



FSH 2209.13 - GRAZING PERMIT ADMINISTRATION HANDBOOK

CHAPTER 80 - GRAZING FEES

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Approved:

Associate Deputy Chief

Date Approved:

Posting Instructions: Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 2209.13-2005-10 to 2209.13_80.

New Document	2209.13_80	57 Pages
Superseded Document(s) by Issuance Number and Effective Date	2209.13_80 (Amendment 2209.13-2005-10, 09/09/2005)	33 Pages
	2209.13,80 Contents (Amendment 2209.13-92-1, 08/03/1992)	1 Page
	2209.13,80 (Amendment 2209.13-92-1, 08/03/1992)	12 Pages

Digest:

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.

81.2 - Clarifies when offspring reach the age of maturity and must be charged the grazing fee for occupancy.

81.2 - Exhibit 01 - 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.

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Digest—Continued:

81.3 - With the existing all-electronic billing system, removes the old requirement 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.

81.3 - Updates the methods of payment currently allowed and available to permittees.

81.3 - Eliminates installment billings (split bills) for all permits except for Grazing Associations on National Grasslands and for National Forests with year-round permits. Even in these situations, if the total grazing fee is less than \$1,000 for the year, only one bill will be issued.

81.3 - Proposes that when issuing installment billings to Grazing Associations, both the first bill and the second bill should be issued for 40% of the authorized use. A final bill will then be issued at the end of the grazing fee year for the remainder due, thereby reducing or eliminating any requests for refunds or the need for credits in the subsequent fee year.

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

81.51 - Inserts a new section clarifying that waivers based on sale of permitted livestock during the grazing season do not provide for a refund to the permittee if a new permit is issued to the purchaser for the remainder of the season.

81.7 - Proposes that the fee charged each year 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, will be the average of the private land lease rates for those 17 States (as computed annually by the National Agricultural Statistics Service for the Forage Value Index component of the grazing fee formula determination).

81.7 - Proposes that the fee charged each year for excess and unauthorized use on all National Forests and Land Utilization Projects in the Eastern regions will be double the annual grazing fee for noncompetitive permits and competitive bid permits.

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.

84.3 - Inserts a new section to explain the limited situations in which grazing fee credits can be used on National Grasslands with both grazing agreements and direct permits.

84.4 - Inserts a completely new section, based on language contained in the 2017 Consolidated Appropriations Act, to carry grassland fee credits forward to complete large or expensive approved conservation practices in future years.

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Digest—Continued:

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

86 - Gives examples of limited situations where grazing permits may be issued free of charge.

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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. 88 for examples, and chapter 30 of this Handbook for details regarding some livestock use permits), charge a fee for grazing by domestic livestock on National Forest System (NFS) lands or other lands under Forest Service control. 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)).

Other lands under Forest Service control are defined in 36 CFR 222.1(b)(14) 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.

For NFS units with year-round grazing allotments, the livestock 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. Some units 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; a few may choose to issue a supplemental bill for collection as the calves reach the age of maturity.

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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 Exhibit 01.

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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^{*}; the number of animals (head) is 125.

Off-date October 10 calendar day:	283
Minus on-date June 6 calendar day:	<u>-157</u>
Subtotal:	126
Plus 1 day of use for on-date of June 6:	<u>+ 1</u>
	127

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

(521.875 rounded up^{**})

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

* Non-leap year.

** Fractional values of head months are rounded up when they are greater than, or equal to .5, or rounded down when they are less than .5.

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

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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 35 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. This process and the dates cannot change. Accordingly, allotments in the Eastern Region 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 a 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 transcends 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.

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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 two installments, but this is only allowed on National Grasslands operating with grazing agreements issued to grazing associations and sometimes on NFS 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.

When two installment payments 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 1st and the second about August 15th.

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

The bill for collection is classified as delinquent debt (*see* FSH 6509.11h, chapter 20) if the grazing fees are not paid by the due date specified. Livestock may not be placed on the permitted allotment(s) until the grazing fees in the bill for collection are paid (*see* 36 CFR 222.50(h)). 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

The fee for any grazing that occurs before the payment of the bill for collection, constitutes excess use and shall be assessed at the unauthorized use rate (*see* sec. 81.7) and may 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 will no longer assess interest charges or penalties; taking action against the term grazing permit is the proper and most effective course of action. Since the Forest Service

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requires payment of grazing fees in advance of use, instead of issuing dunning notices and charging interest or penalties as has been done in the past, 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.

If the bill has not been paid by the due date, do not allow livestock onto the allotment until the bill is paid.

If livestock have been placed on the allotment, and the bill is not paid, follow the guidelines in sec. 16.4, which includes requiring the permittee to remove the livestock from the allotment within 72 hours. All grazing use that occurs until the bill has been paid will be assessed at the excess use rate. See sec. 81.71 for required billing procedures.

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. However, this authority should not be used because grazing permit non-compliance action for failure to pay the grazing fee is the recommended, preferred, and the most effective course of action.

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

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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 - Requests for Extensions or Early On-Dates

Permittee requests to extend the season to take advantage of additional forage must be made in writing and submitted to the authorized officer sufficiently in advance of the time when the increased use is sought. Such requests usually arise in years of abundant and timely rainfall but can also occur in periods of drought when stocking was reduced at the beginning of the season in the hope that fewer numbers and diligent management would carry the entire season.

The allotment should be inspected to determine that allowable use levels have been met throughout the earlier-used pastures, or the entire allotment, and the findings documented before recommending approval. The authorized officer may approve such a request in a bill for collection issued at the time of the decision. All extensions to the authorized season of use must be paid as soon as the bill is received and prior to the use authorized by the decision.

Any extension must conform to applicable laws, regulations, the land management plan (LMP), and allotment management plan (AMP).

Occasionally requests may be received to enter the allotment earlier than the on-date shown on the face of the term permit. Such requests typically arise after an unusually mild winter and/or a warm and early spring. The allotment should be inspected to observe soil and water conditions and to determine that vegetation is sufficiently developed to allow proper grazing use (range readiness).

If the request is approved, the authorized officer should issue the bill for collection for the normal length of season of use, but reflect on the bill for collection and the Annual Operating Instructions that both the planned on-date and the planned off-date are moved up by the same number of days. If it is a year of abundant rainfall and favorable forage production, it is possible

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that a late-season request for an extension might also be received. Again, an inspection will be required to determine that allowable forage use levels were met throughout the allotment before approval and issuance of a supplemental bill for collection in advance of the use.

Extensions of use in the spring or fall are easy and legal to respond to when the allotment National Environmental Policy Act of 1970 (NEPA) decision displays the earliest date that grazing might occur in any year, and the latest date when livestock might be removed—rather than restricted to the average permitted use season shown on the face of the term grazing permit. The authorized officer then has the administrative flexibility to respond to annual climatic fluctuations and to properly manage the forage resource.

81.7 - Excess Livestock Use

As defined in 36 C.F.R. 222.50 (h), any livestock use by a grazing permittee (including members of grazing associations permitted under authority of a grazing agreement) that exceeds permitted/authorized numbers and any livestock grazed outside the permitted/authorized grazing season constitutes excess use. In addition, any livestock grazed in an allotment or other location not authorized in Part 1 of the permit (and the member permit authorized by a grazing association) is defined as excess use. When excess use occurs, refer to secs. 16.3 & 16.4 for determining appropriate non-compliance actions.

See also sec. 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. 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.

Given the varying complexities of grazing allotments and their management, it is understandable on any given year some livestock might still be found scattered in isolated pockets of the

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allotment after the off-date. 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. In all cases, the permittee must be able to demonstrate considerable intent, as well as diligent effort, to have all cattle removed on schedule. That constant effort must continue until all permitted livestock are removed. For sheep allotments, there is virtually no excuse for the band, or any livestock, to remain on the allotment past the permitted off-date.

All livestock remaining on the allotment after the off-date are considered excess animals. However, if the permittee is making a constant, diligent effort to find and remove the last few remaining cattle, there may not be a need to bill for excess use or take permit action.

If the permittee is *not* making a constant and diligent effort to locate and remove the remaining livestock within a few to several days after the off-date, billing for the excess use is warranted and implementation of non-compliance actions may be appropriate (16.4). If the situation occurs in future years, billing for excess use as necessary, and suspension or cancellation action against the term permit is likely warranted.

When the permittee's livestock are in an area on NFS lands not authorized by the permit but the allotment is a considerable distance away from where they are normally permitted to graze, or is on a vacant allotment or a forage reserve pasture, the use is typically grounds for taking suspension or cancellation action against the permit. The livestock will be required to be removed immediately; bill for the excess use and implement non-compliance actions as appropriate (*see* 16.4 of this Handbook).

If, however, the permittee's livestock are found to be in an allotment adjacent to his/her permitted allotment, follow-up investigation and documentation is needed to determine if the use appears to be unintentional or inadvertent, perhaps even accidental (such as a when a recreationist may leave a gate open that should have been closed after going through it).

If the livestock are in the adjacent allotment but are within the normal permitted use season for the correct allotment, this *does* technically constitute billable excess use. The livestock are in the wrong allotment/pasture; however, they are inside the permitted and paid season of use. This may be grounds for taking permit action for a different offense (such as failure to follow the instructions of the authorized officer) depending on the circumstances.

Conversely, if the livestock are in the adjacent allotment, but outside the permitted use season for the correct allotment, this *also* constitutes billable excess use, and the use must be charged and billed for at the excess and unauthorized use rate. 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, this will nearly always require that the excess use be billed for, and permit action may be warranted. If

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there are repeated cases, permit suspension or cancellation action will be taken; bill for excess use.

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 folder.

81.71 - Billing for Excess Livestock Use and Related Permit Actions

For Regions 1-6:

The excess and unauthorized use rate is based on the full commercial value of leased forage (the base value of \$3.80 in 1966 was used in establishing the grazing fee formula at that time for National Forests in the 16 western States, and formalized in President Reagan's Executive Order 12546 signed in 1986 and in effect since that time), unadjusted for differential operating costs for grazing NFS lands and leased private rangelands. The excess and unauthorized use rate does not consider permittee contributions towards rangeland improvements (*see* 36 CFR 222.50(h)).

Beginning in grazing fee year 2021, and used every year thereafter, 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. This updated method of calculation serves to discourage those cases of excess and illegal use.

The 17-State PGLLR *average* will be used to calculate the fee to ensure consistency across all NFS lands relative to the rate charged for unauthorized and excess use. This also ensures that the excess and unauthorized use rate can be updated in the national database in an efficient manner on an annual basis. While it would be ideal if each of the 17 Western States could use its own individual PGLLR for excess and unauthorized use, which would mirror the Bureau of Land Management (BLM), and be consistent with the requests of the livestock industry. Doing so is unnecessarily complex. National Forest boundaries cross State borders in 31 of the lower 48 States. To complicate matters further, the different grazing fees would have to be entered by individual proclaimed National Forests – not just for the 31 that exist today after a century of forest consolidations. The 17-State PGLLR *average* will be used

This information has been 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 RIMS database system. Appropriate fee values are updated annually for this purpose.

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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.

Beginning in grazing fee year 2021, and used every year thereafter, the excess and unauthorized use rate on all NFS lands in the eastern regions (except for the National Grasslands in Texas) is double that year’s grazing fee as calculated for each sub-region. This updated method of calculation prevents the unauthorized use rate from being lower than the grazing fee (which has happened in some years with very low hay prices) and serves to discourage those cases of excess and illegal use.

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:

<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</i>	
						<i>Cattle</i>	<i>Sheep</i>
Appalachia	\$ 4.38	\$ 64.70				\$	\$
Corn Belt	\$ 8.12	\$ 67.50				\$	\$
Florida	\$ 2.44	\$ 67.20				\$	\$
Lake States	\$ 6.11	\$ 55.80				\$	\$
Northeast	\$ 6.27	\$ 71.80				\$	\$
Southeast/Delta	\$ 4.11	\$ 55.90				\$	\$

* 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

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Where an incident of excess use occurs, and the authorized officer determines the facts in the matter, the permittee is notified in person immediately, and in virtually every case given 72 hours to correct the situation.

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.

Once all the animals are removed, if the total amount of excess use adds up to 10 HMs or more, issue a new Bill for Collection to the permittee at that time.

If the total excess use amounts to less than 10 HMs, assess it on the next Bill for Collection issued to that permittee; in most cases, that will be the Bill for Collection issued just prior to the next year's grazing season. The electronic billing will automatically calculate the amount if the next year's excess and unauthorized use rate is different than the one for the current year.

In addition to billing for excess use, a non-compliance action should be implemented as appropriate, following the procedures found in secs. 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.

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 § 222.20(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.

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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). Unauthorized use means the unlawful entry on the land of another. The word “trespass” was used interchangeably with this term in the past but is no longer used.

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 sec. 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:

1. The following are prohibited:
 - a. Placing or allowing unauthorized livestock to enter or be in the NFS or other lands under Forest Service control.
 - b. Not removing unauthorized livestock from the NFS or other lands under Forest Service control when requested by a forest officer.

The courts have consistently found that it is very difficult to prove intent regarding “placing or allowing.” If there is strong reason and evidence to believe that the livestock were knowingly or intentionally 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

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class, brands or other markings, locations, dates observed, and observers. High quality photographs or voiceless 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 provide assistance in identifying a brand and in determining ownership. Local private parties (permittees, adjacent landowners, etc.) 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.

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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 in person, and in virtually every case given 72 hours to remove the livestock.

A minimum of one HM of use will be charged for each day that *any* unauthorized animals occupy NFS lands. This is also true for each day in between inspections by the authorized officer or forest service employee because the burden of proof 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 HMs of unauthorized use. Charge according to the unauthorized use rate in effect for that grazing year.

In cases of repeated unauthorized use, all of the use is charged at the current year's unauthorized use rate. Law enforcement personnel may recommend additional action(s) such as issuing a Violation Notice or requiring a mandatory appearance before a magistrate.

Records related to all cases involving unauthorized use will be maintained in separate case folders. Document all actions taken, including any and all usual and necessary coordination with law enforcement personnel.

81.82 – Impoundment and Disposal of Unauthorized Livestock

Most instances of unauthorized use arise when livestock are discovered in an area where they should not be found or at a time of year when livestock should not be present. 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 grateful owner removes the livestock from NFS lands as requested, makes needed repairs to improvements necessary to prevent a recurring problem (ideally, by that owner), and timely pays in-full the bill for collection for unauthorized use.

It rarely is that simple. Sometimes trees fall across fences, or livestock just get out and wander elsewhere. There are thousands of miles of old forest boundary fences in disrepair. This situation is an example of accidental or non-willful unauthorized livestock on NFS lands, and the livestock owner is very cooperative in resolving the incident.

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There are also examples of where unauthorized use is flagrant. There are times where the Forest Service office is a long ways away from an area and employees are seldom seen there, private landowners don't want to comply with State statutes in fence-out States, gates are left open, livestock are deliberately placed on or left on the Federal lands. The area where unauthorized use is occurring should be inspected and all use document 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. Some investigations will be simple, many will be difficult, and a few may be unsuccessful.

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. Impoundment should be used as the last resort, not an early solution; most employees will never have to experience involvement in such an action during their careers.

The regulations at 36 CFR 262.10 provide for the use of impoundment in cases of unauthorized or excess livestock use. As with all law enforcement activities, impoundment is a serious action with potential significant implications to personnel, finances, liability, safety, and public perceptions. It should only be undertaken after all reasonable efforts to control or remove unauthorized livestock through criminal or other actions have been unsuccessful, or when removal is necessary to protect the government against resource damage.

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, chapter 20, sec. 23). 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

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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.

Refer to sec. 81.81 above for billing procedures for unauthorized livestock use. Authorized officers and law enforcement specialists may modify these billing procedures as a result of completed impoundment efforts, especially if law enforcement penalties employed are significantly higher than the unauthorized use rates.

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 B&F (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)(14) as “non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.” The language gives the agency the authority to charge for grazing on these lands, but such instances of control are rare. 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 in the sixteen contiguous Western States and National Grasslands in California, Idaho, and Oregon.
2. National Grasslands and land utilization projects, except National Grasslands in California, Idaho, and Oregon.

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3. National Forests in the Eastern United States.

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 interim directive is issued by the Washington Office shortly thereafter in March.

83 - GRAZING FEES FOR NATIONAL FORESTS IN THE SIXTEEN CONTIGUOUS WESTERN STATES AND NATIONAL GRASSLANDS IN CALIFORNIA, IDAHO, AND OREGON

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 on National Forests in the sixteen contiguous Western States and National Grasslands in California, Idaho, and Oregon 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.

83.1 - Grazing Fee Formula

The formula in exhibit 01 is used to determine the grazing fees for National Forests in the sixteen contiguous Western States and the three National Grasslands in California, Idaho, and Oregon. Annual rates are issued by interim directive to FSM 2238.6.

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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.

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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 in (43 U.S.C. 1751), (*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. (RBF monies are not collected from, nor authorized for use on, National Grasslands.)

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 in order to benefit forage production for livestock and wildlife, and to improve watershed conditions.

1. All fees collected for grazing livestock on public lands (the Act, PRIA, sec. 6(b), states “50 per centum or \$10,000,000 per annum, whichever is *greater*”) are credited to a separate account in the 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 Treasury as miscellaneous receipts. The RBF monies are distributed for use in the district, region, or National Forest from which such monies were derived.

Long-standing and current practice is that each Region must distribute 50 per cent of those funds to the individual National Forest that collected them. The remaining 50 per cent 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.

2. Money from the RBF shall be utilized only for on-the-ground rangeland improvement expenditures (*see* 36 CFR 222.10b). 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.

3. 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.

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4. Expenses associated with the planning, design, and layout must not be assessed against RBF. All these project planning costs must be paid out of appropriated funds. This includes other specialists that complete surveys and provide project clearances.
5. Expenses associated with project inspections and final approvals can be paid out of RBF funds. This can include contract inspections.
6. Projects can be built or completed by rangeland management specialists and technicians charging against RBF funds. Other force account employees *may* be able to complete projects with RBF funds on a case-by-case basis; one example can be fire crews constructing a fence as long as they're within a reasonable call-back distance of the office.
7. 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.
8. 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.
9. 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 government.
10. Money from the RBF *shall 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, NFWW, NFRR, or NFWF) can be used to supplement Rangeland Betterment Funds, if needed and as approved. The authorized officer must evaluate if the improvement need is important enough to reduce appropriated dollars needed to accomplish many other regular program duties and targets.

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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.

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.

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.

84 - GRAZING FEES FOR NATIONAL GRASSLANDS AND LAND UTILIZATION PROJECTS EXCEPT IN CALIFORNIA, IDAHO, AND OREGON

Forest Service regulations require that the fee for National Grasslands and land utilization projects 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, except that the base value and the private grazing lands lease rate are calculated based on information from only those States in which the affected grasslands or land utilization projects are located.

The fee for grazing on National Grasslands in California, Idaho, and Oregon is the same as the fee for grazing on National Forests in the sixteen contiguous Western States (*see* sec. 83).

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.

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84.1 - Grazing Fee Formula

The formula in exhibit 01 is used to determine the grazing fees for all National Grasslands and land utilization projects, except those in California, Idaho, and Oregon. See the current interim directive to FSM 2238.6 for the current fee; this section is updated annually.

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84.1 - Exhibit 01

Grazing Fee Formula

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

where:

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

BVNG = Stands for Base Value National Grasslands which is the 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 as follows:

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.

See sec. 84.2 for fee reductions for authorized land use practice expenditures.

** See the following discussion for changes made to the grazing fee formula and use of indices for the National Grasslands in the 9 Great Plains States from 1979 through 2017.

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During the summer of 1978, an additional public involvement effort in the review of National Grasslands grazing fees was conducted. As a result of comments received from grazing associations and the general public, a new base fee for the National Grasslands in the nine Great Plains States was established at \$1.33, effective March 1, 1979. The new agreed base reflected a \$0.10 per cow month lower average operating costs to permittees using these grasslands as opposed to the average operating costs of permittees using National Forest and BLM grazing lands.

In 1993 this grassland fee formula was changed again. This time the base value was reduced to \$1.27, using the combined 17-State grazing fee formula. The change appears to be a compromise between the Forest Service wanting to keep the current fee formula and the Association of National Grasslands and Public Lands Council advocating for a common grazing fee for the grasslands, forests, and the BLM. The decision to make this change in the formula was issued in a memorandum from John H. Beuter, Acting Assistant Secretary of Agriculture, to Dale Robertson, Chief of the Forest Service, on January 22, 1993.

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, largely as a result of higher private land lease rates in the nine Great Plains States than in 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 forest fee. Since 2017, and possibly extending into future years, the grazing fee for all National Forests in the 16 western States and for all National Grasslands in the 17 western States is identical.

84.2 - Fee Reductions for Authorized Land Use Practice Expenditures

The authorized officer may reduce the grazing value 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 (here in after 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:

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1. Administrative Costs. 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.

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 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.

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.

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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 must:

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.
7. Ensure that title to the conservation practice on NFS lands is in the name of the United States.
8. Ensure that water rights that may be associated with the conservation practice on NFS lands are filed in the name of the United States (*see* FSM 2540).

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).

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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).

84.3 - Fee Credit Criteria

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 part 222). Grazing fee credits can be used for allotment permittees under both the noncompetitive fair market value system as well as the competitive bid system (*see* sec. 85 for more detailed discussion).

Fee credits have also been routinely used with direct permittees on National Grassland units. In each case, 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 member(s), 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, sec. 25.43.

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84.4 - Fee Credit Carried Forward for Approved Conservation Practices

The Consolidated Appropriations Act of 2017 provided authority to carry grassland fee credits forward to complete approved conservation practices in the future by stating in sec. G, Title III:

“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.”

Fee credits carried forward as a result of passage of the Consolidated Appropriations Act of 2017, 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 sec. 85.43 below.

The original intent of the legislation was to provide another avenue for smaller 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.

The legislation 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 table shows the approximate dollars that could be used for the fee credit carried forward program per year per association. These estimates use the minimum \$1.35 grazing fee level and the assumption that the maximum of 50% of the fee available for conservation practices would be moved to the fee credit carried forward program in a year.

Permitted Head Months per Association	Annual Conservation Practice Budget Available per Association	Number of Associations of This Size
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Permitted Head Months per Association	Annual Conservation Practice Budget Available per Association	Number of Associations of This Size
< 5,000	< \$ 4,000	4
5,000 - 10,000	\$ 4,000 - \$ 8,000	2
10,000 – 25,000	\$ 8,000 - \$ 15,000	9
25,000 – 50,000	\$ 15,000 - \$ 35,000	9
50,000 – 75,000	\$ 35,000 - \$ 50,000	4
75,000 – 100,000	\$ 50,000 - \$ 70,000	0
100,000 – 200,000	\$ 80,000 - \$ 125,000	2

As shown above, the six largest grazing associations generally already collect enough grazing fees annually to be able to construct most of the needed large projects in the same year the fees are collected. The intent of the Consolidated Appropriations Act of 2017 was to allow the smaller grazing associations to amass enough funds to complete larger projects, these restrictions on fee credits carried forward are applied:

1. For associations permitting between 50,000 and 75,000 HMs of grazing annually (currently Grand River, Little Missouri, Sheyenne Valley, and Thunder Basin), no more than three years of fees can be credited and used to fund any project, and the District Ranger must provide written authority and rationale to the association to do so. The priority project must then be completed in full at the end of year three.
2. Associations with over 100,000 HMs of permitted use (currently McKenzie County and Medora) could potentially fund one or more high priority projects in the same year. In the rare case that an exception would be granted in writing by the District Ranger, only one additional year of grazing fees can be credited to the initial year's fees, and the priority project must then be completed in full at the end of year two.
3. To implement the Consolidated Appropriations Act of 2017 for National Grasslands, the following policy and procedures will be implemented for grazing associations and direct permittees beginning with the 2018 grazing fee year: 1. 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 until the cumulative amount is large enough to complete the approved project. In no case can the cumulative collected project amount exceed \$250,000 (except by virtue of the accrued interest).
4. 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 a specific planned completion date. This expensive project has become the association's or permittee's highest priority project for completion.

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5. Because of the project's importance, every effort must be made by the Forest Service and the association/permittee to have the approved project 100 percent ready to be installed and completed once the total funding needed has been collected and deposited.
6. 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.
7. Standard cost-share principles, generally 50:50 for all structural rangeland improvements, shall be applied to the total cost of all projects approved for completion under this authority.
8. A separate grazing association, or direct permittee, bank account for this specific project must be established in which these fee-credit funds will be deposited.
9. The fees credited, which are Forest Service funds, 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. 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.
10. 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.
11. The bank records will be made available to the Forest Service annually for review and at other times if requested.
12. 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.
13. 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 treasury by the end of that grazing fee year.

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Fee credit carried forward for approved conservation practices is also discussed in chapter 20, sec. 25.4.

85 - GRAZING FEES FOR NATIONAL FORESTS IN REGIONS 8 AND 9

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 the PRIA. 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 it is inherited by a direct family member.

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.

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85.11 - Noncompetitive Grazing Fee Formula

Noncompetitive fees are based on fair market value. Fair market value is 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 Title 36, Code of Federal Regulations, Part 222—Range Management, Subpart C—Grazing Fees, the annual grazing fee must equal the 1989 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 in exhibit 01.

An interim directive to FSM 2238.6 is issued annually, usually in March, to display the current fee.

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85.11 - Exhibit 01

Noncompetitive Grazing Fee Formula

$$GF = BFMV \times HPI$$

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 = the 1989 base fair market values for livestock grazing by sub-region. The 1989 base grazing values for noncompetitive permits and minimum bid price for competitive permits are:

Sub-region	States	1989 Base Fair Market Values (in \$ per Head Month)
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
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).

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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 chose 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

To calculate grazing fees, the Regions operate on a “Hay Price Index” formula. Annual adjustments will be made against this “Base Grazing Value” rather than the permittee’s bid. This is done because the Forest Service’s policy is to adjust annual fees to the fair market value of hay as computed by the National Agricultural Statistic Service. This adjustment factor applies to both bid and non-bid allotments and is done automatically within the RIMS. Consequently, the “Head/Month” received from a prospective permittee must be converted to a base value in hay. This is done by dividing the “Head/Month” bid by the current year’s “Bid Adjustment Factor.” This result is entered as the “Original Grazing Fee” in the “Bid Billing” box on the Authorized Use screen in the RIMS database. When the conversion is done correctly, RIMS will automatically figure the correct grazing fee for authorized HMs for the term of the permit. If this is not done, the permittee may be grossly overcharged (Exhibit 01).

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85.21 - Exhibit 01

Competitive Grazing Fee Formula

The Original Bid = The **Base Grazing Fee**
Divided by: the Bid Adjustment Factor
(for that year)

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

\$10.51/Head Month (the winning bid) = \$7.30 Base Grazing Fee
Divided by: \$1.44 Bid Adjustment Factor

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

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85.22 - Competitive Bid Fee Procedures

85.22(a) - Permit Issuance in Case of Tied Bid

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

85.23(a) - Bid Officers

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 allotments, subject to competitive bidding, and make a determination whether to continue grazing, including: 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 community allotment.

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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 such as post offices, restaurants, feed stores, farm equipment stores, social clubs, etc. that individuals interested in bidding might frequent.

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 shall be in writing and shall include the following:

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

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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), except as specified in sec. 85.
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 shall be opened at the same time, not later than 7 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, Chapter 60, Items 62.1 through 62.27, and Item 63.

Below are some appropriate guidelines; refer to the FSH 2409.18 for more detail.

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).

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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 14.304-2).

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 14.304-3).

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 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.

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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 bid; signatures of 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 shall 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 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 sec. 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 3 years, but their deposits must be returned.

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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 issued by interim directive to this code.

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 shall 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 whose bids were not selected may appeal the decision of the authorized officer under Forest Service regulations at 36 CFR, Part 214.

85.4 - Grazing Fee Credits for Required Rangeland Improvements

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), as for grazing permits where fees are established by competitive bid (*see* 36 CFR part 222.54). The following outlines the requirements for fee credits:

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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 LMP and AMP.
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 d) 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. Fee credits may also be carried over to future grazing years (*see* sec. 84.3).

Exhibit 01 demonstrates how to calculate fee credits.

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85.4 - Exhibit 01

Grazing Fee Credits for Required Rangeland Improvements

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

where:

GF = Grazing fee as calculated in sec. 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

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85.41 - Rangeland Improvement Agreement

A written agreement between the Forest Service and the permittee is required before fee credits can be earned by the permittee for rangeland improvement work. At a minimum, a rangeland improvement agreement must contain the estimated costs of a rangeland improvement and the corresponding fee credits that would be earned by a permittee. 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 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.

Agreements must conform to the Forest Service standards in chapter 10, sec. 16.1, of this handbook regarding permit modifications to complete rangeland improvement work.

A sample rangeland improvement agreement is displayed at exhibit 01.

A sample agreement appendix for estimated project summary costs is displayed in exhibit 02.

A sample agreement appendix for actual project summary costs is displayed in exhibit 03.

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85.41 - Exhibit 01

Rangeland Improvement Agreement

THIS RANGELAND IMPROVEMENT AGREEMENT, made and entered into 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 at 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 AGREED AS FOLLOWS:

1. 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 this agreement which authorizes the use of fee credits for agency required rangeland improvements as described herein.
2. 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 form appended hereto.
3. Work covered by this agreement shall begin within X days of the execution of this agreement and be completed not later than xx/xx/xxxxx.
4. Title to the improvement that is the subject of this agreement shall be vested in the United States.
5. 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.
6. This agreement is not assignable or transferable, except with the written consent of the authorized officer.
7. In carrying out the rangeland improvement work specified in this agreement, the permittee shall comply with all applicable Federal, State, county, and municipal laws, ordinances, and regulations.

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85.41 - Exhibit 01 - Continued

8. No member of, or delegate to, Congress or Resident Commissioner or Supervisor shall be admitted to any share or part of this agreement or to any benefit that may arise there from; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

9. Nothing herein shall be construed as binding the Forest Service for the payment of money in excess of available appropriations authorized by law.

10. The permittee agrees 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.

11. If the permittee concludes that significant modifications to the rangeland improvement set forth in this agreement 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 this agreement, the permittee must notify the authorized officer of the need to modify the agreement 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.

12. The permittee acknowledges by signature that the requirements listed become a part of the grazing permit.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names as of the date written above,

John Doe

PERMITTEE

John Doe

AUTHORIZED OFFICER
U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE

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85.41 - Exhibit 02

**RANGELAND IMPROVEMENT AGREEMENT APPENDIX -
 SUMMARY FORM OF ESTIMATED PROJECT COSTS**

District: Wasabi
 Permittee: John Doe
 Pasture and Allotment: X
 Type, Description and Ownership:

Improvement Number X
 Location: X

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

I, John Doe, 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. I understand that any modification in the specifications or location of the rangeland improvement requires prior written approval by the authorized officer. I request an adjustment of \$ X in grazing fee credits for the estimated expenses I will incur to build the above rangeland improvement pursuant to this agreement.

John Doe
 Permittee Date

Approved by: John Doe
 Authorized Officer Date

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85.41 - Exhibit 03

**RANGELAND IMPROVEMENT AGREEMENT APPENDIX -
 SUMMARY FORM OF ACTUAL PROJECT COSTS**

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

The foregoing project was completed in conformance with the Rangeland Improvement Agreement and the costs identified above are supported through records. I request an adjustment of \$_____ in grazing fee credits for the actual expenses I incurred to build the above rangeland improvement pursuant to this agreement.

/s/ John Doe

 Permittee Date

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 \$_____.

/s/ Jane Doe

 Authorized Officer Date

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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.

Estimations of improvements 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 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 discussed in sec. 84.4 above, apply to National Grasslands *only* and have no effect on management of fee credits carried over on the eastern and southern National Forests.

86 - GRAZING WITHOUT CHARGE

Nearly all grazing use is charge 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.

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Grazing may be free where the purpose of grazing is:

1. Vegetation manipulation to meet resource objectives. The most common examples might be to control competing vegetation for timber regeneration, or to control noxious weeds or other invasive species. Even though both parties benefit, use is normally charged, but could be free.
2. Part of a scientific study or research activity where the Forest Service stands to benefit substantially from the research results.
3. 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 his 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 charge use.

Under these circumstances, it is within the authorized officer's discretion to decide whether a grazing fee should be assessed (chapter 30).

86.1 - No Charge for Tribal Treaty Grazing

If grazing rights were reserved by or granted to Indian tribes in a treaty with the United States, fees will not be charged to Tribes who hold permits to graze livestock on NFS lands (*see* chapter 50 of this handbook).