**Response to Public Comments for Forest Service Handbook 2209.13, Chapter 80**

| Public Comment | Response |
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| On November 1, 2020, the Forest Service published a proposed rule to change the regulations pertaining to unauthorized grazing: "Assessing Fees for Excess and Unauthorized Grazing." 85 Fed. Reg. 69303, November 2, 2020. This proposed rule has not been finalized nor has the Forest Service responded to public comments about the proposed changes. Yet, the proposed directives have been pre-written to comport with the proposed regulatory changes without consideration of the concerns raised by the public. This is certainly putting the cart before the horse as the new language in the proposed directives is inconsistent with the current and legally binding regulations. Furthermore, the decision to pursue changes about unauthorized grazing policies through formal rulemaking only strengthens the argument for using the same process to address other aspects of grazing permit administration and management. It can be equally argued that many changes and policies in the proposed directives are contrary to or at least unreasonable interpretations of authority granted by the existing federal regulations. The most appropriate and legal course of action would be for the Forest Service to withdraw the proposed revisions to the directives and the proposed rulemaking for unauthorized grazing and initiate a single rulemaking for the entirety of the Forest Service grazing program. This would also be consistent with the approach taken by the BLM which identified the Government Accountability Office (GAO; GAO 2016) report on unauthorized grazing as one of the purposes and needs for revising BLM's grazing regulations but chose to initiate a single unified rulemaking process along with the appropriate level of environmental analysis to examine the impacts of any proposed changes. 85 Fed. Reg. 3410, 3411, January 21, 2020. The Forest Service uses a very outdated method and formula for determining grazing fees, always charging about 5-10% of nearby private lands. Permittees often allow trespass grazing to proceed because the Forest Service is lax at enforcement, and the penalty fees are almost always considerably less than the normal private land fees. One example of this is on the Beaverhead-Deerlodge National Forest where a permit was in non-compliance one year due to trespass cattle from the permittees neighboring private land due to a lack of fence maintenance. The next year the same thing happened, yet the second year the permittee was only issued a warning. | The Excess Use Rule was released prior to the Directives release. It is legal to release a Rule and Directive to implement it in a 'staggered' timing release or 'simultaneously'. The Directives will be updated before finalizing to reflect any changes made to the Excess Use Rule. The implementation of the fee calculation for excess use is not determined by rule making, but is an administrative process, as carried out through the Directives. |
| The Lease Price for any private land leasing for domestic livestock should be raised to at least $10 per head and then pegged to the rate of inflation. | The USFS does not establish fees for or control private land leasing.  |
| Grazing fees should be increased (I know this requires amendment to existing law). | In 1986, Executive Order 12548 provided for establishment of appropriate fees for the grazing of domestic livestock on public rangelands. In 1988, the fee formula for the Forest Service was incorporated into 36 Code of Federal Regulations (CFR) 222 Subpart C. Each year, the Forest Service bills permittees based on grazing fee calculations released by the National Agriculture Statistics Service. Grazing fees are not established by the Forest Service Manual or Handbook. |
| For those of us who've lived near grazing areas (Lolo Nat'l Forest, Beaverhead-Deerlodge Nat'l Forest), whatever grazing fees are received are not enough to deal with the extensive riparian damage caused by livestock. Higher fees are called for, and as well as more restrictions on the number of cow-calf units per acre. | Grazing fees are determined by Executive Order 12546 signed in 1986 and are calculated and issued by the National Agricultural Statistics Service (NASS) each year. The USFS does not control or determine the grazing fees. |
| Any public land management policy must also ensure that permit holders compensate the public for degradation of ecosystems caused by their activities. | Permit holders pay grazing fees. A portion of these fees return to the Forest where they were collected and are used for rangeland improvement projects. |
| The Directive must also ensure that the grazing permit holders compensate for the cost of environmental degradation caused by grazing, and that the cost is not passed to the public. | Permit holders pay grazing fees. A portion of these fees return to the Forest where they were collected and are used for rangeland improvement projects. |
| FSH 2209 .13 Chapter 80 - Grazing Fees Chapter 80 contains 12 requests from the DPG Grazing Associations' comments that the FS specify or identify how the National Grasslands fees differ from the National Forests. | FSH 2209.13, Chapter 80, Section 84 provides specific discussion and direction on National Grassland specific grazing fees.  |
| FSH 2209.13 Chapter 80 - Grazing Fees Page 36, procedure #9 (Fee Credit Carried Forward for Approved Conservation Practices) "The fees credited, because they are Forest Service funds, must be deposited in the project-specific account at the beginning of each grazing year..." The LMGA objects to the FS mandating this directive to the Grazing Associations. As documented in our DPG SGA: "Grazing Associations will maintain records related to the administration of livestock grazing activities authorized by this Agreement that would otherwise be retained by the Forest Service if it were directly administering livestock grazing through Forest Service term grazing permits. Said records must include but are not limited to: Association Member eligibility and qualification requirements; base property; Association grazing permits; documents pertaining to the investigation and enforcement of Association grazing permit terms and conditions; bills for collection; actual use records; lease agreements; and land use practice costs to include detailed conservation practices, and administrative costs." | The procedures set forth within FSH 2209.13, Chapter 80, Section 84.4 are designed to ensure clear records are maintained relative to the carryover of fee credits for approved conservation practices. Clear records are important relative to accountability and tracking to enable the effective use of the authority as well as record transparency relative to audits as the funds associated with fee credits carried forward are considered federal funds.  |
| Chapter 80 Grazing Fees: Grazing allotments vary tremendously by elevation, topography, vegetation (including amounts of heavy timber), ease or difficulty of access, even weather patterns. But 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 [red text] Weather can play a key role in ability to gather livestock. There must be included here a grace period because a blizzard, excessive rain, or similar can make it impossible to gather livestock and should be duly noted that Mother Nature can and does interfere now and then as do personal family unexpected losses. Instead of an official grace period a notation could be made here that a weather event happened which scattered livestock or the family might have had an unexpected death or illness which stalled out the gathering process. There should always be a "what if" for anything not normal. [end] | The new Excess Use Rule will provide the flexibility needed if unexpected circumstances occur which prevent all livestock from being gathered and removed by the off date. Most livestock permittees know what it takes to gather and remove all their livestock from an allotment and they plan accordingly. When circumstances arise that prevent timely removal, the new Excess Use Rule can be used if conditions are met. |
| Page 27: Correct the double negative in this sentence, “No 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.”  | Sentence corrected to read “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.” |
| FSH 2209.13 Chapter 80 - Grazing Fees Chapter 80 contains 12 requests from the DPG Grazing Associations' comments that the FS specify or identify how the National Grasslands fees differ from the National Forests. | Policy and procedure for grazing fees for National Grasslands are described within section 84 of FSH 2209.13, Chapter 80. The section articulates the aspects and opportunities related to grazing fees that are only available on National Grasslands and land utilization projects. Separate policies and procedures are provided for National Forests within sections 83 and 85 of FSH 2209.13, Chapter 80.  |
| Section 83.2 discusses the use of Range Betterment Funds, a program established by the Federal Land Policy and Management Act, as amended by the Public Rangelands Improvement Act (43 U. S. C. 1751(b)). Concerning priorities for such expenditures, it states: 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. Livestock grazing can be very detrimental to fish and wildlife habitat. See, e. g., Fleischner, 1994. Therefore, the following should be added to these priority criteria: The need for maintaining or improving habitat for fish and wildlife species that may have been, or could be, adversely affected by livestock grazing. Adding this priority would be consistent with the Public Rangelands Improvement Act, the: Findings and Declaration of Policy" section of which noted that "unsatisfactory conditions on public rangelands…threaten important and frequently critical fish and wildlife habitat…". 43 U. S. C. 1711 (2)(a)(3). | Items #1 and #2 include spending authority for maintaining and improving habitat for fish and wildlife species as needs are identified through project specific environmental analysis. Therefore, addition of the suggested language is not needed. |
| FSH 2209.13 Chptr 80 Sec 81.7: While SER CD commends the Forest Service for updating the directives to provide consistent administration across regions and similar to the Bureau of Land Management's policy, we have concerns on the process for calculating the excess and unauthorized grazing fees. Private land lease rates vary dramatically across the 17 states so is very inequitable. SER CD supports the calculation and application of a state rate, recognizing the complexities identified with forests, perhaps even allotments, that cross state lines. The rate applied would be the rate for the state where the Forest Supervisor's office is located that has management authority for the given allotment. | Due to the complexities of 17 different state Private Grazing Land Lease Rates (PGLLRs) and the complexities of National Forests boundaries crossing over into multiple states, the USFS is using the average of the 17 states. The USFS administers numerous grazing allotments that span two states, therefore, at any one time, it is impossible to determine the number of livestock and duration of grazing in one state versus the other state when they are on these allotments. So, using the average of the 17 states is the solution. |
| 2209.13 Chapter 8081.7- Excess Livestock Use The following statement is an unnecessary addition to the section that could be misinterpreted as a negative attitude toward sheep grazers. "For sheep allotments, there is virtually no excuse for the band, or any livestock, to remain on the allotment past the permitted off-date." ISDA advises that this statement be removed completely as the intent of the section is clear without this statement. | This statement has been removed from the text. |
| Chapter 81.7 - Excess Livestock Use Many of the undersigned groups have submitted comments throughout the USFS's regulatory process to address excess and unauthorized use. FSH 2209.13 should reflect those sentiments, found attached here as Appendix A. | This is a general statement and cannot be responded to. Each individual issue has been separately coded and responded to. |
| SECTION 81.7 Changing the excess use fee to the average of the private land lease rates is not an incentive for the permittee to avoid excess use. Applying the proposed excess use fee is not a significant economic leverage to pressure permittees to prevent unauthorized and excess use. We urge that this be significantly increased in order to have it result in a meaningful incentive. | the PGLLR is a sizable increase from historic excess and unauthorized use fees and is considered to be a stronger deterrent. Permittees are also subject to administrative actions on their grazing permits if excess use is determined. The Administrative penalties are good incentives to do the right thing. |
| SER CD has serious concerns with the statement in this section, FSH 2209.13 Chptr 80 Sec 81.7, "For sheep allotments, there is virtually no excuse for the band, or any livestock, to remain on the allotment past the permitted off-date." Sheep wander away from the main band and can be difficult to locate. In addition, weather conditions and delay of trucks scheduled to remove bands of sheep are also factors to be considered. Sheep on grazing allotments may not have full-time herders so should not be singled out and directives should be consistently applied to all "livestock" equally. | This statement has been removed from the text. |
| 81.7 Excess Livestock use WSGA finds the use of a 17 State PGLLR to establish the excess use fee across Regions 1-6 to be veery inequitable. Private land lease rates vary dramatically across these 17 states. Application of a state rate should not be unduly complicated with a simple computer program. Recognizing the complexities that you have identified with forests, perhaps even allotments, that cross state lines, WSGA would offer a recommendation that the Directives provide that the applicable rate on a Forest would be the rate for the state where the Forest headquarters office is located. | Due to the complexities of 17 different state PGLLRs and the complexities of National Forests boundaries crossing over into multiple states, the USFS is using the average of the 17 states and will apply that. The USFS administers numerous grazing allotments that span two states, therefore, at any one time, it is impossible to determine the number of livestock and duration of grazing in one state versus the other state when they are on these allotments. So, using the average of the 17 states is the solution. |
| WSGA is disturbed by the statement in this section that, "For sheep allotments, there is virtually no excuse for the band, or any livestock, to remain on the allotment past the permitted off-date." Groups of sheep do wander away from the main band and can be difficult to locate. In addition, weather conditions and delay of trucks scheduled to remove bands of sheep are also factors to be considered. | This statement has been removed from the text. |
| CHAPTER 80 - GRAZING FEES 1. Comment on Section 81.7 - Excess Livestock Use p. 13 - The Grazing Associations request the FS use state that section 81.7 applies to National Forests only. | Excess livestock are any livestock owned by the holder of a grazing permit, but grazing on NFS lands in greater numbers, or at times or places other than permitted in the grazing permit or authorized on the annual bill for collection. This includes livestock owned by a grazing association member who is authorized to graze under a grazing agreement. |
| Comment on Section 81.7 - Excess Livestock Use p. 13 – 14, The Grazing Associations request the FS create Section 81.7a and title it: Excess Livestock Use for National Grassland Grazing Associations. The Grazing Associations request the FS to insert the following language for Section 81.7a: When excess use occurs on National Grasslands, Grazing Associations will refer to their Grazing Agreements and Rules of Management for determining appropriate excess use actions. Grazing Associations will Investigate and report to the Forest Service all alleged claims of member's permit violations and the Association's handling of those claims, including but not limited to those of excess livestock use. The Forest Service will be informed in writing of the action taken | A new section within Ch. 80 is not needed. Section 25.5 within FSH 2209.13, Ch. 20 provides a description of how excess use is to be addressed by grazing associations.  |
| Comment on Section 81.71 - Billing for Excess Livestock Use and Related Permit Actions p. 15 - paragraph 2. The Grazing Associations request the FS use the following language changes: On the National Grasslands, "Excess Livestock" means any livestock owned or controlled by the holder of a grazing permit issued by the Association but grazing on National Grasslands in greater numbers, or at times or places other than authorized in the grazing permit, Grazing Agreement, or authorized on the Bill for Collection. The Grazing Association will determine the excess and unauthorized use rate for its members in the administration of the grazing program on the National Grasslands. Regardless of the excess and unauthorized use rate used on the National Grasslands, the Grazing Association will pay the excess and unauthorized use rate set by the FS to the Treasury. | The rate charged to grazing associations by the Forest Service for excess use must be consistent. That rate must be described in the directives and as proposed in the updated directives, is the 17-State PGLLR. If a grazing association chooses to apply a different rate to their members that should be captured within their ROM.  |
| Section 81.7 - Excess Livestock Use. This section establishes fees for excess use and also identifies what the F.S. considers excess animals. We feel the process for charging an excess fee in many cases does not consider many factors outside the control of the permittee. Since the F.S. does not exclude other uses, these uses can have an impact on the ability of a permittee to control livestock. As noted in this section, in areas where there are fences to contain livestock on F.S. lands, gates can be left open by other users of the land, which can allow livestock to stray into areas where they can be missed by the permittee. This can also occur with wildlife that knock fences down in remote areas and allow livestock to stray. Other factors outside the control of the permittee are weather events, which can greatly impact the ability to gather livestock in a timely manner. We suggest that F.S. consider options to waive any excess fees due to weather events. We also suggest that in areas with high impacts from other uses the F.S. consider a more flexible approach for charging for excess uses. | The new Excess Use Rule will provide the needed flexibility if warranted. |
| We disagree with the statement, "For sheep allotments, there is virtually no excuse for the band, or any livestock, to remain on the allotment past the pe1mitted off-date." While this statement starts off discussing sheep, it is broadened to all livestock. However, there are a number of factors which can lead to sheep getting separated from the main band such as attacks by predators, weather situations that lead to sheep to become separated from the main band, and others. We do not believe the mentioned statement can be supported and do not see any reason to retain it. | This statement has been removed from the text. |
| We do not believe utilizing an average private grazing land lease rate (PGLLR) is justified. The private grazing land lease rate has a number of factors which make it unsuitable for such consideration. For instance, most, if not all, private grazing is an exclusive or near exclusive use of the land, and in those situations where other uses are allowed on private lands, the other users are identifiable, and control of their actions more closely monitored. Furthermore, many private grazing lands provide more than just forage for livestock. Unlike the F.S., private grazing lands are fenced, and those fences are maintained by the landowner. The landowner also maintains other range structures and improvements that the F.S. places on the permittee. We suggest the F.S. utilize some reasonable multiplier of the federal grazing fees as the basis for an excess livestock use. | The PGLLR rate is only being used for excess or unauthorized grazing use. The regular/basic fee is used for permitted grazing use. It has been determined that the USFS needs to revise the excess and unauthorized grazing use fee to be similar to the BLMs, which is based on the PGLLR. |
| Chapter 80 - Grazing Fees 81.7 - Excess Livestock Use. CDA requests the last sentence of the sixth paragraph discussing sheep be removed. It is unrealistic to expect that every sheep, in all situations will be with the band and removed at the same time. Strays are part of managing sheep bands. Permittees should be expected to promptly remove strays when they are located, but the unrealistic expectation that strays won't happen should be removed. | This statement has been removed from the text. |
| Comment on Section 84.2 - The Grazing Associations requested the FS modify the language within section 84.2 to read as follows: “Land Use Practices (LUPs)” are those Forest Service-approved administrative costs and conservation practices (CPs) undertaken by the Association as part of its management of the livestock grazing program on the National Grasslands covered by the Agreement. Satisfactory completion of the approved LUPs will result in a reduction of the grazing fee owed by the Association to the US Treasury. Refer to the October 24, 1950, USDA, and November 8, 1950, Office of Comptroller General Opinion. The Forest Service will authorize reductions in the annual grazing value charged for grazing on National Grasslands described in Exhibit A by as much as 75% for approved conservation practices and administrative costs in accordance with agency procedure set forth in Chapter 20 of FSH 2209.13 in order to determine the grazing fee due the U.S. Treasury. In the case where the District Ranger decides to allow greater than the 75% of the value to be used that year 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 from the Authorized Officer. | Section 84.2 is intended to explain the overall concept of fee reductions for authorized land use practice expenditures. The requested modifications to the language are not needed as similar details are provided within the subsections (84.21 and 84.22). Also adding wording such as “will” would modify the intent of the policy as the agency does reserve discretion in determining whether to authorize land use practices or not in a given year.  |
| Comment on Section 84.21 - Administrative Costs and Conservation Practices p. 30 - 31 Conservation Practices. The Grazing Associations request the FS use the following language changes: 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 program through a grazing agreement. or grazing permit. Conservation practices shall 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, land exchanges, watershed protection, wildlife habitat improvement, and studies to determine rangeland health and stocking rates. | Grazing Associations have the responsibility to manage their members livestock grazing use on those lands identified within the grazing agreement and not the Forest Service grazing program. There are instances where direct permits to individual permittees are issued on National Grasslands as well as grazing agreements to grazing associations. Existing wording within the proposed section 84.21 is worded to ensure those aspects are captured. Suggested wording may lead to confusion relative to the extent of the grazing association responsibilities as well as the ability to approve conservation practices for direct permittees.  |
| Comment on Section 84.22 - Conservation Practice Approval Criteria p. 32 - paragraph 1, #6. The Grazing Associations request the FS to remove #6 from this list or use the following language changes: 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. Grazing Associations will use the appropriate project cost share with their members since members have Association Grazing Permits. For National Grasslands, Grazing Associations are authorized to administer the grazing program under a Grazing Agreement using their articles of incorporation, by-laws, Grazing Agreement and Rules of Management in managing the grazing program for its members. Since Association Members do not hold a Forest Service grazing permit, they cannot appeal Forest Service decisions related to the grazing use authorized by the Agreement pursuant to 36 CFR 214, the FS should not instruct the Grazing Associations in their management of the grazing program with their members as they have done in this section. | Grazing Associations have the responsibility to manage their members livestock grazing use on those lands identified within the grazing agreement and not the Forest Service grazing program. There are instances where direct permits to individual permittees are issued on National Grasslands as well as grazing agreements to grazing associations. Existing wording relative to cost share principles is needed to ensure they are applied to either a direct permittee or a grazing association when approving conservation practices. The grazing associations do have discretion relative to the manner of which they choose to provide the cost share to the Forest Service. The following language has been added to #6 to make this clearer: 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 associations preference. |
| Comment on Section 84.23 - Fee Reduction Criteria p. 32 - 33; paragraph 1 on p. 33. The Grazing Associations request the FS to remove #6 from this list or use the following language changes: Only National Grasslands and land utilization projects are eligible for fee reductions. They are authorized under Title III of the Bankhead-Jones Farm Tenant Act (BJFTA), 7 U.S.C. secs. 1010-1012, and a 1950 Comptroller General's opinion. Within the decision, the Comptroller General consented to the Forest Service charging permittees a reduced rate in return for an agreement by the permittee to engage in certain specified conservation practices. The decision further supports the authority for fee reductions provided within Title III of the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. 1010-1012) provides authority for a fee reduction.  | "The language at 84.23 has been revised as follows to be more concise: 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. Fee reductions are authorized under Title III of the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. 1010-1012), and a 1950 Comptroller General’s opinion. " |
| 9. FSH 2209.13 Chapter 80 - Grazing Fees Page 36, procedure #9 (Fee Credit Carried Forward for Approved Conservation Practices). "The fees credited, because they are Forest Service funds, must be deposited in the project-specific account at the beginning of each grazing year ... " The LMGA objects to the FS mandating this directive to the Grazing Associations. As documented in our DPG SGA: "Grazing Associations will maintain records related to the administration of livestock grazing activities authorized by this Agreement that would otherwise be retained by the Forest Service if it were directly administering livestock grazing through Forest Service term grazing permits. Said records must include, but are not limited to: Association Member eligibility and qualification requirements; base property; Association grazing permits; documents pertaining to the investigation and enforcement of Association grazing permit terms and conditions; bills for collection; actual use records; lease agreements; and land use practice costs to include detailed conservation practices, and administrative costs." | The procedures set forth within section 84.4 are designed to ensure clear records are maintained relative to the carryover of fee credits for approved conservation practices. Clear records are important relative to accountability and tracking to enable the effective use of the authority as well as record transparency relative to audits as the funds associated with fee credits carried forward are considered federal funds.  |
| Comment on Section 84.4 - The Grazing Associations request the FS make this section exactly the same as in: FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK CHAPTER 20 - GRAZING AGREEMENTS; 25.44 - Fee Credit Carried Forward for Approved Conservation Practices.  | FSH 2209.13, Chapter 80 is the chapter that is focused on grazing fees. Chapter 20 has been revised to refer the reader to Chapter 80 to ensure consistency between the two chapters.  |
| Comment on Section 84.4 – The Grazing Associations request the FS modify the language in this section to read: Since the 2017 Appropriations language allows all grazing associations to amass enough funds to complete larger projects, these management restrictions on fee credits carried forward are applied to the grazing association or direct permittee as appropriate. | Section 84.4 has been revised to remove wording relative to the size of grazing associations.  |
| Comment on Section 84.4 - Fee Credit Carried Forward for Approved Conservation Practices P. 35 - Criteria #1 and #2 under 1st paragraph. Grazing Associations comment that the FS's table and restrictions on larger Associations does not come from Consolidated Appropriations Act of 2017, Public Law No. 115-31, Div. G, Title III. The FS arbitrarily put these restrictions on instead of treating all Grazing Associations equally and fairly. The law was created to help all Grazing Associations, not to have the Fs come up with additions restrictions. The FS is arbitrary and capacious in the decision. | Section 84.4 has been revised to remove wording relative to the size of grazing associations.  |
| Comment on Section Fee Credit Carried Forward for Approved Conservation Practices p.35 - 2nd paragraph 84.4 - (Fee Credit Carried Forward for Approved Conservation Practices). The Grazing Associations request the FS to modify the language to remove the word “policy” to read as follows: To follow the grazing fee credit language for national grasslands, the following procedures will be implemented for grazing associations and direct permittees beginning with the 2020 grazing fee year. | The rangeland management directives (Forest Service manuals and handbooks) contain the policies and procedures related to carrying out the rangeland management program on National Forest System lands. As such, the original wording is accurate. |
| Comment on Section Fee Credit Carried Forward for Approved Conservation Practices P. 35 - Criteria #1 and #2 under 2nd paragraph. Grazing Associations respond that the FS is arbitrary and capacious in their setting of an upper limit of $250,000 on the project. Each Grazing Association and District Ranger should be able to decide on size of projects for themselves. | The criteria has been revised to read: Up to 50 percent 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.  |
| Comment on Section Fee Credit Carried Forward for Approved Conservation Practices p.36- procedure #9 (p. 97 - procedure #7 - FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK CHAPTER 20 - GRAZING AGREEMENTS; 25.44 - Fee Credit Carried Forward for Approved Conservation Practices). The Grazing Associations request the FS use the following language for this section: The fees credited, because they are Forest Service funds, must be deposited in the project-specific 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. A standardized form in addition to the work plan may need to be developed by the parties to establish a record of all account transactions. Grazing Associations Comment: LUPs Fee Reductions and Fee Credits are not FS funds. (see Deputy Assistant General Counsel, James B. Snow Memorandum; September 9, 1992) | Fee credits represent uncollected fees for the grazing value received. Once assessed, the Government views these funds as federal money and it must be managed accordingly. #9 has been updated as follows to make this point clearer: 9. 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 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. |
| 81.82 - Impoundment and Disposal of Unauthorized Livestock The third and fourth paragraphs of this section are narratives that are inconsistent with the purpose and tone of the document. As a handbook/manual, it is unnecessary to place blame on the USFS, permittees or private landowners, but to inform the reader of steps to resolve the issue at hand. The preceding and following paragraphs outline the actions needed for branded and unbranded livestock and do not need the intervening narratives. ISDA suggests removing these statements entirely. If the USFS deems this information necessary for clarification, ISDA urges that the USFS avoids placing blame on any involved party, directly or indirectly. | Section 81.82 has been revised to be more concise and focused on setting the context and describing the policies for impoundment and disposal of unauthorized livestock.  |
| Comment on Section 81.82 - Impoundment and Disposal of Unauthorized Livestock p. 20 – 22. The Grazing Associations request the FS use the following language changes: 81.82 - Impoundment and Disposal of Unauthorized Livestock applies to National Forests only. | Per 36 CFR 262.10, Unauthorized livestock on the National Forest System, which are not removed therefrom within the periods prescribed by this regulation, may be impounded and disposed of by a forest officer as provided herein. The National Forest System includes the National Grasslands.  |
| Comment on Section 81.82 - Impoundment and Disposal of Unauthorized Livestock p. 20 – 22. The Grazing Associations request the FS to create the following section: 81.82a - Impoundment and Disposal of Unauthorized Livestock for National Grassland Grazing Associations. The Grazing Associations request the FS add the following language to section 81.82a: When Unauthorized Livestock Use occurs on National Grasslands, Grazing Associations will refer to their Grazing Agreements and Rules of Management for determining appropriate Unauthorized Livestock Use actions. Grazing Associations will Investigate and report to the Forest Service all alleged claims of member's permit violations and the Association's handling of those claims, including but not limited to those of excess livestock use. The Forest Service will be informed in writing of the action taken. | Per 36 CFR 261.2 - Unauthorized livestock means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by § 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. Unauthorized livestock use and associated penalties does apply to National Grasslands. On National Grasslands where there is a grazing agreement in place, the applicable association manages its members. Any livestock owned by a non-member or non-permittee is placed on NFS lands would be considered unauthorized livestock and it is the Forest Service's responsibility to address the unauthorized livestock use. As such a separate section is not needed.  |
| FSH 2209-13 - Chapter 80 The information in Chapter 80 is useful, but there are some concerns we have regarding the F.S. actions. One concern deals with 81.21 -Animal Equivalency Ratio. In this section the F.S. considers 5 sheep or goats to be equivalent to one cow. We are aware of numerous situations where pe1mittees sought to conve1i from sheep to cows and the F.S. routinely utilized a much higher ratio for these conversions (some conversions were in the range of 10 sheep to 1 cow). By utilizing the 5-to-l ratio strictly for charging permittees grazing is clearly overcharging the permittees. In situations where there have been actual conversions from one species to another, we recommend that the Agency use those numbers to dete1mine fees. To do less is clearly unfair to the permittee. | The conversion factors used are the standard conversion practices in Rangeland Management for livestock conversions. The conversions are used to calculate the amount of forage an animal unit uses in one month. One cow unit is equivalent to 5 sheep or goats. The USFS uses Head Months when calculating how to charge for grazing. The grazing fee charged for each cow head month would be equivalent to the fee charged for 5 sheep/goats per month.  |
| \* Sec. 81.5 - It would be better if the Forest Service billed like the BLM on actual use after the grazing season. SCD does not agree with paying for permitted numbers and season and not getting a refund if the full numbers and season are not used. | It is a requirement that the grazing bill is paid prior to turn out. Most of the BLM offices apply this practice as well. If conditions warrant a refund, such as drought, the authorized officer will work with the permittees to determine if the conditions warrant a refund or apply the fees to the next grazing year. The situation described in the comment is rare - meaning the permittee is expected to fulfill the permit and pay for the permitted use. If a wildfire or drought occurs, the authorized officer works with the permittee to refund or apply a credit. |
| Comment on Section 81.8 - Unauthorized Livestock Use p. 17 – 20. The Grazing Associations request the FS use the following language changes for the title of this section: 81.8 - Unauthorized Livestock Use applies to National Forests only | Per 36 CFR 261.2 - Unauthorized livestock means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by § 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. Unauthorized livestock use and associated penalties does apply to National Grasslands. On National Grasslands where there is a grazing agreement in place, the applicable association manages its members. Any livestock owned by a non-member or non-permittee is placed on NFS lands would be considered unauthorized livestock and it is the Forest Service's responsibility to address the unauthorized livestock use.  |
| Comment on Section 81.8 - Unauthorized Livestock Use p. 17 – 20. The Grazing Associations request the FS add Section 81.8a with the following title: 81.8a - Unauthorized Livestock Use for National Grassland Grazing Associations.  The Grazing Associations request the FS use the following language for section 81.8a: When Unauthorized Livestock Use occurs on National Grasslands, Grazing Associations will refer to their Grazing Agreements and Rules of Management for determining appropriate Unauthorized Livestock Use actions. Grazing Associations will Investigate and report to the Forest Service all alleged claims of member's permit violations and the Association's handling of those claims, including but not limited to those of excess livestock use. The Forest Service will be informed in writing of the action taken. | Per 36 CFR 261.2 - Unauthorized livestock means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by § 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. On National Grasslands where there is a grazing agreement in place, the applicable association manages its members which includes addressing an excess use made by a member. Any livestock owned by a non-member or non-permittee is placed on NFS lands would be considered unauthorized livestock and it is the Forest Service's responsibility to address the unauthorized livestock use.  |
| 81.8 - Unauthorized Livestock Use We believe the F.S. should establish two difference categories for unauthorized livestock use. There should be "intentional and unintentional" categories. We believe the Agency seeks to differentiate these two concepts when they discuss "flagrant" unauthorized use in section 81.82. Unintentional unauthorized use can be where livestock strays from adjacent private lands due to some of the factors mentioned in the discussion on excess livestock use as well as section 81.82 Impoundment and Disposal of Unauthorized Livestock, and certainly would be of a different nature than a situation where someone intentionally moves livestock onto areas where they do not have a permit. We do not support anyone intentionally using the F.S. lands where they are not authorized. We also agree that actions should be taken against the livestock owner except in situations where that livestock owner is leasing land and the landowner is responsible for control of the livestock. | The USFS does not intend to determine intent of excess or unauthorized grazing use. Instead, we investigate the cause and effect and if it meets the criteria set forth in the new Excess Use Rule, the fees can be waived, otherwise fees will be assessed.  |
| Comment on Section 81.81 - Billing for Unauthorized Livestock Use and Related Administrative Actions p. 20. The Grazing Associations request the FS use the following language changes: 81.81 - Billing for Unauthorized Livestock Use and Related Administrative Actions applies to National Forests only | Per 36 CFR 261.2 - Unauthorized livestock means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by § 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. Unauthorized livestock use and associated penalties does apply to National Grasslands. On National Grasslands where there is a grazing agreement in place, the applicable association manages its members. Any livestock owned by a non-member or non-permittee is placed on NFS lands would be considered unauthorized livestock and it is the Forest Service's responsibility to address the unauthorized livestock use including the issuance of any bills that may be required. |
| Comment on Section 81.81 - Billing for Unauthorized Livestock Use and Related Administrative Actions p. 17 – 20. The Grazing Associations request the FS insert the following title language: 81.81a - Billing for Unauthorized Livestock Use and Related Administrative Actions for National Grassland Grazing Associations. The Grazing Associations request the FS add the following language to Section 81.81a: When Unauthorized Livestock Use occurs on National Grasslands, Grazing Associations will refer to their Grazing Agreements and Rules of Management for determining appropriate Unauthorized Livestock Use actions. Grazing Associations will Investigate and report to the Forest Service all alleged claims of member's permit violations and the Association's handling of those claims, including but not limited to those of excess livestock use. The Forest Service will be informed in writing of the action taken. | Per 36 CFR 261.2 - Unauthorized livestock means any cattle, sheep, goat, hog, or equine not defined as a wild free-roaming horse or burro by § 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. Unauthorized livestock use and associated penalties does apply to National Grasslands. On National Grasslands where there is a grazing agreement in place, the applicable association manages its members. Any livestock owned by a non-member or non-permittee is placed on NFS lands would be considered unauthorized livestock and it is the Forest Service's responsibility to address the unauthorized livestock use.  |
| 86 - Grazing Without Charge Utilizing livestock to control or manipulate vegetation is a useful tool, and while we believe the F.S. should strive to ensure that livestock use continue to be a use on the F.S. managed lands, we recognize this may not always be possible. We support offering these opportunities to livestock producers without charge to facilitate vegetation goals. | All grazing use is charged for, as required by 36 CFR § 222.50 (a). However, there are some circumstances where grazing is free of charge as described under provisions of 36 CFR § 222.3(c)(2)(ii) (B) through (G). |
| 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 government- [red text] unless the land is traded or purchased at some point in the future in which case the ownership of the improvements will go to the new owner. | This recommendation is outside the scope of this section. When land exchanges occur, they are administered under a different set of regulations and the transfer of ownership of projects follows under that authority and is not addressed here. |
| Section 81.7 - Excess Livestock Use. This section establishes fees for excess use and also identifies what the F.S. considers excess animals. We feel the process for charging an excess fee in many cases does not consider many factors outside the control of the permittee. Since the F.S. does not exclude other uses, these uses can have an impact on the ability of a permittee to control livestock. As noted in this section, in areas where there are fences to contain livestock on F.S. lands, gates can be left open by other users of the land, which can allow livestock to stray into areas where they can be missed by the permittee. This can also occur with wildlife that knock fences down in remote areas and allow livestock to stray. Other factors outside the control of the permittee are weather events, which can greatly impact the ability to gather livestock in a timely manner. We suggest that F.S. consider options to waive any excess fees due to weather events. We also suggest that in areas with high impacts from other uses the F.S. consider a more flexible approach for charging for excess uses. | The new Excess Use Rule will provide the needed flexibility if warranted. |
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