Data Submitted (UTC 11): 4/15/2021 11:00:00 AM
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Comments: The New Mexico Department of Agriculture submits the attached comments on the U.S. Forest Service's updated Rangeland Management Directives. Thank you for their consideration.

New Mexico Department of Agriculture (NMDA) submits the following comments in response to the United States Forest Service[rsquo]s (Forest Service) proposed revisions to directives governing rangeland management, grazing permit administration, and grazing allotment administration (85 FR 82432).

Part of NMDA[rsquo]s role is to advocate proactively on behalf of New Mexico[rsquo]s agricultural producers and the natural resources that sustain them. Ranchers contributed more than $993 million to the state[rsquo]s economy in 2019 via the sale of cattle and calves.1 Livestock grazing on Forest Service land in New Mexico forms both the economic and cultural foundations of many of the state[rsquo]s rural communities.

NMDA appreciates the Forest Service[rsquo]s effort to update its decades-old manuals and handbooks related to rangeland management for greater management flexibility, usability, and clarity. To these ends, NMDA recommends the Forest Service further clarify some of the content it proposes to update within Forest Service Handbooks 2209.13 and 2209.16, as our comments herein illustrate. Any emphasis appearing below has been added by NMDA.

FOREST SERVICE HANDBOOK 2209.13

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

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

NMDA agrees that there needs to be more clarity on when Forest Service employees should issue each type of permit. While Section 15.8 - Exhibit 01 provides a side-by-side comparison of the differences between the two permits, it does not provide a clear step-by-step guide for employees to follow when making decisions about which type to issue. Instead, NMDA suggests that this section include a decision-making flow chart and example scenarios to better assist Forest Service employees who are navigating this complex determination.

16.11 - Modification Procedure

[ldquo]If there is no current and sufficient project level NEPA analysis and decision, the authorized officer may still make an administrative decision to increase or decrease permitted numbers and/or seasons, provided appropriate and sufficient monitoring information indicates such action is warranted. The authorized officer should not wait for NEPA analysis to modify a permit when sufficient monitoring and rationale documentation indicates a need for modification. The authorized officer will follow guidance in sections 16.12 through 16.15.[rdquo]

The Forest Service Handbook should include more details on what constitutes [ldquo]appropriate and sufficient monitoring information.[rdquo] Since the modification of permit conditions has a significant financial impact on permittees, there should be clearer guidance to the authorized officer on the level of supporting data required. This will ensure that such decisions are guided by best available science in a transparent and objective process.

At a minimum, Section 16.11 should provide references to the other Forest Service handbooks, policies, or technical documents that should inform employee decision-making when considering a permit modification.

17.21 - Non-use for Resource Protection Primarily Due to Drought or Other Climatic Conditions

[ldquo]The approval of resource protection non-use in the case of drought, wildfire, or other severe weather events allows the permittee to avoid using personal convenience non-use during these normally short-term recovery periods. The non-use for resource protection is nearly always based on communication and negotiations between the permittee and the authorized officer. In extreme circumstances, the authorized officer may need to require resource protection non-use associated with these events without permittee agreement.[rdquo]

This section should specify what supporting information the authorized officer should use when determining whether resource protection non-use is required. In the cases where the authorized officer and permittee do not come to an agreement, there must be a clear standard for the scientific evidence needed to validate the authorized officer[rsquo]s decision. This standard will ensure a consistent and fair application of this resource protection non-use provision.

17.22 - Non-use for Resource Protection during Landscape-Scale Vegetative Treatments and Rangeland Developments to Increase Grazing Capacity

[ldquo]A decision to implement resource protection non-use under these circumstances will be made in

writing to the affected permittee(s), or a new applicant, through a Non-Use Agreement for

Resource Protection (Form FS-2200-26).[rdquo]

NMDA believes open and frequent communication between the Forest Service and its permittees is key to successful rangeland management on national forest lands. To support this objective, Section 17.22 should guide Forest Service employees to always engage in full consultation, cooperation, and coordination prior to planning vegetative treatment and rangeland development projects. Not only will early consultation benefit the Forest Service[rsquo]s relationship with its permittees it will also enhance the effectiveness of such projects through producer knowledge and support.

17.23 - Non-use for Resource Protection Designed to Achieve a Changed Resource Condition through Trial Reductions of Forage Use

[ldquo]Occasionally, changing or continuing resource conditions on the allotment may indicate that a change in livestock use levels is needed. The authorized officer may require a trial period of reduced numbers or different seasons to attempt to bring about an improvement or change in vegetative conditions. The permittee may or may not be in agreement with the proposed changes; sometimes the permittee is the one suggesting the proposed trial period in order to determine if the changes in numbers or seasons can bring about the desired results.[rdquo]

It is unclear from this section whether this type of non-use for trial reductions is a voluntary agreement between the authorized officer and the permittee or a requirement imposed by the agency. In the cases where the permittee does not agree to the proposed changes, can the authorized officer still require this type of non-use? If so, what is the permittee[rsquo]s process for appealing the decision?

In cases of disagreement by the permittee, this section should outline the scientifically sound standard of monitoring data that is needed to support the authorized officer[rsquo]s requirement of a trial reduction. This will limit Forest Service employees using the Handbook from arbitrarily implementing trial reductions.

18.39 - Permit Waiver with No Preferred Applicant

[ldquo]The waived amount of permitted use, either on an individual or community allotment, then becomes available for allocation through the grant process. Following that process, the capacity may or may not be allocated to another qualified permittee. A vacant allotment could also be maintained as a forage reserve and available for occasional use as a swing pasture(s) as needed for drought, wildfire, prescribed fire, etc. The guiding document will be the project-level analysis and resultant decision that is current for the active allotment, unless there is a compelling reason to maintain it as a vacant allotment or pasture.[rdquo]

NMDA finds the language describing the process for allocating vacant allotments too ambiguous to effectively guide agency decision-making. Instead, this section should include a comprehensive, step-by-step guide the authorized officer should follow when determining how to allocate a vacant allotment.

In addition, the final version of the Forest Service Handbook should elaborate on which situations would constitute a [ldquo]compelling reason to maintain it as a vacant allotment or pasture[rdquo] and outline the supporting scientific evidence that would validate such a decision.

66 [ndash] Requests for Records under the Freedom of Information Act

This section appears to omit information valuable to handbook users and to permittees whose records are within such users[rsquo] access and control. The text currently directs Forest Service staff to [ldquo](see below)[rdquo] for the nine exemptions to the Freedom of Information Act (FOIA) under which records need not be provided in response to a FOIA request, but the nine exemptions do not appear in the text. NMDA requests these nine exemptions be published within the same chapter for easy reference.

94.3 [ndash] Annual Operating Instructions (AOIs) or Other Similar Documents

This section states that [ldquo]AOIs are not required by the Forest Service grazing regulations; issuance of AOIs or other similar documents is recommended, but optional.[rdquo] Language elsewhere in the same section reads as a mixed message:

[bull] [ldquo]The annual operating instructions (AOIs) or other similar documents specify those annual actions that are needed to implement the management direction set forth in the AMP or underlying decision for that grazing season.[rdquo]

[bull] [ldquo]The AOI is an administrative action implementing a project-level decision through the AMP. Per 36 CFR [sect]214.4(a)(1), issuance of annual operating instructions does not constitute a permit modification and is not an appealable decision.

[bull] [ldquo]AOIs should clearly and concisely identify the obligations of the permittee and the Forest Service, clearly articulate annual grazing management requirements, and monitoring necessary to document compliance.[rdquo]

[bull] [ldquo]The AOI should set forth[hellip][t]he grazing use authorized on the allotment for the current grazing season[hellip][a]llowable use or other guidelines to be applied and followed by the permittee to properly manage livestock[hellip]documentation demonstrating compliance with the terms and conditions in the grazing permit, allotment management plan, and annual operating instructions; and [i]n addition, the permittee may be asked to provide information regarding actual use, livestock distribution, forage utilization, or the condition of improvements.[rdquo]

[bull] [ldquo]It is highly preferable, but not required, that the grazing permittee and the authorized officer sign the AOI[hellip][rdquo]

Given that an AOI is [ldquo]not an appealable decision,[rdquo] there should be instruction on how an authorized officer presents the AOI option to permittees. Additionally, this section of the handbook should direct employees to always engage the permittee in consultation irrespective of AOIs.

FOREST SERVICE HANDBOOK 2209.16

17.22 [ndash] Vacant Allotment Situations

[ldquo]In many instances the authorized officer may choose to leave an allotment in vacant status rather than restock it. This may be because the allotment is marginal in terms of its ability to provide forage on a long-term sustained basis, or it may not be economically feasible to stock and manage on a long-term basis; there may be other reasons. The authorized officer may also choose not to designate the allotment as a Forage Reserve allotment for various reasons, or because it is being considered for future stocking through the grant process (see FSH 2209.13 chapter 10, section 13.2).[rdquo]

To achieve symmetry between the emphasized sentence and the sentence prior to it, NMDA requests the Forest Service enumerate in the same paragraph all or some of the reasons why an authorized officer may choose not to designate a vacant allotment as a Forage Reserve allotment.

Conclusion

NMDA appreciates the Forest Service[rsquo]s effort to update the documents that guide its staff in their understanding of rangeland management on Forest Service land.

NMDA also appreciates the ability to participate in the Forest Service[rsquo]s public comment process. If you have any questions related to these comments, please contact Mr. Max Henkels at (575) 339-5052 or mhenkels@nmda.nmsu.edu.

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