.38 - Selection of Additional Bid Applicants**

If the winning bid is for less than the total number of available HMs identified in the prospectus, the authorized officer may offer the next highest bidder the opportunity to acquire the remaining HMs of available grazing at his or her bid price and issue a grazing permit, until all available HMs have been awarded. This may result in more than one grazing fee per allotment (or in the establishment of multiple allotments with different fees), but it represents the highest bid for the forage identified in the prospectus. Improvement maintenance responsibilities must be allocated between the winning applicants based upon the percentage of total HMs they are authorized to graze.

#### **85.39 - Appeal Rights for Non-Winning Bid Applicants**

Individuals who submit a bid and an application for a term grazing permit in response to a prospectus are considered a solicited applicant per 36 CFR Part 214.2. Individuals whose bids were not selected may appeal the decision of the authorized officer under Forest Service regulations at 36 CFR, Part 214.4(a)(4).

#### **85.4 - Grazing Fee Credits for Required Rangeland Improvements**

Grazing fee credits for required rangeland improvements are an integral part of managing rangelands on the National Forests in Regions 8 and 9 (see 36 CFR parts 222.53(c)(3)(ii) and 222.54(g)(2)). Grazing fee credits can be used for allotment permittees under both the noncompetitive fair market value system as well as the competitive bid system. Grazing fee credit procedures are the same for grazing permits where fees are established by noncompetitive fair market value (see 36 CFR part 222.53(c)(3)(ii)), as for grazing permits where

fees are established by competitive bid (see 36 CFR part 222.54(g)(2)). The following outlines the requirements for fee credits:

1. Range improvement construction or development requirements must be identified through a written Rangeland Improvement Agreement that is incorporated into the grazing permit.
2. Fee credits may only be allowed for range improvements which the Forest Service requires an individual permittee to construct or develop on a specific allotment in order to meet the management direction and prescriptions in the relevant Land Management Plan and Allotment Management Plan.
3. The specified improvements must involve costs which the permittee would not ordinarily incur under the grazing permit, must be of tangible public benefit, and must enhance management of:
  - a. Vegetation for resource protection;
  - b. Soil productivity;
  - c. Riparian, watershed, and wetland values;
  - d. Wildlife and fishery habitat and/or;
  - e. Outdoor recreation values.
4. Routine maintenance or repair of range improvements specified in AMPs or the grazing permit, and other costs incurred by the permittee in the ordinary course of permitted livestock grazing, do not qualify for fee credits.
5. There is no limit on fee credits; fee credits may equal the grazing fees for any given year. When the approved fee credit amount equals the grazing fees due for any given year, a signed official letter containing the required information described within section 85.41 must be sent from the authorized officer to the permittee in advance of the opening date of the grazing period, entry, or livestock use. Fee credits may also be carried over to future grazing years (see sec. 84.3). 85.4 - Exhibit 01 demonstrates how to calculate fee credits.

## 85.4 - Exhibit 01: Grazing Fee Credits for Required Rangeland Improvements

$$(GF \times HM = UGV) - FC = AG(GF \times HM = UGV) - FC = AG$$

where:

GF = Grazing fee as calculated in 85.11 - Exhibit 01.

HM = Number of head months grazed

UGV = Unadjusted grazing value

FC = Fee credits for agency required improvements which may result in a reduction in the total fee charged (see 36 CFR 222.53 through 222.54 and sec. 84.3).

AGV = Adjusted grazing value

### 85.41 - Rangeland Improvement Fee Credit Requirements

Before fee credits can be earned by the permittee, the estimated costs of a rangeland improvement, the timeline required for completion and the corresponding fee credits that would be earned by the permittee must be documented in a signed official letter from the authorized officer to the permittee with a request for the permittee to respond acknowledging the requirements. A sample Rangeland Improvement Fee Credits Requirements document is displayed in 85.41 - Exhibit 01 which can be used as an enclosure to the letter. A sample Agreement appendix for estimated project summary costs is displayed in 85.41 - Exhibit 02. A sample Agreement appendix for actual project summary costs is displayed in 85.41 - Exhibit 03.

Acknowledgment should be documented by such means as a conversation record or other means. Upon completion of the rangeland improvement, the actual costs incurred by the permittee should be determined and, where the actual costs substantially exceeded the estimated costs, the authorized officer should review the completed work to verify it was within the scope of the initial request and if the greater costs were due to factors that were unavoidable. The authorized officer should then decide whether fee credits will be awarded

based on the actual or estimated costs. Transfer the grazing fee credit to the permit and grazing Bill for Collection.

Rangeland improvement fee credit requirements must conform to the Forest Service standards in chapter 10, section 16.1, of this handbook regarding permit modifications to complete rangeland improvement work.

### **85.41 - Exhibit 01: Rangeland Improvement Fee Credit Requirements**

THIS RANGELAND IMPROVEMENT FEE CREDIT REQUIREMENTS, disclosed and agreed to on this **1st** day of **December, 2004**, by and between **John Doe** (hereinafter the permittee) and the U.S. Department of Agriculture, Forest Service (hereinafter the Forest Service) pursuant to the authority set forth in 36 CFR 222.53 and 222.54, is intended to provide for the construction or development of certain specified rangeland improvements on National Forest System (NFS) lands by the permittee, in return for fee credits that will be awarded to the permittee by the Forest Service for the reasonable expenses incurred by the permittee in completing the improvement work.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AS FOLLOWS:

Grazing Permit No **1** issued to the permittee on **12/01/04** that authorizes grazing on the **Grange** Allotment(s) is hereby amended to incorporate the requirements disclosed herein which authorize the use of fee credits for agency required rangeland improvements.

1. The permittee and the Forest Service will cooperate in completing the agency required rangeland improvement described on the allotment management plan which is incorporated into Grazing Permit No. **1**. Contributions by each party towards the completion of the improvement and the adjustments are shown on the project summary document appended hereto.
2. Work required shall begin within **X** days of notification of the requirements and be completed not later than **xx/xx/xxxx**.
3. Title to the improvement that is the subject of the requirements shall be vested in the United States.
4. The rangeland improvement constructed, or work performed at permittee's expense, shall

not in any way confer on the permittee the exclusive right to use of the improvement or the land on which the improvement is located.

5. The rangeland improvement requirements and associated fee credits are not assignable or transferable, except with the written consent of the authorized officer.
6. In carrying out the rangeland improvement work as required, the permittee shall comply with all applicable Federal, State, county, and municipal laws, ordinances, and regulations.

#### **85.41 - Exhibit 01 - Continued**

7. Nothing herein shall be construed as binding the Forest Service for the payment of money in excess of available appropriations authorized by law.
8. The permittee is required to maintain the rangeland improvements to the standard of repair, orderliness, and safety acceptable to the Forest Service during the term of Grazing Permit No. **1** .
9. If the permittee concludes that significant modifications to the rangeland improvement described are necessary to meet the requirements of the land management plan or the allotment management plan or if the permittee concludes that the expenses incurred in completing the rangeland improvement work will substantially exceed the estimates set forth in the requirements, the permittee must notify the authorized officer of the need to modify the requirements and obtain the authorized officer's written approval of the proposed modification prior to proceeding with the new plan or to be eligible for the additional fee credits associated with the revised plan.
10. The permittee has acknowledged the requirements listed above are now a part of the grazing permit.

Jan  
e  
Doe

Authorized Officer  
U.S. Department of Agriculture  
Forest Service

**85.41 - Exhibit 02: Rangeland Improvement Agreement Appendix Summary Form of  
Estimated Project Costs**

Forest and District: Mountain NF/Wasabi RD

Permittee: Smokey Bear

Improvement Number X

Pasture and Allotment: X

Location: X

Type, Description, and Ownership:

<b>Project Cost Area</b>	<b>(1) Number and Units</b>	<b>(2) Rate Per Unit</b>	<b>(3) Forest Service Share</b>	<b>(4) Cooperator Share</b>	<b>(5) Allowable Adjustment</b>	<b>(6) Credit Forwarded</b>	<b>(7) Total Cost of Project</b>
Labor							
Materials							
Equipment							
Contracts							
Total							

The permittee will build the above rangeland improvement in accordance with the attached

specifications on or before the date specified in the Rangeland Improvement Agreement. Any modification in the specifications or location of the rangeland improvement requires prior written approval by the authorized officer. An adjustment of \$ X in grazing fee credits for the estimated expenses the permittee will incur to build the above rangeland improvement.

Approved by: Jane Doe

Authorized Officer      Date

**85.41 - Exhibit 03: Rangeland Improvement Agreement Appendix Summary Form of Actual Project Costs**

<b>Project Cost Area</b>	<b>(1) Number and Units</b>	<b>(2) Rate Per Unit</b>	<b>(3) Forest Service Share</b>	<b>(4) Cooperator Share</b>	<b>(5) Allowable Adjustment</b>	<b>(6) Credit Forwarded</b>	<b>(7) Total Cost of Project</b>
Labor							
Materials							
Equipment							
Contracts							
Total							

The foregoing rangeland improvement project has been completed in conformance with the Rangeland Improvement Agreement. Copies of receipts for actual expenditures incurred by the permittee in the construction of this rangeland improvement project have been furnished to me. I have inspected this rangeland improvement and determined that it meets Forest Service standards. In addition, I have reviewed the expenses incurred by the permittee and conclude that they are reasonable and consistent with the costs in this area for the type of work involved in this project. I approve a fee credit for the permittee in the amount of \$(Enter Amount).

Approved by: Jane Doe



Authorized Officer      Date

#### **85.42 - Determination of Fee Credit Value**

The value of improvement work conducted by the permittee for fee credit purposes shall be based on the actual expenses incurred by the permittee in completing the improvement work, or the actual contracted value to complete the improvement work, whichever is less. To verify expenses or to estimate projected local costs, local independent contractors may be contacted for construction prices, labor, machinery rental, or custom vegetation work. Consult the local Cooperative State Research, Education, and Extension Service (CSREES) to identify average costs for types of improvement work that qualify for a fee credit. If the permittee contracts the work, the fee credit is estimated as above, and is then adjusted to actual receipts upon the completion of the improvement or at the end of the grazing season.

Estimates of improvement costs can be used to determine fee credits, until the actual cost is determined. The grazing fee credits are always adjusted to reflect the actual cost. Any differences between the actual and estimated costs are generally reflected in the grazing fees on the bill for collection for the following grazing season.

#### **85.43 - Fee Credit Carry-Over**

In the event that the fee credit for an improvement exceeds the grazing fee owed by the permittee in a given year, the permittee may carry over the balance of the fee credit into future grazing seasons, until the fee credit is exhausted, or the grazing permit expires, whichever comes first. Accurate records of the running fee credit totals must be kept.

If a permit is terminated because the Forest Service determined to devote the allotment to other uses, and there are outstanding fee credits due, the permittee may be compensated for his/her interest in the adjusted value of the installed improvements. If the permit is cancelled because of violations of permit terms and conditions or the permit is voluntarily waived, the permittee is not entitled to compensation for the adjusted value of the improvement or for the outstanding unrealized fee credits. These conditions must be fully explained to the permittee before future fee credits are earned. Fee credits may not be earned past the expiration date of the permit.

Fee credits carried forward as a result of passage of the Consolidated Appropriations Act of 2017 and the subsequent appropriations acts containing similar provisions only apply to National Grasslands (see sec. 84.4) and have no effect on management of fee credits carried over on the National Forests in the Eastern and Southern Regions.

## **86 - Grazing Without Charge**

Nearly all grazing use is charged use. But subject to the express written approval of the authorized officer, a permittee may not be required to pay a fee for certain types of grazing authorized under a Temporary Grazing or Livestock Use Permit.

Grazing may be through the issuance of a free permit where the purpose of grazing is as specified in 36 CFR §222.3(c)(2)(ii)(B) through (G), and through a cooperative agreement as specified at 36 CFR 36 CFR §222.3(c)(2)(ii)(I). Those instances include such purposes as:

1. Part of a scientific study or research activity where the Forest Service stands to benefit substantially from the research results.
2. A crossing permit to access private lands - if the crossing takes place in just all or part of one day. This is usually to a non-permittee; permittees should have the crossing authorized on the term permit (usually as the first day and last day of the permitted use season, or as a separate line if overnight stay is required and the use is across someone else's allotment). If the crossing involves an overnight stay, the crossing permit is charged use.
3. A cooperative agreement to use grazing as a management tool to manipulate vegetation to meet resource objectives on a given parcel of land. Common examples include controlling competing vegetation for timber regeneration or controlling noxious weeds or other invasive species.

Under the circumstances enumerated in the regulation, it is within the authorized officer's discretion to decide whether a grazing fee should be assessed (see ch. 30 of this handbook).

### **86.1 - No Charge for Tribal Treaty Grazing**

The authorized officer shall not charge a fee for any Tribe exercising its treaty or other reserved right to graze on NFS lands (see ch. 50 of this handbook).

---

[1] Non-leap year.

[2] Fractional values of head months are rounded up when they are greater than, or equal to 0.5, or rounded down when they are less than 0.5.

[Back to top](#)

---