DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

RIN 0596–AD75

Rangeland Management

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule; request for public comment.

SUMMARY: The U.S. Department of Agriculture (USDA or Department) proposes to amend the regulations governing grazing and livestock use on the National Forest System to modernize grazing administration, improve clarity, codify existing policy, and expand opportunities for stewardship and access. The proposed amendments would update permit issuance, eligibility, and qualification provisions; establish a framework for adaptive response to drought, wildfire, and similar disturbance events; and expand authorities for stewardship-oriented livestock use, including adding the ability to implement stewardship projects (such as outcome-based grazing or targeted grazing) under a temporary grazing permit or livestock use permit. The proposed rule would revise grazing fee provisions to ensure consistent fee-setting across the national forests in the 16 contiguous Western States and the national grasslands, and establish a surcharge for authorized leasing of livestock by permittees. It would consolidate and renumber existing sections in subpart A for clarity and make conforming, technical, and administrative updates throughout part 222. The Department invites public comment on all aspects of the proposed rule.

DATES: Comments must be received in writing by December 14, 2026.

ADDRESSES: Comments, identified by RIN 0596–AD75, should be sent via one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments; or
- *Mail:* Hardcopy letters must be submitted to the Director, Natural Resources, National Forest System, 201 14th Street SW, Mailstop 1108, Washington, DC 20250–1124. Hardcopy letters must be postmarked on or before the close of the comment period as shown above in **DATES**.

Comments should be confined to issues pertinent to the proposed rule, should explain the reasons for any recommended changes, and should reference the specific section and wording being addressed, where possible. All timely comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments and a plain language summary of the proposed rule may be viewed on the Federal eRulemaking Portal at *https://www.regulations.gov.* In the search box, enter ''RIN 0596–AD75,'' and click the ''Search'' button. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available for public viewing. Please note that comments containing any standard confidentiality disclaimer—such as the automatic notices added to some emails—will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Myra Black, Rangeland Program Manager, National Forest System, Natural Resources, USDA Forest Service, by phone at (202) 205–1464. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service, then provide the phone number of the named point of contact for further information.

SUPPLEMENTARY INFORMATION:

I. Background and Need

A. Authority

The Forest Service administers livestock grazing on the National Forest System under the authority and direction of the Organic Act of 1897 (16 U.S.C. 481, 551), the Transfer Act of 1905 (16 U.S.C. 472), the Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. 1010, 1011, 1012), the Granger-Thye Act of 1950 (16 U.S.C. 572, 580d, 580g, 580h, 580l), the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531), the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended by the National Forest Management Act (NFMA) of 1976 (16 U.S.C. 1600–1605, 1609, 1613), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740, 1751–1752), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901–1908), the Agricultural Credit Act of 1987 (7 U.S.C. 5101–5106), the Wilderness Act of 1964 (16 U.S.C. 1133), and Public Law 97–258 (31 U.S.C. 9701), as well as various appropriations provisions and executive orders. The Forest Service issues grazing permits and other livestock use authorizations on the National Forest System lands. Regulations for administration of livestock grazing and rangeland management on National Forest System lands are set forth at 36 Code of Federal Regulations (CFR) part 222.

B. Existing Regulatory Framework

Part 222 is organized into four subparts. Subpart A (Grazing and Livestock Use on the National Forest System) establishes the substantive and procedural framework for the issuance, modification, suspension, and cancellation of grazing permits, as well as for cooperation in management. Subpart B (Mediation of Term Grazing Permit Disputes) provides for the mediation of disputes regarding term grazing permits in States with mediation programs certified by the U.S. Department of Agriculture. Subpart C (Grazing Fees) governs the calculation and collection of grazing fees on the National Forest System. Subpart D (Management of Wild Free-Roaming Horses and Burros) is not affected by this rulemaking.

The substantive regulations governing the issuance and administration of grazing permits in subpart A have not been comprehensively revised since 1977, with limited amendments in 1979, 1981, 1990, and 2022. Subpart C has remained largely unchanged since 1979, with adjustments to the grazing fee formula and to the assessment of fees for excess and unauthorized use most recently codified in 2022 (87 FR 35097, June 9, 2022). In the intervening decades, livestock grazing on the National Forest System has continued to be a vital component of rural livelihoods, food and fiber production, and the management of forage, fuels, and other vegetation across about 96 million acres of allotments. Grazing practices have evolved, ranching workforce demographics have shifted, drought and wildfire frequency and intensity have increased, and the framework for cooperation with neighboring Federal land managers, States, Tribes, and conservation partners has matured.

C. Need for Amendments

Many considerations prompt the Department to propose these amendments to part 222. Below, the Department groups the proposed changes into clear categories, explains the current status quo under existing

regulations or directives, and describes why specific updates are necessary.

1. Modernize and Codify Long-Standing Practices Reflected in Forest Service Directives

On December 18, 2020, the Forest Service published in the **Federal Register** proposed directives to revise Forest Service Manual 2200 and Forest Service Handbooks 2209.13 and 2209.16 (85 FR 82432, December 18, 2020). These directives received and incorporated public input and were finalized between 2022 and 2025. The revisions replaced dated terminology (such as substituting ''range'' with ''rangeland''), updated temporary non-use policies to provide greater management flexibility during climatic events and for resource management needs, added flexibilities to reduce barriers to entry into the agricultural industry, and provided greater clarity and consistent interpretation for policies and procedures that were reflective of how practices were being implemented on the ground. This proposed rule updates terminology and delegations to the ''authorized officer,'' and places long-standing administrative practices from Forest Service Manual 2200 and Forest Service Handbook 2209.13 into regulation where rights and obligations are clearer; no substantive change is intended except where expressly noted in the paragraphs below.

In 2021 the Rangeland Management program embarked on a strategic and futuristic exploration called ''Rangeland Futuring,'' consisting of brainstorming exercises and listening sessions with employees, stakeholders (17 different interest groups including industry, environmental groups, federal agencies, and advocacy), Tribes, and permittees. The intent of Rangeland Futuring was to gain perspective on how the Agency should manage its rangelands into the future and focus on actions such as improving access to term grazing permits, providing greater flexibilities in term grazing permits, improve overall livestock management, improve program transparency, improve monitoring consistency, implement modernized rangeland management technologies and coordination, implement employee development, enhance Tribal engagement, and other ideas related to rangeland management. The input received through the workshops and webinars was developed into implementable actions leading to modernization of the existing regulations and the need to better align with the Bureau of Land Management.

The existing regulations are also being modernized to align the Rangeland Management program to legislation, such as the Carl Levin and Howard P. ''Buck'' McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), and reflect current agency policies and practices, that came out of the Rangeland Futuring effort over the past six years.

2. Establish Explicit Adaptive Tools for Rangeland Disturbance and Emergency Response

Under current regulations, authorized officers and permittees address events such as drought, wildfire, and sudden reductions in forage or water availability through case-by-case decisions relying on annual operating instructions, permit letters, and directive guidance. This ad hoc approach can delay actions and lead to inconsistent documentation. This proposed rule therefore codifies a rangeland disturbance planning and emergency response framework (new section222.2(e) and section222.5(d)) with clear criteria; consultation, cooperation, and coordination steps; and documentation requirements (for example duration, affected pastures, and termination criteria). This structure makes temporary response actions predictable and transparent, so they can be invoked promptly and consistently when ground conditions change. It also provides for grazing flexibility of up to 21 days early before the beginning date specified in the permit or not to extend grazing more than 21 days after the end date specified on the permit (222.5(c)(7)), to account for annual fluctuations in climate, and water and forage availability when needed to reduce fine fuels or adjust grazing due to drought conditions.

3. Update Eligibility and Qualification Provisions To Reflect Contemporary Ranching Pathways

Existing regulations emphasize outright ownership of base property and livestock and do not fully account for common, lawful arrangements used by beginning ranchers and successors (for example, successional base property, extended purchase agreements, leases of livestock or property, or mentor/mentee arrangements). Consistent with recently finalized directives and codifying the policies, the proposed rule clarifies that ''owned or leased'' base property and livestock qualify (section222.3(h)(2)), adds exceptions for documented successional and mentor/mentee arrangements, and recognized certain family succession circumstances. These changes formalize pathways that have reduced barriers to entry in practice and better match the realities of ranch transitions, workforce demographics, and the scale of community ranching operations. In addition to these added flexibilities to reduce barriers, the Forest Service is adding the opportunity to allow leasing of base property and livestock to better align with Bureau of Land Management (BLM) base property and livestock leasing policies and further diversify opportunities for the various business transactions that transpire in the ranching industry.

4. Replace Dated Permit-Cap Provisions With a Flexible Anti-Consolidation Framework

Current upper and special limits in section 222.3(c)(1)(vi)(E) are phrased in terms that do not provide authorized officers the discretion needed to address two opposite trends: (1) excessive accumulation of multiple permits by a single-family unit or related group of entities, and (2) proliferation of inefficiently small split permits that are difficult to administer, diminish livestock production ranches and viable market supplies, as well as fragment herd management across an allotment. The proposed rule authorizes denial of applications that would produce either extreme based on documented local factors such as reduced opportunities for local or beginning ranchers, diminished on-the-ground oversight, or impaired economic viability of community-scale ranching (section 222.6(h)). This modern, criteria-based approach allows field units to tailor decisions to local conditions and staffing realities while maintaining fair access to grazing capacity.

5. Address Livestock Leasing Through Targeted Surcharge

Current fee provisions in subpart C do not expressly address situations where livestock owned by non-permittees are lawfully leased by the permittee and grazed on the permittee's allotment. To recover the government's incremental administrative costs, capture a portion of the larger profit associated with pasturing livestock, and to promote parity with the Bureau of Land Management, this proposed rule would create a surcharge for such authorized leasing (section 222.50(d), section 222.52(d), section 222.53(i)), consistent with the long-standing concept used by the Bureau of Land Management at 43 CFR 4130.8–1(f). See 31 U.S.C. 9701. The surcharge does not prohibit leasing, but may provide incentive to maintain owned livestock, which are familiar with grazing the allotment and promoting long-term stewardship of the land. The surcharge would capture a

portion of the larger profit associated with pasturing livestock and prices the additional administrative burden exempting properly documented mentees, beginning ranchers, permittee successors, immediate or extended family members under section 222.3(h)(2)(v), and operators receiving relief due to drought, fire, or other natural causes. This targeted instrument supports mentoring and succession objectives while discouraging arrangements that would bypass permittee responsibilities or obscure ownership.

6. Consolidate and Clarify Fee-Setting Across Western National Forests and National Grasslands

Although the existing formula at section 222.51 governs fee calculation on Western forests and informs grassland fees, it is split across sections 222.51 and 222.52. The proposed rule would consolidate fee-setting, while retaining the existing fee formula, for the national forests in the 16 contiguous Western States and the national grasslands into a single section (section 222.51), set forth the grazing fee formula explicitly without change, and codifies the fee-reduction and fee-credit provisions historically administered through Forest Service Manual 2240 and Forest Service Handbook 2209.13, chapters 20 and 80, and other related guidance. Codification increases transparency, reduces confusion for operators who graze across forest and grassland units, and preserves established caps.

7. Streamline Eastern States' Competitive Bidding Procedures

Current section 222.54 requires each bidder to deposit 10 percent of the total bid amount, with refunds processed for unsuccessful or unqualified bidders. Field units report that this deposit-and-refund cycle imposes an administrative burden disproportionate to its purpose. The proposed rule would remove the deposit requirement and retain qualification checks and minimum bid setting (section 222.53), reducing administrative burden, speeding award timelines, and lower up-front barriers without changing how fair market value is established.

8. Align With the Bureau of Land Management and Inter-Department Initiatives Where Appropriate

Many operators hold authorizations on both National Forest System lands and adjacent BLM lands. Divergent definitions and tools can impose compliance costs and complicate administration. In 2025 the Secretaries of Agriculture and Interior coordinated an initiative to develop a USDA–DOI Grazing Action Plan to streamline and modernize livestock grazing on federal lands, with key goals of strengthening rancher resilience, reducing barriers to ranchers through modernization, supporting herd rebuilding, and maintaining working rangelands while sustaining rangeland health and supporting rural economies. In March 2026, Forest Service and BLM signed the Advancing Grazing on Forest Service and BLM Lands Memorandum of Understanding (MOU), which commits the two agencies to coordinated actions, including prioritizing vacant and closed allotments, maximizing grazing flexibilities, streamlining permitting, improving data transparency, expanding targeted and outcome-based grazing, enhancing wildlife liaison functions, and modernizing grazing management practices. The Forest Service has coordinated with the BLM throughout the development of this proposed rule and has incorporated structural and substantive elements that align with the BLM rulemaking, including the surcharge concept and certain policies such as extending temporary non-use for personal convenience from 3 years to 4 years.

At the Department's direction, the Forest Service initiated its collaborative work with the BLM on this proposed rule in January 2026. From the outset, consistency between the Departments' regulations was a key objective. In the early development of this proposed rule the Forest Service and BLM met to identify and discuss consistency on key policy issues such as ensuring livestock grazing increased livestock production, leasing of base property and livestock, expanding opportunities for beginning ranchers, and broadening the definition of base property. From January to June 2026, BLM assisted with the review and participated in development of this rule by integrating BLM rule language to improve consistency in permit administration and rangeland management across administrative boundaries. Development of this proposed rule in its entirety was collaborative and coordinated to improve consistency for livestock operators who graze across both systems. For example, key provisions in this proposed rule reflecting an intentional effort to improve consistency include:

- Allowing leasing of base property and livestock consistent with BLM regulation (36 CFR 222.1, 222.3(h)(2));
- Redefining ''base property'' to include water rights consistent with BLM regulations (36 CFR 222.1); and
- Providing additional opportunities to consult, cooperate, and coordinate with permittees before taking permit action (36 CFR 222.5(c), (d), (e)).
- Extending temporary non-use for personal convenience from 3 to 4 years (36 CFR 222.5(d)(1)(ii)).

Although the agencies have different authorities, the Department has endeavored to achieve consistency regarding policy issues to the benefit of shared livestock operators. The Department seeks public comment on this proposed rule as to whether these objectives have been met, and where even greater consistency and equalization may be achieved. The Department will consider these comments in the development of a final rule.

D. Overview of Proposed Rule

This proposed rule would amend subparts A, B, and C of 36 CFR part 222. Subpart D (Management of Wild Free-Roaming Horses and Burros) is not affected. The principal elements of the proposed rule are summarized below. A section-by-section explanation follows.

The title of part 222 would be revised from Range Management to Rangeland Management to reflect contemporary terminology and to better align the part heading with current agency usage and statutory context.

Subpart A would be reorganized and revised to modernize the framework for issuing and administering grazing permits. Section 222.3 would be revised in full to consolidate the categories of permits, eligibility and qualification requirements, and codify the grant priority process for available grazing capacity. Notable substantive changes include:

- *Livestock use permits.* Extend the maximum term from one year to up to five years to reduce repeat paperwork for research, transportation stock, and targeted vegetation management while preserving their non-renewal priority status (section 222.3(j)(2)). Livestock use permits would also be expanded to include stewardship projects (such as outcome-based grazing and targeted grazing).
- *Discretionary priority and qualification exceptions.* Codify, for existing policies and use of the prospectus-based offerings process, discretionary priority for qualified beginning ranchers and permittee mentees, and add four exceptions that reflect directive-based pathways now common in practice (section 222.3(g), (h), (k)). This formalizes tools used to

reduce barriers and support family and workforce succession.

Section 222.4 would be amended with a revised heading and targeted updates to paragraph (a) to reflect delegation to the authorized officer and maintain current cancellation grounds. Routine adjustments would be addressed in the new section 222.5.

A new section 222.5 would consolidate and codify the framework for changes in permitted, authorized use, and active use including codifying procedures and limits for temporary non-use and permit modifications currently found in Forest Service manual and handbook, including:

- *Temporary non-use for personal convenience.* Clarify limits (up to 4 consecutive years, not to exceed 4 years in a 10-year rolling period when less than 90 percent of permitted numbers are grazed), keeping the concept but adding guardrails to prevent extended temporary non-use from eroding management objectives.
- *Temporary non-use for resource management needs.* Make explicit documentation and monitoring requirements; preserve emergency authority for immediate closures or temporary changes when needed to protect resources.
- *Temporary increases/decreases and forage reserve use.* Clarify written request requirements and a 21-day window for short-term changes within existing permit terms; specify how additional forage is apportioned, including for stewardship outcomes and forage reserves.

Sections 222.6 and 222.7 would each be revised in full. Current section 222.9 would be redesignated as section 222.8 and completely revised to consolidate and update the provisions currently found in sections 222.6, 222.9, and 222.10. Current section 222.7 would be redesignated as section 222.9 and fully revised to update the existing requirements contained in section 222.7. Finally, current section 222.8 would be redesignated as section 222.10 and revised in full to update the provisions of the existing section 222.8.

Subpart B would be amended to revise the heading and introductory text of section 222.20 to clarify that mediation is available in States with a USDA certified mediation program, the heading and paragraph (b) of section 222.21 to clarify the parties to mediation include the authorized officer who made the decision or his or her designee, and section 222.26 in full. These changes would replace references to the ''Chief, Forest Service'' with references to the ''authorized officer'' to reflect current delegations and would clarify the parties to mediation as being the authorized officer or the authorized officer's designee while keeping the scope of ex parte communications the same as the current section.

Subpart C would be amended to revise sections 222.50 and 222.51 in full; remove existing section 222.52 (National Grasslands), the substance of which would be incorporated into revised section 222.51; and redesignate sections 222.53 and 222.54 as sections 222.52 and 222.53, respectively, with conforming and substantive amendments.

Substantive policy changes would (1) expand base property definition from 'land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by the permittee to qualify for a term grazing permit' to include crop lands and stockwater rights, which provides greater flexibility for applicants to qualify for a term grazing permit, while better aligning with BLM regulations; (2) reduce barriers to permit acquisition for beginning ranchers and mentees through targeted exceptions and discretionary priority in prospectus-based offerings, as these policies are already being widely implemented through Forest Service Handbook 2209.13, chapter 10; (3) expand stewardship-oriented authorities, including adding the ability to implement stewardship projects under a temporary grazing permit or livestock use permit, due to the increasing need for a permit to facilitate implementation of targeted grazing and stewardship agreements; (4) clarify and expand the procedures for temporary non-use, increases and decreases in permitted use, and permit modifications to codify existing practices; (5) codify the rangeland disturbance planning framework for drought, wildfire, and other events; (6) codify a surcharge for authorized leasing of livestock; (7) consolidate fee-setting for the national forests in the 16 contiguous Western States and the national grasslands; (8) codify fee-reduction and fee-credit provisions for grazing on the national grasslands and land utilization projects; (9) replace outdated permit-cap provisions with a more flexible anti-consolidation framework; and (10) improve consistency with BLM livestock grazing regulations and practices.

II. Section-by-Section Explanation of the Proposed Rule

A. Subpart A—Grazing and Livestock Use on the National Forest System

1. Section 222.1 Authority and Definitions

The Department proposes to revise section 222.1 in full. Paragraph (a) would be updated to reflect that the Chief, Forest Service, may redelegate the authority to develop, administer, and protect rangeland resources to the authorized officer through Forest Service Manual 2200, consistent with current practice. The reference to ''range resources'' would be updated to ''rangeland resources'' throughout to align with contemporary usage in directives and planning.

Paragraph (b) would replace the existing list of definitions with an updated, expanded list presented in alphabetical order. New definitions would be added for terms used elsewhere in the proposed rule or as found in the Forest Service Manual and Handbooks, including active allotment; actual use; adjusted grazing value; authorized officer; active use; authorized use; beginning rancher; conservation practice; consultation, cooperation, and coordination; current grazing management; eleven Western States; unauthorized use rate; fair market value; fee credit; forage reserve allotment; grant process; grazing agreement; grazing association; land use practices; lessee of base property; lessee of livestock; livestock use permit; maintenance of rangeland improvements; mentee; monitoring; nine Great Plains States; non-permittee; temporary non-use; permitted use; preferred applicant; rules of management; small farm or ranch; stocking rate; succeeding family member; successional base property; successional livestock arrangement; supplemental feed; targeted grazing; temporary grazing permit; term grazing permit consolidation; term grazing permit with on-and-off provisions; term private land grazing permit; trend; unauthorized livestock; vacant allotment; and waiver of term grazing permit. Most defined terms exist in recently updated Forest Service directives, which went through public notice and comment, and are carried into regulations for transparency and ease of administration, while other terms are being added for consistency with BLM.

Existing definitions would be updated where necessary to reflect current terminology, statutory references, and Forest Service practice. The definition

of range betterment fund would be updated to reflect that the fund consists of 50 percent of all monies received as fees for grazing livestock on the national forests in the 16 contiguous Western States or $10,000,000 per annum, whichever is greater, consistent with title IV, section 401(b)(1), of the Federal Land Policy and Management Act.

2. Section 222.2 Allotment Management

The Department proposes to revise section 222.2 in full and incorporate into this section the provisions on allotment management plans, changes to allotment boundaries, and rangeland disturbance planning.

Paragraph (a) would establish that forage-producing National Forest System lands are managed for livestock grazing in a manner consistent with land management plans. Paragraph (a) has similar wording to the current paragraph (c) of this section. Forest plans guide multiple-use management, and grazing authorizations have long been issued to conform with plan direction; this codifies existing practice.

Paragraph (b) has similar wording and the same intent as the current paragraph (a), carrying forward the existing direction on the designation of allotments. Paragraph (c) would make allotment management plans optional to align with wording in Section 402(d) of the Federal Land Policy and Management Act, whereas the current paragraph (b) makes development of an allotment management plan mandatory. Paragraph (c) carries forward the provisions on allotment management plans, including the consultation, cooperation, and coordination process; if an allotment management plan is developed it will include elements such as prescribe the livestock grazing practices necessary to meet specific resource objectives defined in existing environmental analysis, specify any operational flexibility that can be approved by the authorized officer, and include a monitoring plan; the treatment of private and State lands; and revision and termination procedures. Under current practice, authorized officers frequently use annual operating instructions or functionally equivalent instruments to implement site-specific direction where a full allotment management plan is not necessary. Making allotment management plans optional eliminates duplicative documentation in routine cases and allows allotment management plans to be prepared where they add value. When an allotment management plan is prepared, the content requirements remain mandatory.

Paragraph (d) would codify the provisions on changes to allotment boundaries, such as when the conditions under which a realignment may be considered a technical correction, the procedures for combining vacant allotments, and the requirements applicable when a boundary modification is not appropriately handled as a technical correction. Paragraph (e) would establish the rangeland disturbance planning framework, which provides considerations for the authorized officer to navigate, providing for temporary response actions, such as temporary changes in livestock numbers, season of use, pasture rotation, timing of use, area of use, water use, supplemental feeding locations, targeted grazing, temporary non-use or other actions necessary to maintain rangeland resources and livestock health during drought, wildfire, or other events that materially reduce forage or water availability. Authorized officers and permittees currently navigate disturbance events through case-by-case tools. Codifying a clear, repeatable framework reduces uncertainty, improves timeliness, and delineates documentation and notice expectations. The framework also clarifies that targeted grazing may be used, when appropriate and consistent with applicable law and plan direction, as a tool within wildfire decisions (see section 222.5 for related authorities).

3. Section 222.3 Issuance of Grazing Permits

The Department proposes to revise section 222.3 in full and incorporate into this section the provisions on eligibility and qualification requirements, permits with priority for renewal, permits with no priority for renewal, and grant priority for available grazing capacity. Paragraph (a) retains components of the current wording and further identifies the categories of permits available for grazing and livestock use, including term grazing permits, temporary grazing permits, and livestock use permits. Paragraphs (b) through (e) would describe the substantive content and effect of term grazing permits, including the elements that must be specified on the permit, that grazing is by production-oriented livestock, the treatment of variable-use authorizations, the subjection of all permits to cancellation, suspension, or modification, and the longstanding principle that permits convey no right, title, or interest in any lands or resources. Paragraph (f) would update existing paragraph (c) to allow the authorized officer (rather than the Chief, Forest Service) to issue permits.

Paragraph (g) would carry forward the existing direction at paragraph (c)(1)(vi) on the issuance, renewal, and administration of term permits, and would codify a discretionary priority for qualified beginning ranchers or permittee mentees when a term grazing permit is issued through a prospectus, together with four categories of exceptions to the qualification requirements (phased acquisition of base property or livestock; successional base property arrangements; permittee mentor/mentee arrangements; and successional livestock arrangements). This discretionary priority for qualified beginning ranchers or permittee mentees is a policy from Forest Service Handbook 2209.13 Chapter 10, that is being codified to align with the Department's direction to expand opportunities for beginning ranchers. The prospectus process has historically been used across the Eastern States and National Grasslands when soliciting applicants for a term grazing permit when long term forage is available. The process of prioritizing applicants, the grant priority process, has historically been utilized throughout National Forest System lands. Paragraph (h) would codify eligibility and qualification requirements that are not currently in part 222 but have been long standing policies in the Forest Service Handbook 2209.13 Chapter 10. Paragraph (h) also includes codifying six exceptions to the base property and livestock ownership requirement. Paragraph (i) would carry forward the framework for permits with priority for renewal at the existing paragraph (c)(1), including the 10-year permit term and the priority position of the existing permit holder. Paragraph (j) would carry forward the framework for permits with no priority for renewal at the existing paragraph (c)(2), with two notable updates: it would add a sixth ground for issuing a temporary grazing permit (use on a forage reserve allotment by a non-permittee and use for stewardship and targeted grazing projects), and it would extend the term of livestock use permits from one year to up to five years and expand its use to include stewardship and targeted and grazing projects. Paragraph (j) would also codify the term private land permit. Paragraph (k) would codify the grant priority process for available grazing capacity, including a prospectus-based priority order that favors qualified beginning ranchers, mentees, and small business ranchers. Historically, the grant priority process has been used when grazing capacity becomes available on a permanent sustained-yield basis for grazing across

the Forest Service, giving first priority to existing permittees when unresolved resource or management concerns exist and then to permittees who have invested in the allotment and the increase in available forage is due to their efforts. These priorities remain as they historically have been. However, if these situations are not present when the opportunity for available forage arises, the next order in the grant priority process is to issue a prospectus and solicit applicants, giving priority to a beginning rancher, mentee, or small business rancher; whereas historically this priority was given to owners of livestock currently authorized on ranges administered by the BLM to the extent that the BLM ranges need adjustments and then to a new applicant (not an existing term permittee) who is eligible and qualified. Nearly all grant priority process decisions were issued to existing Forest Service permittees due to unresolved resource or management concerns and rarely came down to the process of seeking new applicants. Thus, the policies rarely provided opportunities to allow new ranchers into the public lands grazing system.

Compared to the current regulation, these changes include the following:

- *Issuance authority.* The authorized officer—rather than the Chief—may issue permits (updates existing paragraph (c)).
- *Eligibility/qualification.* The section codifies eligibility and qualification exceptions (successional arrangements, mentor/mentee, phased acquisition, extended livestock purchase), making transparent practices that have been administered via Forest Service directives.
- *Grant priority for available capacity.* Codifies a prospectus-based priority order that favors qualified beginning ranchers, mentees, and small business ranchers when no preferred applicant exists, while maintaining first priority for renewal with the existing permit holder under 43 U.S.C. 1752(c).

Prioritizing beginning ranchers and mentees for newly available capacity may place other qualified applicants behind those categories in prospectus order. The rule preserves first priority for renewal and does not alter existing permit holders' status on their current allotments.

4. Section 222.4 Cancellation or Suspension of Grazing Permits

The Department proposes to amend section 222.4 by revising the section heading, paragraph (a) introductory text, and paragraph (a)(2)(iv). The section heading would be amended from ''Changes in grazing permits'' to ''Cancellation, modification, or suspension of grazing permits'' to more accurately describe the section's content, which is principally directed at the grounds and procedures for cancellation, modification, and suspension of grazing and livestock use permits. The introductory text of paragraph (a) would be revised to refer to the ''authorized officer'' rather than the ''Chief, Forest Service,'' consistent with the substitution made throughout part 222 to reflect current delegations. Paragraph (a)(2)(iv) would be revised to refer to ''the allotment'' rather than ''the allotted range,'' consistent with the defined term ''allotment'' at section 222.1(b); no substantive change to the grounds for cancellation is intended. The remaining provisions of section 222.4 would not be amended. Routine adjustments to permitted and authorized use—including temporary non-use for permittee personal convenience, temporary non-use for resource management needs, emergency closures, and permit modifications—would be governed by new section 222.5.

5. Section 222.5 Changes in Permitted, Authorized, and Active Use

The Department proposes to add a new section 222.5 to better align wording with BLM, consolidate, codify, and modernize the policies governing changes in the use of National Forest System lands for livestock grazing. This includes adopting common terminology regarding the amount of livestock grazing that may occur in a given year, as ''authorized use.'' To provide clarity across agencies, the Forest Service will use the term ''active use'' when describing the amount of grazing that can be permitted and available for use. Section 222.5 does not currently exist in 36 CFR part 222; the substance of this new section has been administered through Forest Service Manual 2200 and 2230 and Forest Service Handbooks 2209.13 and 2209.16. Paragraph (a) would establish the authorized officer's general responsibility to periodically review allotment management and adjust active use and authorized use as necessary to manage, maintain, or improve rangeland health; assist in restoring riparian ecosystems to properly functioning conditions; or conform with land management plans. The components of paragraph (a) have been interwoven throughout policies in the Forest Service Manual 2200 and 2230 and Forest Service Handbooks 2209.13 and 2209.16; by codifying the policies in paragraph (a) it makes the policies more concise. Paragraph (b) would require that any further modifications to permitted use be based on site-specific analysis informed by monitoring data, documented field observations, ecological site inventories, or other updated information that was included during the site-specific analysis deemed acceptable by the authorized officer, which is consistent with policies in the Forest Service Handbook 2209.13 Chapters 10 and 90, as well as consistent with BLM regulation at 4110.3–2. Paragraph (c) would codify current Forest Service Handbook policies and procedures found in Forest Service Handbook 2209.13 Chapter 10 for increasing permitted, authorized, and active use, including authorizations to fill in behind approved temporary non-use; the conditions for forage reserve use; the apportionment of additional forage for stewardship outcomes as found in Forest Service Handbook 2209.13 Chapter 10 and 30 policies; add the new written-request requirement and 21-day timing window for temporary changes within existing permit terms; and the apportionment of additional forage available on a permanent or sustained-yield basis through the grant process in section 222.3(l), consistent with policies in Forest Service Handbook 2209.13 Chapter 10. Paragraph (d) would codify current Forest Service Handbook 2209.13 Chapter 10 policies and procedures for decreasing permitted use, including adding a new framework for temporary non-use for permittee personal convenience (changing the limit from up to 3 consecutive years to up to 4 consecutive years and not to exceed 4 years in a 10-year rolling period when a permittee plans to graze less than 90 percent of permitted numbers), codifying current Forest Service Handbook 2209.13 Chapter 10 policy for temporary non-use for resource management needs (with documentation requirements and emergency-closure authority), codifying temporary non-use for rangeland research, and codifying the existing framework for temporary non-use of grazing association-issued term grazing permits. Paragraph (e) would codify, with minor changes, current Forest Service Handbook 2209.13 Chapter 10 policies and procedures for permit modifications, including a new consult, cooperate, and coordinate requirement, written documentation through a letter with appropriate attachments, the one-year advance notice requirement for changes in season of use, livestock numbers, kind, class, or allotment (carried forward from existing section 222.4(a)(8), with an emergency exception), and eight enumerated

categories of permit modification purposes.

All frameworks above have been utilized through Forest Service directives Forest Service Handbook 2209.13 Chapter 10 and local program administration. Codification increases transparency, consistency, and efficiency while keeping on-the-ground discretion where needed.

6. Section 222.6 Term Grazing Permit Waivers and Applications

The Department proposes to revise section 222.6 to codify, with minor changes, the procedures for waivers of term grazing permits and applications for term grazing permits as found in Forest Service Handbook 2209.13 Chapter 10. The waiver and application procedures have historically been administered through Forest Service Manual 2230 and the corresponding Handbook 2209.13 Chapter 10; codifying them in regulation provides transparency and increased certainty for permittees and applicants. The section would address the circumstances under which a waiver must be submitted by retaining the existing policies found in Forest Service Handbook 2209.13 Chapter 10 and adding language to address the new ability to lease base property that has a term grazing permit associated with it; the requirements applicable to waivers by retaining the existing policies found in Forest Service Handbook 2209.13 Chapter 10 and adding a 90-day complete and execution requirement when the sale or lease occurs; the effect of approval; the special procedures applicable to inheritance is added to be consistent with BLM language while also codifying language consistent with Forest Service Handbook 2209.13 Chapter 10; new language added to address base property leases, and entity name change policies remain unchanged; the consequences of failure to comply with the requirements; modernization of the upper and special limits concept, as found in existing 222.3 (1)(vi)(E), by focusing on the criteria authorized officers may use to deny an application that would result in excessive consolidation or in an inefficiently small permit; the circumstances under which an application must be submitted following a waiver of term grazing permit; and adding a 90-day complete and execution requirement for applications to be files following a sale or lease.

Bringing waiver and application procedures from Forest Service directives into regulation standardizes expectations nationwide and reduces administrative burden, while providing consistencies with the BLM.

7. Section 222.7 Changes in National Forest System Land Acreage

The Department proposes to revise section 222.7 to codify Forest Service Handbook 2209.13 Chapter 10 and 90 policies and procedures applicable when National Forest System land acreage available for livestock grazing changes. Paragraph (a) was added to align with BLM 4110.4–1 and would address increases in available forage outside designated allotments, providing that such forage shall be made available to eligible and qualified applicants through the grant process at section 222.3(l) (which codifies Forest Service Handbook 2209.13 Chapter 10 policies on the grant process). Paragraph (b) was added to align with BLM 4110.4–2 and would address decreases in land acreage within an allotment, providing for cancellation or modification of grazing permits as appropriate to reflect the changed area of use and codifies language consistent with Forest Service Handbook 2209.13 Chapter 10 and 2209.16 Chapter 10. Paragraph (c) would carry forward, with conforming amendments, the longstanding requirement under 43 U.S.C. 1752(g) that permittees be given two years' prior notification before grazing permits and grazing preference may be cancelled to devote lands to another public purpose, except in cases of emergency, and would preserve the permittee's right to reasonable compensation for authorized permanent rangeland improvements as provided in revised section 222.8(h).

8. Section 222.8 Rangeland Improvements

The Department proposes to redesignate existing section 222.9 as section 222.8 and to revise the redesignated section in full. Paragraph (a) maintains the existing section 222.9 paragraph (a) intent and modernizes the wording by establishing the authorized officer's authority, instead of the Chief, to authorize installation and maintenance of structural and nonstructural rangeland improvements. Paragraph (b) would carry forward the substantive direction on construction, installation, modification, and maintenance of rangeland improvements, while modernizing the language to include consistency with multiple-use management. Paragraph (b) codifies process from Forest Service Manual 2240 and Forest Service Handbook 2209.16 Chapter 10 regarding documentation and authorization of rangeland improvements, including the rules governing title to permanent and temporary improvements and the requirements applicable to cooperators. Paragraph (c) aligns wording found in BLM's section 4120.3–1(f) and expands it to be applicable to Forest Service process. Paragraph (c) would establish the authorized officer's authority to review proposed rangeland improvement projects to determine whether they require analysis under the National Environmental Policy Act and, if so, what level of review applies. Paragraph (d) codifies policy and process from Forest Service Manual 2240 and Forest Service Handbook 2209.16 Chapter 10 regarding the provisions on term grazing permit modifications for rangeland improvements, documentation and permittee contributions. Paragraph (e) codifies policy and process from Forest Service Manual 2240 and Forest Service Handbook 2209.16 Chapter 10 and modernizes language by recognizing the various mechanisms used to capture opportunities presented by external cooperators by establishing the provisions for non-permittee cooperators, including the appropriate use of collection agreements, Challenge Cost Share Agreements, memoranda of understanding, interagency agreements, Good Neighbor Agreements, and Cooperative Agreements. Paragraph (f) was added to better align with BLM section 4120.3–6 and codifies language from Forest Service Manual 2240 by establishing the provisions for removal of rangeland improvements. Paragraph (g) was added to align with BLM section 4120.3–9 and would establish the provisions on water rights for the purpose of livestock grazing. Paragraph (h) aligns with BLM section 4120.3–6(c), modernizes language from existing 222.6 while keeping consistent with its intent, codifies Forest Service Manual 2240 and Forest Service Handbook 2209.13 Chapter 10 and 70. Paragraph (h) would establish, expand, and clarify the provisions on compensation for permittees' interest in authorized permanent rangeland improvements when permits are cancelled to devote lands to another public purpose. Paragraph (i) would establish the provisions on the range betterment fund by retaining and modernizing the existing language found at current 222.10 and 222.10(a). The language is modernized to account for agency realignment shifting away from Forest Service Regions. Paragraph (i)(2) and (3) we added to align intent with BLM language. This consolidated treatment is intended to clarify the relationships among the various provisions governing rangeland improvements and to make

those provisions easier to find and apply.

These provisions consolidate and clarify practices historically addressed in Forest Service directives to make them easier to find and apply. The compensation provision reflects the statutory framework in 43 U.S.C. 1752(g) regarding two-year notice and reasonable compensation.

9. Section 222.9 Cooperation in Management

The Department proposes to redesignate existing section 222.7 as section 222.9 and to revise the redesignated section in full. The section is being revised because the existing section on Cooperation in management was confusing and did not clearly articulate the difference between formally recognized grazing associations and local, county, State, national, or Tribal livestock associations. The revision provides more depth and details for formal recognition and cooperation with grazing associations and codifies Forest Service Handbook 2209.13 Chapter 20. The substantive provisions on cooperation with grazing associations would be reorganized into paragraphs addressing the authority to recognize associations, the requirements for recognition, when withdrawal of recognition is warranted, and rules of management which describe how an association will administer the grazing program for its members on the lands covered by their forest Service grazing agreement, and the purpose is to provide clear and consistent rules that will be applied to each member and to distribute livestock grazing privileges in a fair manner to all qualified members. References to the ''Chief, Forest Service'' would be replaced with references to the ''authorized officer'' to reflect current delegations. Paragraphs on cooperation with national, State, and county livestock organizations adds recognition of Tribal livestock organizations; interagency cooperation; and cooperation with others would be carried forward with minor wording updates.

Reorganization of this section improves clarity without changing substantive policy.

10. Section 222.10 Cooperation in Control of Estray or Unbranded Livestock, Animal Diseases, Noxious Weeds, and Use of Pesticides

The Department proposes to redesignate existing section 222.8 as section 222.10 and to revise the redesignated section. The section heading would be amended to refer to ''noxious weeds'' rather than ''noxious farm weeds.'' References to the ''Chief, Forest Service'' would be replaced with references to the ''authorized officer.'' The substantive provisions governing cooperation with State, county, and Federal agencies on livestock diseases, sanitation, and noxious weeds; with the Animal and Plant Health Inspection Service on pesticide spray programs; and with State cattle and sheep sanitary or brand boards on control of estray and unbranded livestock would be carried forward without substantive change.

B. Subpart B—Mediation of Term Grazing Permit Disputes

1. Section 222.20 State Mediation Program

The Department proposes to revise section 222.20 to update the section heading from ''Decisions subject to mediation'' to ''State mediation program'' and to remove redundant phrasing in the body of the section. The substantive scope of the section—which provides that the holder of a term grazing permit issued in a State with a mediation program certified by the U.S. Department of Agriculture may request mediation of a dispute relating to a decision to suspend or cancel the permit—would not change. However, mediation of a dispute relating to a decision to deny development of a stockwater improvement has been added to the section in order to provide a process for permittees to seek relief from a decision which would prevent them from proving beneficial use of their filed water right application and obtaining the water right.

2. Section 222.21 Parties and Participation

The Department proposes to amend section 222.21 by revising the section heading, the introductory text, and paragraph (b). The section heading would be updated to refer to ''Parties and participation'' rather than ''Parties.'' The introductory text would be revised to clarify that the listed individuals are the parties and participants who may attend mediation of a term grazing permit dispute. This change would replace the current language, which narrows participation to ''parties'' and may imply that only the authorized officer and permittee may participate, when participation is often expanded to include legal counsel, and the permittee's creditors. Paragraph (b) would be revised to identify ''the authorized officer who made the decision being mediated or his or her designee'' as the participating Forest Service representative, replacing the more specific reference to the Chief, Forest Service or other Forest Service employee. Paragraphs (a), (c), (d), and (e) would not be amended.

3. Section 222.26 Ex Parte Communications

The Department proposes to revise section 222.26 in full to update the reference from ''the Chief of the Forest Service or other Forest Service employee who made the decision being mediated, or his or her designee'' to ''the authorized officer or his or her designee.'' The substantive prohibition on ex parte communications between the participating Forest Service official and the Appeal Deciding Officer would not change. Sections 222.22 (Stay of appeal), 222.23 (Confidentiality), 222.24 (Records), and 222.25 (Costs) would not be amended.

C. Subpart C—Grazing Fees

1. Section 222.50 Grazing Fees

The Department proposes to revise section 222.50 in full. The section heading would be amended from ''General procedures'' to ''Grazing fees.'' Paragraph (a) would carry forward the requirement that fees be charged for all livestock grazing or livestock use of National Forest System lands, with cross-references updated to reflect the consolidation of free-use authorities into revised section 222.3. Paragraph (b) would carry forward the policy basis for fee establishment under Office of Management and Budget Circular A–25, as revised in 1993. Paragraphs (c) and (d) would clarify the animal unit month (AUM) definition for fee-calculation purposes by stating that one animal unit month is a month's use of forage and occupancy of rangeland by one cow, bull, steer, heifer, bison, horse (ancillary to livestock production), burro, or mule, or five sheep or goats; and provide expressly that the Forest Service will not charge grazing fees for animals less than 6 months of age that are the progeny of animals upon which fees are paid. Paragraph (e) would establish a surcharge for authorized leasing of livestock owned by persons other than the permittee, equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per animal unit month for the appropriate State, as determined by the National Agricultural Statistics Service. The surcharge concept aligns with the Bureau of Land Management's surcharge at 43 CFR 4130.8–1(f). Targeted exemptions that exist in current Forest Service Handbook 2209.13, Chapter 10, and being codified here would be available for livestock owned by

properly documented mentees, beginning ranchers, permittee successors, immediate or extended family members, and operators receiving relief from drought, fire, or other natural causes. Paragraphs (f) through (q) would carry forward and reorganize the provisions on lambing, transportation livestock, billing and rounding, due dates and late fees, fee credits, refunds, fee year, data year, and the unauthorized grazing use rate, including the conditions under which the authorized officer may waive monetary fees for unauthorized grazing use as provided in the 2022 final rule (87 FR 35097, June 9, 2022).

The fee policy at Circular A–25 remains current and aligning surcharge structure with the BLM simplifies program administration for operators that graze across systems.

2. Section 222.51 National Forests in 16 Western States and National Grasslands

The Department proposes to revise section 222.51 in full to consolidate fee-setting for the national forests in the 16 contiguous Western States and the national grasslands. Paragraph (a) would expand the scope from National Forests and Land Utilization Projects in the 16 contiguous Western States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming to also include all national grasslands because the fee formula is the same and this consolidation of sections reduces redundancy found by separating out the national grasslands. Paragraph (b) would set out the grazing fee formula expressly, in the form $GF = BV \times (FVI + (BCPI - PPI))/100$, with definitions for each variable carried forward from existing section 222.51(b) and clarified for ease of administration. Paragraph (c) would carry forward the existing 25-percent annual change limit, and paragraph (d) would carry forward the existing $1.35-per-animal unit month floor. Paragraph (e) would codify the long standing fee-reduction provisions found in the Forest Service Handbook 2209.13, Chapters 20 and 80 and Forest Service Manual 2200, Chapter 40 for authorized land use practice expenditures on the national grasslands and land utilization projects. Land use practices include conservation practices and certain administrative costs incurred by grazing associations for routine administration of the livestock grazing activities of its members under a grazing agreement issued by the Forest Service. Fee reductions have been used on National Grasslands and land utilization projects since the late 1930s, when these lands began to be managed for rehabilitation and sustainable use. This practice was reaffirmed by the Comptroller General's 1950 decision, which confirmed the Secretary's authority under Section 32(c) of the Bankhead-Jones Farm Tenant Act of 1937 to lease lands ''with or without consideration'' and to establish terms that best accomplish the purposes of the Act. Fee reductions continue to be applied when permittees incur required conservation or administrative expenditures.

Paragraph (f) would modernize and codify fee credit language found in Forest Service Handbook 2209.13, Chapters 20 and 80, and Forest Service Manual 2200, Chapter 40 to reflect the long-standing practice of using fee-credits when a permittee or grazing association funds an approved rangeland improvement up-front and receives fee credits in future years to replenish the contributed funds. Fee credits have been long articulated within 36 CFR 222.53(c)(3)(ii) and 36 CFR 222.54(g)(2) for the Eastern States as a mechanism to facilitate required rangeland improvements to maintain and improve rangeland conditions, however fee credits have only been described in policy on the National Grasslands.

These provisions reflect long-standing Forest Service grasslands program practices in Forest Service directives. Consolidation makes the formula and reductions easier to administer across lands where operators often participate in both National Forest and grassland programs.

3. Removal of Section 222.52 (National Grasslands)

The Department proposes to remove existing section 222.52 (National Grasslands), which provides that grazing fees for national grasslands will be established under concepts and principles similar to those in section 222.51(b). Because revised section 222.51 would directly govern fee-setting on the national grasslands, this one-sentence section is no longer necessary.

4. Section 222.52 Grazing Fees in the Eastern States—Noncompetitive Procedures

The Department proposes to redesignate existing section 222.53 as section 222.52 and to revise the redesignated section. Paragraph (a) would be revised to enumerate the Eastern States to which the noncompetitive procedures apply, replacing the existing reference to ''the Eastern and Southern Regions.'' Paragraph (b) would be revised to cross-reference paragraph (a) and to update the cross-reference to the redesignated competitive bidding section. Paragraph (c) would be revised to replace references to ''the Chief, Forest Service, or an authorized officer to whom such authority has been delegated'' with references to the ''authorized officer.'' Paragraphs (c)(2) (Annual Adjustment of Base Grazing Value), (c)(3) (Computation of Annual Grazing Fee), and (c)(4) (Implementation) would not be substantively amended.

5. Section 222.53 Grazing Fees in the Eastern States—Competitive Bidding

The Department proposes to redesignate existing section 222.54 as section 222.53 and to revise the redesignated section. Paragraph (a)(1) would be revised to enumerate the Eastern States to which the competitive bidding procedures apply. Paragraph (a)(2) would be revised to add limited liability companies to the list of allowable bidders because longstanding Forest Service policy found in Forest Service Handbook 2209.13, Chapter 10, recognizes limited liability companies as a legal entity that is eligible to apply for and hold a term grazing permit. Modernization of these regulations is warranted because limited liability companies are more common today, operating in the agricultural industry, than they were the last time 36 CFR 222.54 was updated. Paragraph (b) would be revised to update the cross-reference to the redesignated noncompetitive section. Paragraph (d) would be revised to remove the requirement that each applicant submit a bid deposit equal to 10 percent of the total amount of the bid, eliminating the deposit-and-refund cycle currently required for unsuccessful or unqualified bidders. Eastern States staff indicate that the practice of requiring a deposit for all bidders, processing the deposits, then refunding the deposits for the unsuccessful bids is a burdensome process for employees, as well as bidders. The cost of providing a bid deposit for beginning ranchers, who are trying to establish themselves in the industry, with minimal capital and funding, presents a barrier. Paragraph (e) would be revised conformingly to remove the requirement that the authorized officer refund the deposit. Paragraph (h) would be revised to update the cross-reference to the redesignated noncompetitive section. Paragraphs (c) (Prospectus), (f) (Permit Issuance), and (g) (Computation of Successful Bidder's Annual Fee) would not be substantively amended.

Removing the deposit lowers liquidity barriers and simplifies bid administration. Allowing limited liability companies reflects common, modern business forms among small ranching enterprises.

III. Regulatory Certifications

A. Regulatory Planning and Review

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this proposed rule is significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed the proposed rule consistent with E.O. 13563.

B. Unleashing Prosperity Through Deregulation

E.O. 14192 requires that an agency, unless prohibited by law, identify at least ten existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. E.O. 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. While there are modest administrative costs, the proposed rule is expected to lower barriers to entry for beginning ranchers and small operations, modernize grazing administration, increase flexibility for permittees, and align more closely with contemporary ranching practices and Bureau of Land Management regulations. Accordingly, this proposed rule is anticipated to be a deregulatory action under Executive Order 14192.

C. National Environmental Policy Act

The proposed rule would amend the regulations governing grazing and livestock use on the National Forest System. Departmental regulations at 7 CFR 1b.4(c)(20) exclude from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions.'' The Department's preliminary assessment is that this proposed rule is administrative and procedural, falls within this categorical exclusion, and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement. Any subsequent, site-specific grazing authorizations or rangeland actions will undergo National Environmental Policy Act review, as appropriate under Forest Service procedures at 36 CFR part 220 and Departmental regulations at 7 CFR part 1b. A final determination will be made upon adoption of the final rule.

D. Regulatory Flexibility Act

The Department has considered this proposed rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). Most Forest Service grazing permittees would be considered small entities under Small Business Administration size standards. The proposed rule would expand eligibility for term grazing permits to include applicants who own or lease (rather than only own) base property and livestock; would establish discretionary priority for qualified beginning ranchers and mentees; would codify a surcharge for authorized leasing of livestock; and would streamline the Eastern State's competitive bidding process by removing the current 10-percent bid deposit requirement. In the aggregate, the proposed rule is expected to reduce barriers to entry for beginning and small business ranchers by prioritizing them for available forage and by providing opportunities to phase into securing a term grazing permit, a process that better aligns with modern economic constraints experienced by beginning and small ranchers, and to lower compliance costs and increasing consistency in practice by aligning the Forest Service framework with that of the Bureau of Land Management for operators who graze on both Federal land systems. The Department does not currently anticipate that this proposed rule would have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act. However, the Department will consider public comments and any information submitted regarding potential impacts on small entities before making a final certification. The Department specifically invites comment on the potential economic effects of this proposed rule on small entities.

E. Federalism

The Department has considered this proposed rule under the requirements of E.O. 13132, Federalism. The Department has determined that the proposed rule conforms with the federalism principles set out in this E.O., would not impose any compliance costs on the States, and would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has concluded that this proposed rule would not have federalism implications.

F. Consultation and Coordination With Indian Tribal Governments

E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Departmental Regulation 1350–002 establishes the Department's policy on Tribal consultation.

The Department has reviewed this proposed rule in accordance with the requirements of E.O. 13175 and Departmental Regulation 1350–002 and has determined that this proposed rule has Tribal implications. Consistent with that determination, the Forest Service has notified Tribal governments about the opportunity to engage in government-to-government consultation. The Forest Service will continue to engage with Tribal governments—and when requested, consult with affected Tribes—throughout the rulemaking process and will fully consider Tribal views in the final rule. The Forest Service specifically invites comment from Tribes on the proposed rule and any aspect of the rule that may affect Tribes, Tribal lands, treaty rights, or trust resources.

G. Family Policymaking Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for a rule that may affect family well-being. The proposed rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not

necessary to prepare a Family Policymaking Assessment for the proposed rule.

H. Takings Implications

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Department has determined that the proposed rule would not pose the risk of a taking of private property. Term grazing permits, temporary grazing permits, and livestock use permits convey no right, title, or interest held by the United States in any lands or resources, and the proposed rule expressly preserves the longstanding right to reasonable compensation for a permittee's interest in authorized permanent rangeland improvements when permits are cancelled to devote lands to another public purpose.

I. Energy Effects

The Department has reviewed the proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that the proposed rule would not constitute a significant energy action as defined in E.O. 13211.

J. Civil Justice Reform

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12988, Civil Justice Reform. Upon publication of the proposed rule, (1) all State and local laws and regulations that conflict with the proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

K. Severability

The Department intends for the provisions of this rule to be considered separately. If any portion of this rule were stayed or invalidated by a reviewing court, the remaining elements would continue to provide the agency with important and independently effective tools to manage livestock grazing on the National Forest System lands. If a court prevents any provision of this proposed rule from taking effect, it is the Department's intent that the other parts of the rule would not be affected. The remaining provisions would remain in force.

L. Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of the proposed rule on State, local, and Tribal governments and the private sector. The proposed rule would not compel the expenditure of $100 million or more, adjusted annually for inflation, in any 1 year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required.

M. Paperwork Reduction Act

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501–3521) and the Office of Management and Budget's regulations at 5 CFR part 1320. The Forest Service will seek Office of Management and Budget approval for rule-specific collections introduced by this proposal currently covered under OMB Control No. 0596–0003 (Grazing Permit Administration Forms).

The anticipated rule-specific collections may include: (1) documentation for eligibility and qualification under leasing, mentor-mentee, succession, and beginning-rancher pathways; (2) written requests and coordination for temporary changes and disturbance-response actions; (3) attestations and documentation for leased-livestock surcharge exemptions; and (4) documentation for eligibility and qualifications for small business ranchers.

The Forest Service will publish a 60-day Paperwork Reduction Act notice followed by a 30-day notice concurrent with submission of the Information Collection Request to the Office of Management and Budget, consistent with 5 CFR 1320.11. We will seek public comment separately on these anticipated collections—specifically on their necessity and practical utility; the accuracy of burden estimates; ways to enhance quality, clarity, and utility; and ways to minimize burden, including automation or streamlined instruments.

List of Subjects in 36 CFR Part 222

Administrative practice and procedure, Grazing lands, Livestock, National forests, Public lands—grazing, Range management, Reporting and recordkeeping requirements.

Therefore, for the reasons set forth in the preamble, the Department proposes to amend chapter II of title 36 of the Code of Federal Regulations as follows:

PART 222—RANGELAND MANAGEMENT

■ 1. The authority citation for part 222 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1010, 1011, 1012; 7 U.S.C. 5101–5106; 16 U.S.C. 472; 16 U.S.C. 481, 551; 16 U.S.C. 528–531; 16 U.S.C. 572, 580d, 580g, 580h, 580k, 580l; 16 U.S.C. 1133; 16 U.S.C. 1600–1605, 1609, 1613; 31 U.S.C. 9701; 43 U.S.C. 1740, 1751–1752; 43 U.S.C. 1901–1908; E.O. 12548 (51 FR 5985).

■ 2. Revise the part heading set forth above.

Subpart A—Grazing and Livestock Use on the National Forest System

■ 3. Revise Subpart A table of contents to read as follows:

Section
222.1 Authority and definitions.
222.2 Allotment management.
222.3 Issuance of grazing permits.
222.4 Cancellation, modification, or suspension of grazing permits.
222.5 Changes in permitted, authorized, and active use.
222.6 Term grazing permit waivers and applications.
222.7 Changes in National Forest System land acreage.
222.8 Rangeland improvements.
222.9 Cooperation.
222.10 Cooperation in control of estray or unbranded livestock, animal diseases, noxious weeds, and use of pesticides.

■ 4. The authority citation for Subpart A is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1010, 1011, 1012; 7 U.S.C. 5101–5106; 16 U.S.C. 472; 16 U.S.C. 481, 551; 16 U.S.C. 528–531; 16 U.S.C. 572, 580d, 580g, 580h, 580k, 580l; 16 U.S.C. 1133; 16 U.S.C. 1600–1605, 1609, 1613; 31 U.S.C. 9701; 43 U.S.C. 1740, 1751–1752; 43 U.S.C. 1901–1908; E.O. 12548 (51 FR 5985).

■ 5. Revise § 222.1 to read as follows:

§ 222.1 Authority and definitions.

(a) *Authority.* The Chief, Forest Service, shall develop, administer, and protect the rangeland resources, and permit and regulate the grazing use of all kinds and classes of livestock on all National Forest System lands and on other lands under Forest Service control. The Chief's authority may be redelegated to the authorized officer through these regulations and Forest Service Manual 2200 Zero Code.

(b) *Definitions.* For purposes of this subpart—

Active allotment means an allotment with a term grazing permit issued authorizing grazing or for which a transition between term grazing permits is occurring.

Active use means that portion of the permitted use within an allotment that

is: (1) Available for livestock grazing use under a permit or lease; (2) Not approved for temporary non-use; and (3) Not in suspension.

Actual use means where, how many, and what kind or class of livestock graze on an allotment, or on a portion or pasture of an allotment, and how long they graze. Actual use may be expressed in terms of animal unit months.

Adjusted grazing value means the total grazing fee calculated as authorized animal unit months (AUMs) multiplied by the grazing fee, minus land use practices on national grasslands or fee credits on eastern national forests. The adjusted grazing value is the amount due shown on the bill for collection. This applies to national grasslands and eastern forests.

Allotment means an area of land designated and managed for grazing and livestock.

Allotment management plan means a document prepared in accordance with 43 U.S.C. 1702(k).

Animal unit month (AUM) means one month's use of forage and occupancy of rangeland by one (1) cow, bull, steer, heifer, bison, horse (ancillary to livestock production), burro, or mule, or five (5) sheep or goats.

Authorized officer means a Forest Service line officer with the authority to take certain actions related to rangeland management on National Forest System lands and other lands under Forest Service control.

Authorized use means the part of active use that is available for grazing in a given year. It is specified on the annual bill for collection and verified by the permittee's payment of fees.

Base property means:

(i) Private land, owned or leased by a permittee or permit applicant, that contains livestock operation facilities capable of serving as a base of operations for the livestock use of National Forest System lands; or

(ii) Private land, owned or leased by a permittee or permit applicant, that has the capability to produce crops or forage that can be used to support authorized livestock for a specific period of the year; or

(iii) Stockwater rights that are vested in the permittee or permit applicant pursuant to State law and appurtenant to National Forest System lands, or private lands owned or leased by a permittee or permit applicant.

Beginning rancher means a permittee's children, grandchildren, or other individuals who has not owned or served as an officer, managing partner or member, or any other deciding individual of a farm or ranching business for a period of 10 or more years;

Cancel or cancellation means action taken through a final written decision to permanently invalidate a term grazing permit in whole or in part.

Carrying capacity means the average number of livestock, wildlife, or both that may be sustained on a management unit, compatible with management objectives for the unit. In addition to site characteristics, carrying capacity is a function of management goals and management intensity.

Class of livestock means an age or sex group of a kind of livestock.

Conservation practice means a type of land use practice consisting of structural and nonstructural rangeland improvements that may be implemented by grazing associations and permittees on national grasslands and land utilization projects, subject to the approval of the authorized officer.

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice or exchanging opinions on issues, plans, or management actions.

Current grazing management means grazing in accordance with the terms and conditions of an existing permit, including any modifications that are consistent with an applicable Department of Agriculture land management plan.

Direct permittee means, in the context of National Grasslands, an individual or organization that holds a grazing permit (temporary or term) issued directly by the U.S. Forest Service for use of National Grasslands for livestock production. This is distinct from an indirect permittee, who may be a member of a grazing association or other group that holds the permit on behalf of its members.

Eleven Western States means the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming, which are used to calculate the forage value index.

Fair market value (FMV) means the monetary amount that is reasonably expected for use of rangeland, and that applies only to grazing fees. Expressed as an amount per month, fair market value is usually established by competitive conditions. For grazing on National Forest System lands, fair market value is the difference between the total costs associated with livestock grazing on privately leased grazing lands and the total non-fee costs of livestock grazing National Forest System lands.

Fee credit means the value of rangeland improvements required by an authorized officer on eastern national forests, or as conservation practices on national grasslands and land utilization projects, that are credited against the annual grazing value in the determination of a grazing fee.

Forage reserve allotment means an allotment (such as a grass bank or swing allotment) that is used for a short-term (less than three years) when needed and for which a project-level environmental analysis and decision has been made to authorize use of the allotment forage resource. Forage reserves can be used to facilitate landscape-level management by improving flexibility in responding to needs (such as drought, fire, or restoration) or resource management opportunities (such as vegetative manipulation). Intermittent use of forage reserves should occur to ensure they remain in a ready-to-use state to avoid the forage reserve declining into decadent overgrowth or rangeland improvements falling into disrepair.

Grant process means the procedure for identifying an applicant or applicants to receive a term grazing permit when grazing capacity becomes available and there is no preferred applicant.

Grazing agreement means a type of term grazing permit that authorizes eligible grazing associations and grazing districts organized under State or Tribal law to graze livestock on National Forest System lands. It includes provisions to allow the association to distribute its allotment use among its members and administer its members' use in conformance with applicable law, regulation, land management plan and allotment management plan direction, the terms and conditions of the grazing agreement, and the association's rules of management and bylaws.

Grazing association means a cooperative of National Forest System grazing users to which a grazing agreement has been issued. Grazing associations are organized under State or Tribal statutes for the purpose of cooperative management of permitted livestock and to administer the livestock grazing use distributed to its members. Grazing associations may also be referred to as grazing districts.

Grazing permit means a document authorizing livestock to use National Forest System or other lands administered by the Forest Service for the purpose of livestock production (such as the production of meat, milk, fiber, or other products) and includes animals used in support of livestock production operations, such as pack and saddle stock.

Grazing preference or preference (see also *Preferred applicant*) means a

superior or priority position against others for the purpose of receiving or renewing a grazing permit. This priority is attached to base property that is owned or leased by the permittee or it may be attached to permitted livestock owned by the permittee.

Land use practices means practices contained within the conditions of a grazing permit that is issued on national grasslands. The costs of these practices are deducted from the annual grazing value to determine the annual grazing fee. Land use practices include:

(i) *Conservation Practices.* The protection, planning, and land treatment and rangeland improvement measures (structural and nonstructural) that the Forest Service requires in carrying out the provisions of a grazing permit or grazing agreement. Some examples include fences, water developments, and prescribed fire.

(ii) *Administrative Activities.* Allowable administrative and program management activities carried out by a grazing association functioning under a grazing agreement, which would otherwise be an expense incurred by the Forest Service. Examples include billing and oversight of approved rangeland improvement projects.

Lessee of base property means an individual or entity that has a possessory interest under a lease for the base property associated with a grazing permit. A grazing permit can only be issued to a lessee who leases base property that is associated with a grazing permit and meets the other eligibility requirements. To obtain a permit the lessee of base property must prove a possessory interest in the leased base property, that has a grazing permit associated with it, through a formal lease agreement. When a term grazing permit is associated with permitted livestock, an individual or entity may lease property that meets the base property requirements, so they are eligible for a grazing permit.

Lessee of livestock means a permittee that has a possessory interest under a lease agreement for livestock that will be managed by the permittee on the allotment. The permittee must prove a possessory interest in the leased livestock through a formal lease agreement.

Livestock means production oriented animals of any kind kept or raised for the use or production of meat, milk, fiber, or other products, and includes animals used in support of the production operation (such as horses used as permittee pack and saddle stock).

Livestock use permit means a permit issued for purposes other than livestock production (such as research, leased sires, or targeted grazing). The issuance term shall not exceed five years, and the permit has no priority for renewal.

Maintenance of rangeland improvements means the timely repair of rangeland facilities to a condition adequate to ensure proper functioning of the facility, perpetuate its life, and protect or improve the rangeland resource. Satisfactory maintenance of improvements is a mandatory term and condition of the permit for grazing on National Forest System lands.

Mentee means someone who is mentored by an existing permittee and enters into a mentor/mentee agreement approved by the authorized officer.

Monitoring means the observation and orderly collection of data over an appropriate time-period to evaluate:

(i) Effects of management actions; and

(ii) Effectiveness of actions (such as land health).

National forests in the 16 contiguous Western States means lands designated as national forest within the boundaries of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming (national grasslands are excluded) (43 U.S.C. 1902(i)).

National Forest System lands means the national forests, national grasslands, land utilization projects, other Federal lands for which the Forest Service has administrative jurisdiction, and all other lands and interests mentioned in 16 U.S.C. 1609(a).

Nine Great Plains States means the States of Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, in which the indices are collected to determine the annual grazing value on the 17 national grasslands in those States.

Non-permittee means a person who owns or leases livestock and does not have a grazing permit to graze livestock on National Forest System lands.

Other lands under Forest Service control means non-Federal public and private lands over which the Forest Service has been given control through lease, agreement, waiver, or otherwise.

Outcome-based grazing means the incorporation of pre-authorized grazing plan modifications, called flexibilities, into grazing authorizations to better respond to changing conditions to achieve vegetation objectives.

Permitted livestock means livestock owned or leased by the permittee that has been identified by brand or other markings as requested on the application for a term grazing permit, temporary grazing permit, or term private land permit.

Permitted use means the forage allocated for grazing by production-oriented livestock in an allotment under a permit and is expressed in AUMs. Permitted use includes authorized use and active use and suspended use AUMs. See also *Active use.*

Permittee means any person who has been issued a grazing permit.

Preferred applicant (see also *Grazing preference*) means an individual who has priority position against others for the purpose of receiving (through waiver or grant) or renewing a grazing permit. The entity remains in preferred applicant status until all required documentation is submitted within the time limit agreed upon by the authorized officer, reviewed, and it is determined that the applicant meets all eligibility and qualification requirements.

Rangeland betterment means rehabilitation, protection, and improvement of National Forest System lands to arrest rangeland deterioration and improve forage conditions, fish and wildlife habitat, watershed protection, and livestock production.

Range betterment fund means the fund established by title IV, section 401(b)(1), of the Federal Land Policy and Management Act of 1976. This fund consists of 50 per centum of all monies received by the United States as fees for grazing livestock on the national forests in the 16 contiguous Western States or $10,000,000 per annum, whichever is greater.

Rangeland improvement means any authorized activity, physical modification, or treatment designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect, and improve the health of rangeland ecosystems to benefit production-oriented livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to structures, treatment projects (*i.e.,* prescribed fire), and use of mechanical devices or modifications achieved through mechanical means (*i.e.,* inter-seeding, pitting).

Rules of management means a set of policies, procedures, and practices, including eligibility requirements, developed by a grazing association or grazing district and approved by the authorized officer, that govern the grazing use both on National Forest System lands covered by a grazing agreement and on private, State, Tribal, or other agency lands under the management of a grazing association.

Small farm or ranch means a business that is classified as a small family farm according to the farm typology maintained and periodically updated by the U.S. Department of Agriculture's Economic Research Service, based on gross cash farm income categories and family ownership criteria. The term small business farm or ranch is synonymous with small farm or ranch.

Stocking rate means the number of specific kinds and classes of animals grazing a given area over a specific time period per acre. Stocking rate is usually expressed in AUMs per acre.

Succeeding family member means child, grandchild, niece, or nephew of a permit holder. The term grazing permit may be waived to such family member.

Successional base property means base property that is leased for the purpose of facilitating the lessee's ability to transition to owning the leased base property within a specified period of time.

Successional livestock arrangement means an approved written agreement between a permittee and the permittee's successor that allows the successor to build a herd by incrementally acquiring the current permittee's permitted livestock operation over a declared period of time, during which the permittee's livestock will be replaced by livestock owned by the successor.

Supplemental feed means a feed or nutritional supplement that augments the forage available from the National Forest System lands and is provided to improve livestock nutrition or rangeland management.

Suspend or suspension means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the term grazing permit, provided however, such withholding shall not exceed a period of 3 years or until the violation is remedied, or until specified objectives or actions have been met, whichever is earlier.

Sustained yield means the achievement and maintenance, in perpetuity, of a high-level, annual or regular periodic output from the various renewable resources of the National Forest System lands, consistent with multiple use.

Targeted grazing means using livestock as a tool to create strategic linear fuel breaks, to reduce fine fuel height and fuel loading, and to maintain fine fuels reduction for a specified period under, or to address other resource issues such as control of undesirable plant species.

Temporary grazing permit means a type of grazing authorization issued in certain circumstances to allow use of forage available on National Forest System lands (either within or outside of an allotment) when issuance or modification of a term grazing permit is not appropriate or needed, or authorizes the use of livestock to meet other resource objectives (for example, outcome-based grazing or targeted grazing).

Temporary non-use means that portion of active use that the authorized officer approves in writing to not be used temporarily. Temporary non-use may be in response to a request made by the permittee for personal convenience or it may result from resource management needs required by the authorized officer.

Term grazing permit consolidation means the consolidation of two or more term grazing permits for the same entity when the entity obtains qualified base property or permitted livestock, or both, which have been historically associated with separate livestock operations on grazing allotments, and applies to obtain the term grazing permits and consolidate them under a single permit.

Term grazing permit with on-and-off provisions means a type of term grazing permit with a provision that may be issued to a qualified applicant who holds a term grazing permit and who owns or leases non-National Forest System land that is intermingled with, or adjacent to, and used in conjunction with, a Forest Service grazing allotment.

Term private land grazing permit means a permit issued to a person who owns or leases unfenced private, State, or other rangeland parcels that are intermingled with, or adjacent to, a Forest Service grazing allotment, and who does not hold a term grazing permit for grazing on the National Forest System lands on the allotment.

Trend means the measurable direction of change over time, either toward or away from desired management objectives.

Transportation livestock means livestock used as pack and saddle stock for travel on the National Forest System.

Unauthorized leasing and subleasing means:

(i) The lease or sublease of a Federal grazing permit, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;

(ii) The lease or sublease of a Federal grazing permit to another party without the assignment of the associated base property;

(iii) Allowing another party, other than sons, daughters, and grandchildren of the grazing permittee or beginning ranchers meeting the requirements of § 4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee; or

(iv) Allowing another party, other than sons, daughters, and grandchildren of the grazing permittee or beginning ranchers meeting the requirements of § 4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Unauthorized livestock means any cattle, sheep, goat, hog, bison, or equine not defined as a wild free-roaming horse or burro or feral animal (one that is abandoned or unbranded), or any other livestock or exotic ungulate, that is not authorized by a Forest Service permit and bill for collection. Noncommercial pack and saddle stock used by recreationists, travelers, and other forest and grassland visitors for occasional trips, and livestock trailed over an established driveway when there is no overnight stop on National Forest System land, do not fall under this definition.

Unauthorized use rate means the annual fee charged for unauthorized livestock use.

Utilization means the portion of the current year's growth removed during a specified period. The term is also used to refer to the pattern of such use. For guidance on utilization, see *Utilization Studies and Residual Measurements: Interagency Technical Reference* (Technical Reference 1734–3) (Bureau of Land Management et al. 1996, revised 1997, 1999), or subsequent updates.

Vacant allotment means an allotment for which no term grazing permit is currently issued.

Waiver of term grazing permit means a form completed by the holder of a term grazing permit that surrenders all privileges provided under the permit back to the United States. If the holder of the term permit has sold base property or permitted livestock to another individual or entity, the waiver may be executed in favor of the purchaser to apply for the permit.

■ 6. Revise § 222.2 to read as follows:

§ 222.2 Allotment management.

(a) Consistent with land management plans, forage-producing National Forest System lands may be managed for livestock grazing.

(b) Allotments shall be designated on the National Forest System and on other lands under Forest Service administration where the land is available for grazing. Associated private and other public lands may be considered in such designation, with the consent of the landowner, lessee, or agency, to form logical rangeland management units.

(c) *Allotment management plans.* An allotment management plan may be developed for each allotment. If the authorized officer elects to develop an allotment management plan, the plan shall be developed in consultation, cooperation, and coordination with affected permittees, landowners, and any State or Tribe with lands covered by such allotment management plan. The allotment management plan shall be implemented, reviewed periodically, and revised as needed.

(1) Permits may incorporate an allotment management plan for managing livestock grazing.

(2) Allotment Management Plans will:

(i) Prescribe the livestock grazing practices necessary to meet specific resource objectives defined in any existing environmental analysis;

(ii) Specify any operational flexibility that can be approved by the authorized officer; and

(iii) Include a monitoring plan to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(3) Private, Tribal, and State lands may be included in allotment management plans, dealing with rangeland management, with the consent or at the request of the parties who own or lease those lands.

(4) A requirement to conform with completed allotment management plans shall be incorporated by reference into the terms and conditions of the grazing permit for the allotment.

(5) Allotment management plans may be revised or terminated by the authorized officer. When revisions or terminations occur, the authorized officer shall inform through written notification affected permittees, landowners involved, and any State or Tribe having lands within the area covered by the plan.

(d) *Changes to allotment boundaries.* After consultation, cooperation, and coordination with the affected grazing permittee(s) and any States or Tribe having lands within the allotment to be covered by such allotment management plan, the authorized officer may designate and adjust grazing allotment boundaries. The approach used to modify allotment boundaries shall be determined on a case-by-case basis. In some instances, modifying an allotment boundary may be considered a technical correction, while in other instances, modification may require environmental analysis and decision.

(e) *Rangeland disturbance response actions.* The authorized officer may implement temporary response actions to address drought, wildfire, flood, insect or disease outbreak, loss of water availability, or other events that materially reduce forage or water availability or otherwise threaten rangeland resources or livestock health.

(1) Temporary response actions may include temporary changes in livestock numbers, season of use, pasture rotation, timing of use, area of use, water use, supplemental feeding locations, targeted grazing, temporary non-use, or other actions necessary to protect rangeland resources or livestock health.

(2) Before implementing a temporary response action, the authorized officer shall, to the extent practicable, consult, cooperate, and coordinate with affected permittees and consider reasonable alternatives proposed by affected permittees.

(3) The authorized officer shall document the basis for the temporary response action, including the conditions prompting the action, the expected duration, the affected allotments or pastures, and the criteria for terminating or revising the action.

(4) A temporary response action under this paragraph does not modify the term grazing permit unless the authorized officer separately modifies the permit in accordance with § 222.5(e).

(5) In an emergency, the authorized officer may make a temporary response action effective immediately or on a date specified in the decision. The authorized officer shall provide written notice to affected permittees as soon as practicable.

(6) The authorized officer may determine that vegetation, soil, or other resources on National Forest System lands are at substantial risk of wildfire due to drought, fuels buildup, or other causes, or at immediate risk of erosion or other damage due to wildfire. The authorized officer may include targeted grazing as a component of a wildfire management decision, consistent with applicable law, the applicable land management plan, and agency procedural requirements.

■ 7. Revise § 222.3 to read as follows:

§ 222.3 Issuance of grazing permits.

(a) Unless otherwise specified by the Chief, Forest Service, all grazing and livestock use on National Forest System lands and on other lands under Forest Service control must be authorized by a term grazing permit, a term grazing permit with on-and-off provisions, grazing agreement, term private land grazing permit, a temporary grazing permit, or a livestock use permit.

(b) Term grazing permits (including term grazing permit, term grazing permit with on-and-off provisions, grazing agreement, and term private land grazing permit) authorize grazing by production-oriented livestock on the National Forest System lands, consistent with land management plans as available. Permits must specify the permitted use, the kind and number of livestock, the period of use, the allotment to be used, and the terms and conditions, and must identify the appropriate land management plan and the site-specific analysis and decision associated with the permit.

(c) The number and season of use, and designated areas permitted in a term grazing permit (including term grazing permit, term grazing permit with on-and-off provisions, grazing agreement, and term private land grazing permit) may be changed on an annual basis, through the authorized use, to address resource needs or respond to drought, fire, or other situations.

(d) All permits shall be made subject to cancellation, suspension, or modification for any violation of federal law, these regulations or any terms or conditions of the permit, or Allotment Management Plan.

(e) Term grazing permits, temporary grazing permits, term grazing permits with on-and-off provisions, grazing agreement, and term private land grazing permits, and livestock use permits convey no right, title, or interest held by the United States in any lands or resources.

(f) The authorized officer may issue permits for livestock grazing and other use by livestock, such as for vegetation control or invasive species management, on the National Forest System and on other lands administered by the Forest Service.

(g) The Chief, Forest Service, shall prescribe provisions and requirements under which term permits will be issued, renewed, and administered, including:

(1) The amount and character of base property and livestock that the permit holder shall be required to own or lease.

(2) Conditions for the approval of temporary non-use of the permit for specified periods.

(3) Discretionary priority for a qualified beginning rancher or permittee mentee when issuing a term grazing permit through a prospectus. Beginning ranchers and permittee mentees must meet all eligibility and qualification requirements intended to reduce barriers to entry into the agricultural industry, or demonstrate that they meet the exceptions prescribed by the Chief. Exceptions to the qualification requirements for beginning ranchers and permittee mentees may be approved

singularly or in combination and include:

(i) Allowing for the phased acquisition of base property or livestock, or both, under limited circumstances.

(ii) Allowing for a successional base property arrangement, which essentially sets up an extended purchase and sale agreement. This means that the base property owner agrees to sell the described base property, and the successor agrees to purchase the property by the date specified in the arrangement.

(iii) Allowing a beginning rancher or a mentee to be mentored by a permittee. When a permittee mentor/mentee arrangement is approved by the authorized officer, the mentee is not issued a term grazing permit; instead, the mentee may run up to 50 percent of the permitted livestock numbers under the permittee mentor's term grazing permit.

(iv) Allowing successional livestock arrangements to provide the opportunity for an entity seeking to acquire the current permittee's livestock operation to build a herd by incrementally acquiring livestock from the current permittee.

(h) *Eligibility and qualification requirements.* Term grazing permits may be issued only to individuals or entities who meet the eligibility and qualification requirements.

(1) To be considered eligible to hold a term grazing permit, an applicant must be:

(i) A citizen of the United States who has reached the age of majority by the State where the permitted grazing activity would occur, except for individuals who have not reached the age of majority and have a parent, guardian, or trustee who cosigns the permit; a minor who has obtained the status of legal adulthood before reaching the legal age of majority by court order for emancipation; or a citizen of a foreign country who has demonstrated intent to become a citizen by having filed for naturalization;

(ii) An entity formed and recognized as a legal entity in accordance with applicable Federal and State statutes; or

(iii) An American Indian Tribe, Tribal Organization, or Tribal member.

(2) To be considered as qualified to hold a term grazing permit, an eligible applicant must own or lease base property, as defined in § 222.1, and own or lease the livestock to be permitted. However, when any of the excepted conditions described below apply, an entity may be approved to meet those requirements:

(i) An exception to the base property ownership/lease requirement is provided to allow for successional base property arrangements, providing the opportunity for an entity to incrementally acquire ownership of a current permittee's described base property.

(ii) An exception to the livestock ownership/lease requirement is provided to allow current permittees to mentor an aspiring small business rancher or beginning rancher. When a beginning rancher or mentor/mentee arrangement is approved by the authorized officer, the beginning rancher or mentee is not issued a term grazing permit; instead, the beginning rancher or mentee may run up to 50 percent of permitted livestock numbers under the permittee's term grazing permit.

(iii) An exception to the livestock ownership/lease requirement is provided to allow for successional livestock arrangements, providing the opportunity for an entity seeking to acquire the current permittee's livestock operation to build a herd by incrementally acquiring livestock from the current permittee.

(iv) An exception to the livestock ownership/lease requirement is provided to allow beginning ranchers to enter into extended livestock purchase and sale arrangements when additional time is needed for the beginning rancher to acquire enough livestock to fully stock the term grazing permit.

(v) An exception to the requirement that base property ownership/lease and permitted livestock be held by the same precise legal entity is provided to facilitate estate planning and family livestock operation. Under limited circumstances, one entity may own the base property and a second entity composed of the same individuals may own or lease the livestock to be permitted. The authorized officer may allow up to 50 percent of the permitted livestock to be owned by the permit holder's immediate or extended family members and grazed under the permit holder's term grazing permit, provided the permit holder annually identifies the number, ownership, and brands of such livestock.

(vi) Under instances where a ranch becomes associated with a permanent conservation easement that prohibits subdividing it into parcels, the Forest Service may recognize this one property as the base property qualifying multiple different entities to hold grazing permits associated with that land.

(i) *Permits with priority for renewal.* Term grazing permits authorized in this paragraph have priority for renewal and may be in the form of term grazing permits, grazing permits with on-and-off provisions, or grazing agreements. Permittees and applicants must be eligible and qualified to hold such permits in accordance with paragraph (h) of this section. Permits issued under this paragraph may be issued as follows:

(1) On national forests in the 16 contiguous Western States, 10-year term permits will be issued unless the land is pending disposal, will be devoted to other uses prior to the end of 10 years, or it will be in the best interest of sound land management to specify a shorter term in accordance with 43 U.S.C. 1752(b)(3).

(2) On National Forest System lands other than national forests in the 16 contiguous Western States, the permit term shall be for periods of 10 years or less. Term grazing permits in the form of grazing agreements may be issued to cooperative grazing associations or similar organizations incorporated or otherwise established pursuant to State or Tribal law.

(3) A term permit holder has first priority for receipt of a new permit at the end of the term period, provided the permit holder has fully complied with the terms and conditions of the expiring permit.

(4) To update terms and conditions, term grazing permits may be cancelled at any time, provided a new permit is issued to the existing permit holder for a new term of the appropriate number of years for a new permit, per paragraphs (1) and (2) above.

(5) New term permits may be issued to an eligible and qualified purchaser of a permittee's permitted livestock or base property, or to a lessee of a permittee's base property, provided the permittee waives the term permit to the United States in favor of the purchaser of base property or livestock, or the base property lessee.

(6) When a permit expires or is waived, the authorized officer shall renew an existing permit or issue a new permit to reallocate the use from the expiring/waived permit with terms and conditions consistent with the supporting environmental analysis and decision.

If a permit expires or is waived, and there is no current environmental analysis or a new environmental analysis is necessary, the authorized officer shall:

(i) for the National Forests in the 16 contiguous Western States, issue a permit with the same terms and conditions until the environmental analysis and documentation required under NEPA and other applicable laws is complete. After completion of this process the permit may be canceled, suspended, or modified accordingly.

(ii) for lands other than the National Forests in the 16 contiguous Western States, issuance of the permit shall be consistent with appropriations language, if available, and all applicable laws.

If a permit is cancelled, this paragraph does not apply. See 222.4(c).

(7) If the permittee chooses to dispose of all or part of the permittee's base property or permitted livestock (not under approved temporary non-use), but does not choose to waive the term permit, the authorized officer shall give written notice that the permittee is no longer qualified to hold a permit. The permittee shall be given up to one year to reestablish qualifications before cancellation action is final.

(j) *Permits with no priority for renewal.* Permits with no priority for reissuance are subject to terms and conditions as prescribed by the authorized officer and are authorized as follows:

(1) Temporary grazing permits for periods not to exceed one year, on a charge basis, may be issued provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the National Forest System lands. The authorized officer shall consult, cooperate, and coordinate with affected permittees on common allotments prior to issuance of temporary grazing permits:

(i) to allow for the use of rangelands while a term grazing permit is held in suspension;

(ii) to use additional forage created by unusually favorable climatic conditions;

(iii) to use the permitted rangelands when the permit holder's livestock is in temporary non-use status for reasons of personal convenience;

(iv) to allow a person to continue to graze livestock for the remainder of the grazing season where base property has been sold or the lease cancelled, the permit waived, and a new term permit issued;

(v) to allow grazing use in the event of drought or other emergency of National or Regional scope where such use would not result in permanent resource damage;

(vi) to allow for vegetation control or invasive species management, as well as stewardship projects (such as outcome-based grazing or targeted grazing); or

(vii) to allow use on a forage reserve allotment by an entity who does not have a term grazing permit.

(viii) The permittee or individual who acquires a temporary permit shall perform annual rangeland improvement maintenance prior to turning livestock out on the allotment.

(2) Livestock use permits shall not exceed five years and may be issued consistent with applicable laws and under terms and conditions prescribed by the authorized officer as follows:

(i) paid permits for transportation livestock;

(ii) paid or free permits for research purposes and administrative studies;

(iii) paid or free permits to trail livestock across National Forest System lands;

(iv) free permits to persons who reside on ranch or agricultural lands within or contiguous to National Forest System lands, not to exceed 10 head of livestock owned or kept whose products are consumed or whose services are used directly by the family of the resident, and who distinctly need such National Forest System lands to support such animals;

(v) free permits to campers and travelers for the livestock actually used during the period of occupancy. This may be authorized without a written permit;

(vi) paid or free permits for horses, mules, or burros used by permittees to support management of permitted livestock when they are not included in the term grazing permit;

(vii) free permits for horses, mules, or burros to cooperators who use pack and saddle stock to support research, administration, or other work being conducted. This may be authorized without a written permit;

(viii) paid or free permits for livestock used as a management tool to manipulate or control vegetation or invasive species, as well as implement stewardship projects (such as outcome-based grazing or targeted grazing) on a given parcel of National Forest System land; or

(ix) paid permits to holders of grazing permits for breeding animals used to service livestock permitted to graze on lands administered by the Forest Service.

(3) Term private land permits may be issued to an applicant who owns or leases unfenced private, State, or other rangeland parcels that are intermingled with, or adjacent to, a Forest Service-administered grazing allotment but does not hold a term grazing permit for use of the National Forest System lands, under the following conditions:

(i) The applicant shall provide proof of ownership or lease of the offered land for grazing purposes.

(ii) Issue this permit only if it is in the best interest of the United States, considering the management of National Forest System lands and resources within the allotment, and whether the owned or leased lands should be managed with the National Forest System lands as a logical grazing unit.

(iii) Term private land permits may be issued for a period that coincides with the term of their land lease or other agreement that allows their use, or for a period of up to 10 years, whichever is less.

(iv) The authorized officer shall estimate the grazing capacity for the offered lands identified in the application for a term private land grazing permit.

(v) The applicant must agree to all terms and conditions of the term private land grazing permit, including the overall season of use and the number of livestock on the owned or leased lands.

(vi) Livestock that access National Forest System lands without authorization are unauthorized livestock.

(k) *Grant priority for available grazing capacity.* When grazing capacity becomes available on a permanent sustained-yield basis for grazing, the authorized officer may authorize grazing use of such land or forage on the basis of this section, § 222.5, § 222.7(a), or any of the following factors:

(1) When unresolved resource or management concerns exist on a district or forest, priority consideration shall be given to impacted permittees first. Authorized officers shall document the rationale for determining which permittee will be granted the unobligated capacity when addressing unresolved resource or management concerns.

(2) When no unresolved resource or management concerns exist:

(i) When the available grazing capacity is associated with an allotment with existing permittees and is a direct result of permittees' direct contributions to the completion of rangeland improvements, development programs, or enhanced livestock grazing and rangeland management, the capacity shall be allocated in a proportional manner relative to the contributions made by each permittee leading to the increased capacity;

(ii) When grazing capacity is added through a land exchange, and that land is incorporated into an existing allotment, priority shall be given to existing permittees on the allotment who grazed the acquired land prior to the land exchange; or

(iii) When the available grazing capacity is not associated with paragraph (l)(2)(i) or (ii) of this section, the authorized officer shall solicit applicants by issuing a prospectus in the following priority order:

(A) to a beginning rancher or mentee with a permittee mentor/mentee

agreement who is a small business rancher;

(B) to existing permittees on adjacent allotments who are small business ranchers;

(C) to owners of livestock who are not current Forest Service permittees but are currently in good standing and authorized on rangeland administered by the Bureau of Land Management to the extent provided in the memorandum of understanding between the Forest Service and Bureau of Land Management; and then

(D) to a solicited applicant who has applied in response to a prospectus and is eligible and qualified.

■ 8. Amend § 222.4 by revising the section heading, paragraph (a) introductory text, and paragraph (a)(2)(iv), and by adding paragraph (c) to read as follows:

§ 222.4 Cancellation, modification, or suspension of grazing permits.

(a) The authorized officer may cancel, modify, or suspend any grazing or livestock use permit, in whole or in part, as follows:

* * * * *

(2) * * *

(iv) Fails to restock the allotment after the full extent of approved personal convenience temporary non-use has been exhausted.

* * * * *

(c) If a permit is cancelled, the authorized officer should reallocate the use from the cancelled permit to a new applicant under the grant process (§ 222.3(k)). The issuance shall be consistent with a current environmental analysis, decision authorizing grazing, and all applicable laws. The authorized officer retains sole discretion to determine how to reallocate this use.

■ 9. Add § 222.5 to read as follows:

§ 222.5 Changes in permitted, authorized, and active use.

(a) The authorized officer shall periodically review the permitted use specified in a grazing permit and shall make changes in the permitted use, authorized use, or active use as necessary, when supported by site-specific analysis from monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer to:

(1) Manage, maintain, or improve rangeland health or productivity; or

(2) Assist, if necessary, in making progress toward restoring riparian ecosystems to properly functioning conditions; or

(3) Conform to land management plans.

(b) If sufficient improvement cannot be achieved through adjustments to authorized use, modifications to permitted use may be necessary and should be based on a site-specific analysis, which shows active grazing use is causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring data, documented field observations, ecological site inventories, or other information deemed acceptable by the authorized officer.

(c) *Allocation of additional forage.* Apportioned forage shall be consistent with multiple-use and sustained-yield management objectives.

(1) Additional forage available on a permanent or sustained-yield basis for grazing by production-oriented livestock shall be apportioned to eligible and qualified applicants in accordance with the grant process in § 222.3(k). The authorized officer shall apportion the available forage after consultation, cooperation, and coordination with affected permittees on a common allotment, and any State having lands within the allotment.

(2) Additional forage temporarily available for grazing by production-oriented livestock may be apportioned on an annual temporary basis, depending on the need by permittees or individuals who acquire a temporary permit, or based on resource management needs.

(3) When additional forage is temporarily available due to temporary non-use for personal convenience by a permittee, the authorized officer may authorize grazing to fill in behind the approved temporary non-use. The use may be made temporarily available to an existing permittee through a bill for collection or to an individual who acquires a temporary permit.

(4) Forage reserve use by existing permittees shall be authorized on the bill for collection. Forage reserve use by a non-permittee shall be authorized by a temporary permit.

(5) When livestock management activities are needed temporarily to achieve identified rangeland condition outcomes, such as invasive species control, vegetation management, or fuels treatments), additional forage may be apportioned to permittees or others in accordance with § 222.3(c), § 222.3(f), § 222.3(j)(1), § 222.3(j)(2), or § 222.3(k).

(6) Permittees who seek temporary changes in grazing use within the terms and conditions of their permit must request the changes in writing from the Forest Service before the requested change in grazing use would be authorized.

(7) The authorized officer may approve temporary changes in livestock number, period of use, or both, provided that any temporary change in the authorized period does not begin more than 21 days before the beginning date specified in the permit and does not extend more than 21 days after the ending date specified on the permit, unless otherwise authorized in an allotment management plan.

(d) *Personal or required non-use.*

(1) *Temporary non-use for the permittee's personal convenience.*

(i) Temporary non-use for the permittee's personal convenience occurs when a permittee requests to graze less than 90 percent of the permitted number of livestock on a specified allotment for a given grazing year. Temporary non-use applies only to the number of animals and can be requested for partial numbers of permitted livestock or for all of the permitted livestock.

(ii) Temporary non-use for the permittee's personal convenience may only be authorized for up to 4 consecutive years and may not exceed 4 years in a 10-year rolling period.

(iii) Temporary non-use for the permittee's personal convenience must be requested in writing by the permittee for each year. Approval or denial shall be documented by the authorized officer in writing.

(2) *Temporary non-use for resource management needs.*

(i) When the authorized officer determines that temporary non-use for resource management needs is necessary, the authorized officer would initiate consultation, and coordination with affected permittees and the State or Tribe having lands within the allotment.

(ii) Permitted use may be placed into temporary non-use for resource management needs, in whole or in part, on a temporary basis due to drought, fire, or other natural causes; or to facilitate installation, maintenance, or modification of rangeland improvements. The temporary non-use shall be implemented and documented through the annual bill for collection.

(iii) Temporary non-use for resource management needs may be requested by the permittee and must be requested in writing for each year it is desired.

(iv) The authorized officer may require temporary non-use for resource management needs or temporarily modify management practices when review of site-specific monitoring shows that current grazing use is causing an unacceptable level or pattern of utilization, or when use exceeds the carrying capacity. Only monitoring methods and data approved by the Forest Service and collected at sites identified in the allotment management

plan, land management plan, or site-specific analysis shall be used.

(v) Where permitted use is reduced under this section, it will be placed in temporary non-use for resource management needs until the authorized officer has determined that the specific objectives that were expected to be met by implementing the temporary non-use for the resource management needs have been met, and livestock can return to the area. The need for temporary non-use should be identified on an allotment-by-allotment basis. When establishing the need for temporary non-use for resource management, the authorized officer shall document the following in a memorandum to the file and a letter to the permittee:

(A) The period and amount of temporary non-use being approved or required must be identified;

(B) The objectives to be achieved, such as how the temporary non-use would enable or support the implementation of vegetation treatments (such as prescribed fire or seeding); the specific resource conditions that are expected to be met, enhanced, or how the temporary non-use will enable progress to be made toward achieving the specific resource conditions;

(C) How the temporary non-use is expected to achieve the described objectives; and

(D) The monitoring that will be conducted (the type, frequency, and so forth), and when the data will be reviewed to determine if the temporary non-use is achieving the described objectives.

(vi) When the temporary non-use is a result of an emergency (such as for drought, fire, flood, or animal disease outbreaks/transmissible livestock disease) and there is a need to immediately protect the soil, vegetation, or other resources, the authorized officer should issue notices of emergency closure and decisions requiring modification of authorized grazing use. The notices may be effective upon issuance or on a date specified in the decision.

(vii) The authorized officer shall not authorize qualified applicants to graze forage made available as a result of temporary non-use for resource management needs.

(3) Temporary non-use for rangeland research may be available under a written agreement between the Forest Service, the permittee, and the entity conducting the research on an allotment, or portion of an allotment, as needed for a study area, and must be requested in writing.

(4) Temporary non-use of grazing association-issued term grazing permits shall be administered as follows:

(i) Associations may approve member requests for temporary non-use for personal convenience and for resource management needs.

(ii) Associations may require their members to take temporary non-use for resource management needs if, in coordination with the Forest Service the Forest Service determines the temporary non-use is needed (such as due to wildfire and drought).

(iii) Grazing associations shall ensure that the implementation of their temporary non-use policy is consistent with the Forest Service temporary non-use policies.

(iv) The Forest Service authorized officer may approve requests by the grazing association for temporary non-use for personal convenience, resource management needs, or require temporary non-use for resource management needs.

(v) Grazing associations must graze at least 90 percent of the number of livestock under their association-issued grazing permit each year, unless the Forest Service approves or requires temporary non-use.

(vi) The need for resource management temporary non-use should be identified on an allotment-by-allotment basis and should include specific objectives that are expected to be met by implementing temporary non-use.

(vii) The grazing association shall be responsible for working with its members to carry out temporary non-use for resource management needs on the associated allotments.

(viii) A member's failure to place livestock on the National Forest System lands without approved or required temporary non-use may be subject to non-compliance actions as described in the association's rules of management.

(ix) A grazing association is authorized to allow association members or temporary non-members to fill in behind a member's temporary non-use for personal convenience. If an association decides not to fill in behind the member's temporary non-use for personal convenience, the association must contact the Forest Service and request that the temporary non-use be approved and reflected on the annual bill for collection issued by the Forest Service to the association.

(e) *Permit modifications.* The authorized officer may make modifications to the terms and conditions of a grazing permit when livestock use or related management practices are not meeting the land management plan, allotment management plan, management objectives, or are not in conformance with the results of the monitoring data. Before any modifications are made to the term grazing permit, the authorized officer will consult, cooperate, and coordinate the need for such action with the permittee, the State, and Tribe having lands or responsibility for managing resources on the allotment. To the extent practical, the authorized officer will provide the permittee and State having lands or responsibility for managing resources in the allotment an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit. Permit modifications are issued through a letter to the permittee. Permit modifications may be for purposes such as:

(1) Achieve resource management objectives or adapt to changed rangeland resource conditions.

(2) Comply with requirements of or changes to applicable laws, regulations, land management plans, decisions, agency policies and procedures, and other legally binding documents. Other management needs could include amendments or revisions to a land management plan, or to conservation recommendations provided in a new biological opinion.

(3) Respond to permittee requests within the parameters of the land management plan, grazing permit terms and conditions, and site specific environmental analysis.

(4) Increase or decrease livestock numbers, period of use or change the kind or class of livestock.

(5) Changes in the area to be grazed, including modification of allotment boundary changes to or inclusion of an allotment management plan.

(6) Modify other terms and conditions of the permit, including provision for construction or reconstruction, and/or maintenance, of rangeland improvements.

(7) Devote lands to other public purposes and provide 2 years notice to permittee if the modification includes a partial cancellation.

■ 10. Revise § 222.6 to read as follows:

§ 222.6 Term grazing permit waivers and applications.

(a) A waiver of the term grazing permit shall be submitted when one of the following occurs:

(1) Sale of base property that has a term grazing permit associated with it;

(2) Lease of base property that has a term grazing permit associated with it;

(3) Sale of permitted livestock that has a term grazing permit associated with them; or

(4) Individual or entity name change requested.

(b) Waiver of a term grazing permit, in whole or in part, are subject to the following requirements:

(1) The current permittee must complete and execute a waiver of the term grazing permit within 90 days of selling or leasing the base property, within 90 days of selling the permitted livestock, or when requesting a name change.

(2) The waiver of the term grazing permit must identify the base property or permitted livestock to which the grazing permit is attached and identify the permitted use being waived.

(3) The waiver of the term grazing permit shall note that the permittee agrees to reasonable compensation as calculated per 222.8(h) for contributions to rangeland improvements and does not hold, and never has, any ownership interest in rangeland improvements constructed, installed, or maintained by the seller on National Forest System lands associated with the waiver.

(4) The authorized officer may modify the terms and conditions of a permit during the permit waiver process when such modifications are needed to conform to current situations brought about by changes in law, regulations, executive orders, allotment management plans, land management planning, resource conditions or management needs, or preferred applicant requests.

(c) At the date of approval of a waiver of term grazing permit, the existing grazing permit shall terminate automatically.

(d) When an individual or entity inherits base property and/or permitted livestock through operation of law or testamentary disposition, and they are otherwise eligible and qualified to hold a term grazing permit, process a waiver of term grazing permit in the same manner as waivers for term grazing permits due to the sale and purchase of base property or permitted livestock.

(1) In the event a will, estate settlement agreement, or probate provides for different owners of the base property and permitted livestock, the opportunity to apply for the term grazing permit is usually provided to the entity that inherits the base property unless otherwise specified or agreed to by the parties.

(2) Strict compliance with the qualification requirements may not be appropriate during the settlement of an estate. The estate shall be required to meet all qualification requirements within three years, unless the administrator of the estate can document why it would be inequitable to do so or why a longer time period is required.

(3) If the individual or entity does not meet the eligibility and qualification requirements in accordance with § 222.3(h) by the end of the three-year period, or as agreed upon by the authorized officer, then the term grazing permit shall be subject to cancellation.

(4) Once a waiver of term grazing permit is received, the individual or entity that inherited the base property should submit an application for a term grazing permit.

(e) When a waiver for a term grazing permit is received due to a base property lease, the following conditions apply:

(1) The base property owner (lessor) must complete and execute a waiver for a term grazing permit within 90 days of signing the lease agreement.

(2) The base property lessee must complete and execute an application for a term grazing permit within 90 days of signing the lease agreement.

(3) Once the application for a term grazing permit is processed, the term grazing permit will be issued for a term that coincides with the expiration of the base property lease agreement or up to 10 years, whichever is shorter. If the permit is issued for a term of less than 10 years, the authorized officer should determine that approving the waiver and issuing the permit will be in the best interest of sound land management to specify a shorter term.

(4) If the base property lease agreement is not renewed, the term grazing permit will be waived back to the base property lessor.

(5) If the term grazing permit is cancelled due to permit violations by the lessee, the grazing preference may be held by the Forest Service for up to one year, while waiting for the lessor to become qualified to hold a term grazing permit. The lessor's term grazing permit application shall be held in preferred applicant status.

(6) If the lessor sells the base property associated with the grazing preference before re-qualifying to hold the term grazing permit, the authorized officer may approve waiving the grazing preference to the base property purchaser. If the grazing preference is not waived with the sale of the base property, then the authorized officer may offer it in accordance with the grant process in section § 222.3(k).

(7) When base property is under lease, a lessee's request for a waiver of the term grazing permit will not be accepted, unless the waiver is waiving the term grazing permit back to the lessor, or unless the lessor agrees, in writing, to allow the lessee to waive the permit to a different entity.

(f) If an entity wishes to change its name on a term grazing permit, it must execute a waiver of the term grazing permit and submit an application for a term grazing permit with all the supporting documents. Term grazing permits cannot be modified to update the name change. Regardless of how many years remain on the old permit, a new 10-year term grazing permit is issued in the name of the new entity.

(g) Following the waiver of a term grazing permit, the authorized officer may consult, cooperate, and coordinate with the preferred applicant, the State or Tribe having lands within the allotment, and affected permittees if the application is for use on a common allotment, before issuing the grazing permit.

(h) The authorized officer may deny an application for a permit from a preferred applicant if approval would result in consolidation of term grazing permits or split a permit into multiple smaller permits.

(1) Limitations on term grazing permit consolidation should be based on whether the consolidation would result in excessive accumulation of term grazing permits by a single family unit or related group of entities, including circumstances where consolidation would:

(i) Reduce opportunities for local or beginning ranchers or permittee mentees;

(ii) Undermine locally based livestock operations;

(iii) Diminish on-the-ground oversight; or

(iv) Impair the economic viability of community scale ranching.

(2) The authorized officer may deny an application for a term grazing permit when approval would result in issuing and administering a small term grazing permit deemed inefficient for the government to administer, does not align with the local livestock industry for the production of food and fiber, or is not in the best interest of the government.

(i) An application for a term grazing permit must be submitted when one of the following occurs:

(1) Purchase of base property that has a term grazing permit associated with it;

(2) Lease of base property that has a term grazing permit associated with it;

(3) Purchase of permitted livestock that have a term grazing permit associated with the livestock;

(4) Permittee requests to reassign or change the base property parcel's legal description; or the name of the permitted entity; or

(5) Expiration of the current term grazing permit. The application for a term grazing permit should be submitted at least 1 month prior to the term grazing permit expiration date to ensure timely processing of the renewal.

(j) The purchaser of base property or permitted livestock must complete and execute the application for a term grazing permit within 90 days of purchasing the base property or permitted livestock, or they will lose their priority for obtaining preferred applicant status. Once their application for a term grazing permit is received, they will become the preferred applicant for the term grazing permit and shall meet all eligibility and qualification requirements consistent with § 222.3(h) or its exceptions within the time limit agreed upon by the authorized officer.

(k) The lessee of base property must complete and submit the application for a term grazing permit within 90 days of signing the base property lease, or they may lose their priority for obtaining preferred applicant status. Upon receipt of their application, they shall become the preferred applicant for the term grazing permit and shall meet all eligibility and qualification requirements consistent with § 222.3(h) or its exceptions within the time limit agreed upon by the authorized officer.

(l) When the permittee requests to change the legal description of base property associated with a term grazing permit, the permittee can submit an application for a term grazing permit and note that it is a request to change the base property. Any newly described land submitted by the permittee must meet all base property requirements. When a grazing agreement is in place, and a member of the grazing association would like to change or reduce their described base property, they must make that request to the association in a manner that is consistent with the grazing association's rules of management.

(m) Failure of either the permittee or the preferred applicant to comply with the regulations of this section may result in rejection of the waiver and application for a term grazing permit or cancellation of the term grazing permit.

■ 11. Redesignate §§ 222.7, 222.8, and 222.9 as §§ 222.9, 222.10, and 222.8, respectively.

■ 12. Add § 222.7 to read as follows:

§ 222.7 Changes in National Forest System land acreage.

(a) When lands are added to the National Forest System or existing National Forest System lands are newly designated as available for livestock grazing under the administration of the Forest Service, the authorized officer may make the forage for livestock available to eligible and qualified applicants through the grant process described in § 222.3(k).

(b) Where there is a decrease in National Forest System land acreage available for livestock grazing within an allotment:

(1) Grazing permits may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Grazing permits may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the National Forest System lands shall be apportioned by the authorized officer based on the level of available forage and the magnitude of the change in National Forest System land acreage available, or as agreed to among the permittees and the authorized officer.

(c) When National Forest System lands are disposed of or devoted to a public purpose that precludes livestock grazing, permittees shall be given two years' prior notification, except in cases of emergency (such as national defense requirements in time of war, natural disasters, or national emergency needs), before grazing permits may be cancelled. A permittee may unconditionally waive the two-year prior notification. Such a waiver shall not prejudice the permittee's right to reasonable compensation for, but not to exceed the fair market value of, the permittee's interest in authorized permanent rangeland improvements located on these National Forest System lands (see § 222.8(h)).

■ 13. Revise the newly redesignated § 222.8 to read as follows:

§ 222.8 Rangeland improvements.

(a) The authorized officer may authorize installation and maintenance of structural and nonstructural rangeland improvements as needed to manage the rangeland resource on National Forest System lands and other lands under Forest Service control.

(b) Rangeland improvements shall be constructed, installed, used, maintained, modified, and removed from National Forest System lands in a manner consistent with multiple-use management, optimal effectiveness, and cost efficiency by permittees or other cooperators (including individuals, organizations, or agencies other than the Forest Service), subject to the following:

(1) All rangeland improvements to be installed, constructed, or modified by the permittee on National Forest System lands and other lands under Forest Service control must be authorized by a term grazing permit modification, the provisions of which become part of the term grazing permit. Term grazing permits require the holder to maintain their assigned rangeland improvements.

(2) All rangeland improvements completed by other cooperators, individuals, organizations, or agencies shall be authorized for construction and maintenance through agreements, contracts, memorandums of understanding, or other appropriate documentation or authorization where the Forest Service is a party. The Forest Service will consult, cooperate, and coordinate with the permittee prior to allowing work by a third party to commence. The Forest Service shall keep a copy of the documentation in the rangeland improvement project file.

(3) If the permittee hires a third party to complete the permittee's required contributions to the rangeland improvement project, the permittee must inform the authorized officer of their decision and secure approval from the authorized officer before work begins on the project.

(4) Title to permanent structural and nonstructural rangeland improvements shall rest in the United States.

(5) Title to temporary and removable structural rangeland improvements (such as corrals, creep feeders, loading chutes, and troughs for hauled water) may be retained by the cooperator if no part of the cost for the rangeland improvement is borne by the United States. Once the use for the season has concluded, the temporary and removable structures will be removed from National Forest System lands.

(6) Rangeland improvement work performed by a cooperator or permittee on National Forest System lands shall not confer the exclusive right to use the improvement or the land influenced; nor does it convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(c) The authorized officer will review proposed rangeland improvement projects under applicable laws to determine if the proposed action is subject to the requirements of NEPA, as outlined at 7 CFR part 1b, and to determine whether additional analysis or documentation is required under NEPA and applicable implementing procedures. If the authorized officer determines that the proposed action

may proceed consistent with 7 CFR part 1b and other applicable requirements, then a term grazing permit modification is initiated to authorize the project. The permittee may voluntarily accept the modification or appeal the modification under 36 CFR 214.

(d) *Term grazing permit modifications for rangeland improvements.*

(1) A modification to part 3 of the term grazing permit must be completed to authorize and document the work to be completed for rangeland improvement projects with permittees.

(2) Permit modifications for rangeland improvements must include construction specifications, location, estimated cost and degree of cost-sharing, the specific contributions (such as labor, materials, and funding) that will be made by the permittee and the Forest Service, and a timeline for required completion.

(3) Permittees shall contribute the agreed-upon contributions of money, labor, equipment, or materials for new, modified, or reconstructed rangeland improvements on National Forest System lands when the rangeland improvement is used for livestock management purposes. All permittee contributions shall be documented through the permit modification, case files, and database of record.

(4) Once the construction of the rangeland improvement is complete and the authorized officer determines that the rangeland improvement meets the required specifications, part 3 of the term grazing permit must be modified to add the rangeland improvement(s) to the list of improvements assigned to the permittee for maintenance.

(5) Permittees are required to maintain all assigned rangeland improvements related to livestock grazing on National Forest System lands or other lands under Forest Service control and to keep them in standard operable condition throughout their normal life expectancy. This includes periods during temporary non-use and suspension. Permittees are responsible for all maintenance costs associated with rangeland improvements. The permittee will only be assigned maintenance for improvements that they benefit from.

(e) *Non-permittee cooperators for rangeland improvements.*

(1) The authorized officer shall evaluate non-permittee proposals to construct rangeland improvements under the same criteria that apply to permit holders, to determine if the improvements contribute toward accomplishing the overall resource management objectives for the area. Before any work is completed by a non-permittee, the Forest Service will consult, cooperate, and coordinate with any existing permittees, States, and Tribes that have lands within the allotment.

(2) The authorized officer shall ensure that rangeland improvements financed by non-Federal contributions are cost-effective and that they are located and built to Forest Service specifications.

(3) The authorized officer should use a collection agreement for any funds that non-Federal parties deposit with the Forest Service for rangeland improvements.

(4) The authorized officer should use a Challenge Cost Share Agreement when cooperation is between the Forest Service and a non-permittee, involves an exchange of funds, materials, or services that is mutually beneficial, and enhances the Forest Service's activities.

(5) The authorized officer should use a Memorandum of Understanding when cooperation is between the Forest Service and a non-permittee, does not involve an exchange of funds, materials, or services, and the agreement is non-binding.

(6) The authorized officer should use an interagency agreement when an agreement is between the Forest Service and other Federal agencies, including those instances that involve sharing of costs, equipment, and expertise.

(7) If the rangeland improvement is an authorized restoration service with a State, county, or Tribe, and is not excluded, a Good Neighbor Agreement may be appropriate.

(8) The authorized officer should use a Cooperative Agreement when the Forest Service provides materials or funds to the cooperator to complete the project and the cooperator is a non-permittee and non-Federal entity or individual.

(9) The authorized officer should consult with a Grants and Agreements specialist to determine whether a different agreement is available for the type of work being desired.

(f) *Removal of rangeland improvements.*

(1) Rangeland improvements shall not be removed from National Forest System lands without authorization.

(2) The authorized officer may require permittees to remove rangeland improvements when the improvements are no longer helping to achieve land management plan or allotment goals and objectives, or if the improvements fail to meet the criteria under this section.

(g) *Water rights for the purpose of livestock grazing on National Forest System lands.*

(1) Any right asserted by the United States in accordance with State law to use water on National Forest System land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the laws of the State where such land is located, as authorized by applicable Federal waivers of sovereign immunity. Any stock water right shall be acquired, perfected, maintained, and administered in the name of the United States, including joint ownership between the United States and permittee where required by State law, expressed or implied principal-agent relationships, or any other legal arrangements recognized under State law and in coordination, consultation, and cooperation with the holder or holders of a valid grazing permit on the allotment.

(2) The Forest Service will not change the purpose of use, place of use, or place of diversion of a water right acquired, perfected, maintained, or administered under paragraph (1) of this section except in accordance with State law. The Forest Service must give a minimum of 30 days' notice and the opportunity to object to any grazing permittees who utilize the subject water for their livestock before making any such application for a change with the State.

(3) The United States shall not condition the authorization of a cooperative range improvement project on the permittee placing the name of the United States on a permittee's water right authorized under State law.

(h) *Compensation for permittees' interest in authorized permanent rangeland improvements.*

(1) A current permittee may be entitled to reasonable compensation for the adjusted value of the permittee's investment in authorized permanent rangeland improvements, as listed in the term grazing permit, in situations where the permit has been cancelled, in whole or in part, to devote the permitted grazing land to another public purpose that precludes livestock grazing. Such compensation shall not exceed the fair market value of the terminated portion of the permittee's interest in such improvements.

(i) This compensation for permittees' interest in authorized permanent rangeland improvements only applies when the current permittee made a quantifiable and verifiable investment of money, labor, or materials to construct one or more permanent improvements on the subject land. Former permittees who contributed to an improvement but lost or waived their term grazing permit prior to the subject lands being devoted to another public purpose are not eligible for compensation, nor are permittees who are grazing their

livestock on the National Forest System lands but did not contribute to the improvement. Investments towards the maintenance of improvements are not eligible for compensation.

(ii) Compensation may be authorized when:

(A) A term permit for grazing on all National Forest System lands in the 16 contiguous Western States is cancelled, in whole or in part, to devote the land to another public purpose that precludes livestock grazing; or

(B) A term permit for grazing on National Forest System lands in the Eastern States is cancelled, in whole or in part, to devote the land to another public purpose that precludes livestock grazing; or

(C) A grazing agreement on National Grasslands is cancelled, in whole or in part, to devote the land to another public purpose that precludes livestock grazing, and the improvements have been constructed by a grazing association or grazing district on a national grassland, entitling the association or district to compensation; provided that the portion of the improvement funded through fee reductions for conservation practices shall not be eligible for compensation. The grazing association has responsibility to distribute any compensation paid by the Forest Service back to the member who contributed funds to the improvement.

(2) Compensation to permittees for their contributions in authorized permanent rangeland improvements does not apply to administrative decisions that temporarily reduce livestock numbers or seasons of use due to resource conditions, or that require a change in the timing of use for compatibility with other resource needs. It also does not apply to permit cancellations due to noncompliance by the permittee.

(3) Pursuant to 43 U.S.C. 1752(g), except in cases of emergency, no term grazing permit shall be cancelled to devote the lands covered by the permit to another public purpose without two years' prior notification. It is the responsibility of the Forest Service to notify the permittee that the permittee is eligible for compensation and to identify the amount of compensation.

(4) Reasonable compensation for the adjusted value of the permittee's investment may not exceed the fair market value of the permittee's investment at the time of permit cancellation.

(5) Any portion of improvement funding contributed by the Forest Service from appropriated funds, including range betterment funds, is not eligible for compensation.

(6) Cooperative construction funds provided by State or other Federal agencies (such as Environmental Quality Incentives Program funds through the Natural Resources Conservation Service) shall not be considered part of the permittee's investment.

(7) A Forest Service appraiser, or the services of a qualified third-party appraiser managed by a qualified Forest Service employee, shall use Forest Service-accepted appraisal methods to determine the adjusted value based on the national and local conditions that influence costs where the improvements are located. Generally, amortization schedules are not to be used to determine adjusted value; the appraisal states the present value, which includes an assessment of the condition of the improvement due to regular maintenance or lack thereof. Only the value of the improvement will be considered for compensation, not how much the improvement may have increased the value of the land for grazing.

(8) Compensation may not exceed the amount of the original investment by the permittee in the construction or reconstruction of the improvement.

(9) Completed permit modifications for rangeland improvement work, electronic improvement records, and other documentation and records from the agency and permittee shall be used to verify the costs incurred by both parties to construct the improvements.

(10) Payments for compensation for the adjusted value of the permittee's investment in authorized permanent rangeland improvements shall be handled as obligations of the United States in conformance with current agency policy.

(11) Compensation cannot be made to persons who are no longer permittees, nor to permittees presently using the allotment and associated permanent rangeland improvements that were placed or constructed by former permittees. When a term grazing permit holder executes a permit waiver, and the waiver is accepted by the authorized officer, all interest in the rangeland structural improvements to which the permittee has contributed, and any potential right to compensation upon permit cancellation, cease to exist.

(i) *Range betterment fund.*

In addition to rangeland development accomplished through funds from the rangeland management budget line item, the Granger-Thye Act, and deposited and non-deposited cooperative funds, rangeland development may also be accomplished through use of the range betterment fund as follows:

(1) On national forests within the 16 contiguous Western States, the authorized officer shall implement rangeland improvement programs where necessary to arrest rangeland deterioration and improve forage conditions, with resulting benefits to wildlife, watershed protection, and livestock production. One-half of the available funds shall be expended on the national forest where derived. The remaining one-half of the fund shall be allocated for rangeland rehabilitation, protection, and improvements on National Forest System lands as the Chief, Forest Service, directs. During the planning process, consultation shall be held with grazing permittees affected by the rangeland rehabilitation, protection, and improvements.

(2) The funds may be used for activities associated with on-the-ground improvements, including the planning, design, layout, contracting, modification, maintenance for which the Forest Service is responsible, and monitoring and evaluating the effectiveness of specific rangeland improvement projects.

(3) During the assessment needs for the rangeland development or rangeland improvement programs, the authorized officer shall consult, cooperate, and coordinate with the affected permittees.

■ 14. Revise the newly redesignated § 222.9 to read as follows:

§ 222.9 Cooperation.

(a) *Cooperation with grazing associations.*

(1) *Authority.* The authorized officer is authorized to recognize, cooperate with, and assist grazing associations in the management of the livestock and rangeland resources on a single grazing allotment, associated groups of allotments, or other association-controlled lands on which the members' livestock are permitted to graze.

(2) *Requirements for recognition.* The requirements for receiving recognition are:

(i) A grazing association must be established as a co-operative pursuant to State or Tribal law as a precursor to being recognized by the Forest Service and considered for the issuance of a grazing agreement. An established grazing association may contact the authorized officer in writing, requesting that the grazing association be formally recognized and issued a grazing agreement;

(ii) The members of the association constitute a majority of the grazing

permittees on the grazing allotment or allotments involved;

(iii) The officers of the association are elected by a majority of the association members or of a quorum as specified by the association's constitution and bylaws;

(iv) The officers other than the Secretary (primary officer) and Treasurer must be grazing permittees on the grazing allotment or allotments involved;

(v) The association's activities must be governed by a constitution and bylaws acceptable to and approved by the authorized Forest Service officer; and

(vi) Rules of management are needed to ensure proper resource management.

(3) *Withdrawing recognition.* The authorized officer may withdraw recognition of the association whenever it is dissolved in accordance with the State or Tribal law where it was established.

(4) *Rules of management.*

(i) Rules of management are developed by the board of directors of a grazing association and used in administering the grazing program for its members on all association-administered lands.

(ii) Grazing associations are responsible for developing their initial rules of management, which are then provided to the Forest Service authorized officer for review and concurrence.

(iii) An association's rules of management may be more restrictive than applicable Federal law, regulation, or Forest Service policy, but they cannot be less restrictive. The authorized officer will not concur with any rules that are less restrictive or are otherwise in conflict with applicable Federal law, regulation, and Forest Service policy.

(iv) The rules of management describe how an association will administer the grazing program for its members on the lands covered by their respective grazing agreements. The purpose of the rules of management is to provide clear and consistent rules that will be applied to each member and to distribute livestock grazing privileges in a fair manner to all qualified members.

(b) *Cooperation with national, State, Tribal and county livestock organizations.* The appropriate authorized officer shall endeavor to establish and maintain close working relationships with national livestock organizations that have an interest in the administration of National Forest System lands and shall work cooperatively with State and county livestock organizations having similar interests. The policies and programs of national, State, Tribal and county livestock organizations give direction to, and reflect in, the practices of their members. Good working relationships with these groups are conducive to the betterment of rangeland management on both public and private lands.

(c) *Interagency cooperation.* The appropriate authorized officer shall cooperate with other Federal agencies that have a jurisdictional interest during development of allotment management plans, and management plans, or site-specific plans on National Forest System lands, as well as coordinate with State and local governments pursuant to 16 U.S.C. 1604(a) as appropriate.

■ 15. Revise the newly redesignated § 222.10 to read as follows:

§ 222.10 Cooperation in control of estray or unbranded livestock, animal diseases, noxious weeds, and use of pesticides.

(a) Insofar as it involves National Forest System lands and other lands under Forest Service control, or the livestock that graze thereon, the authorized officer shall cooperate with:

(1) State, county, and Federal agencies in the application and enforcement of all laws and regulations relating to livestock diseases, sanitation, and noxious weeds;

(2) The Animal and Plant Health Inspection Service and other Federal or State agencies and institutions in surveillance of pesticide spray programs; and

(3) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock to the extent it does not conflict with the Wild Free-Roaming Horses and Burros Act of 1971.

(b) The authorized officer shall cooperate with county or other local weed control districts in analyzing noxious weed problems and developing control programs in areas of which the national forests and national grasslands are a part.

Subpart B—Mediation of Term Grazing Permit Disputes

■ 16. Revise Subpart B table of contents to read as follows:

Section
222.20 State mediation program.
222.21 Parties and participation.
222.22 Stay of appeal.
222.23 Confidentiality.
222.24 Records.
222.25 Costs.
222.26 Ex parte communications.

■ 17. The authority citation for Subpart B is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 5101–5106; 16 U.S.C. 481, 551; 16 U.S.C. 472.

■ 18. Revise § 222.20 to read as follows:

§ 222.20 State mediation program.

The holder of a term grazing permit issued in a State with a mediation program certified by the U.S. Department of Agriculture may request mediation of a dispute relating to a decision to suspend or cancel the permit as authorized by § 222.4(a)(2)(i), (ii), (iv), and (v) and (a)(3) through (6). Any request for mediation must be included in an appeal filed in accordance with 36 CFR part 214. A holder of a term grazing permit, issued in a State with a certified mediation program, may request in writing, mediation of a dispute relating to a decision denying the development of a stockwater improvement.

■ 19. Amend § 222.21 by revising the section heading, the introductory text, and paragraph (b) to read as follows:

§ 222.21 Parties and participation.

Only the following parties and participants may attend mediation of a term grazing permit dispute:

* * * * *

(b) The authorized officer who made the decision being mediated or his or her designee;

* * * * *

■ 20. Revise § 222.26 to read as follows:

§ 222.26 Ex parte communications.

The authorized officer or the authorized officer's designee shall not discuss mediation with the Appeal Deciding Officer, except to request an extension of time or to communicate the results of mediation.

Subpart C—Grazing Fees

■ 21. Revise Subpart C table of contents to read as follows

Section
222.50 Grazing fees.
222.51 National Forests in 16 Western States and National Grasslands.
222.52 Grazing fees in the Eastern States—noncompetitive procedures.
222.53 Grazing fees in the Eastern States—competitive bidding.

■ 22. The authority citation for Subpart C is revised to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 551; 16 U.S.C. 572, 580d; 31 U.S.C. 9701; 43 U.S.C. 1740, 1751–1752; 43 U.S.C. 1901; E.O. 12548 (51 FR 5985).

■ 23. Revise § 222.50 to read as follows:

§ 222.50 Grazing fees.

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest System lands, or other lands under Forest Service control. An exception applies to livestock use authorized free of charge under § 222.3 (j)(2)(ii)–(viii).

(b) Except as provided in § 222.3 (j)(2)(ii)–(viii) and § 222.50(k), the full

fee shall be charged for each animal unit month of grazing use. For the purposes of calculating the fee, an animal unit month is defined as one month's use of forage and occupancy of range by one (1) cow, bull, steer, heifer, bison, horse (ancillary to livestock production), burro, or mule, or five (5) sheep or goats.

(1) Over the age of 6 months at the time of entering the public lands or other lands administered by the Forest Service;

(2) Weaned regardless of age; or

(3) Becoming 12 months of age during the authorized period of use.

(c) The Forest Service shall not charge grazing fees for animals that are less than 6 months of age at the time of entering National Forest System lands, provided that they are the progeny of animals upon which fees are paid, and provided that they will not become 12 months of age during the authorized period of use.

(d) A surcharge shall be added to the grazing bill for authorized leasing of livestock. The surcharge shall be over and above any other fees that may be charged for livestock grazing on National Forest System lands. Surcharges shall be paid prior to grazing use. The surcharge for authorized leasing of livestock owned by persons other than the permittee shall be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per animal unit month for the appropriate State as determined by the National Agricultural Statistics Service. This surcharge shall be charged per animal unit month.

(e) No additional charge will be made for the privilege of lambing upon National Forest System lands, or other lands under Forest Service control.

(f) In calculating the bill for collection, the authorized officer will round charges to reflect the nearest whole number of animal unit months.

(g) Transportation livestock may be charged at a special rate, and at a minimum established for such use. Fees for horses, mules, or burros associated with management of permitted livestock on an allotment, or for research purposes and administrative studies, and authorized on a charge basis, are determined under provisions of paragraph (b) of this section.

(h) The fees for trailing livestock across National Forest System lands will conform with the rates established for other livestock. Where practicable, fees for trailing permitted livestock will be covered in the regular grazing fee, and the crossing period will be covered in the regular grazing period.

(i) Fees are due on the due date specified on the bill for collection. Payment shall be made prior to grazing use, unless otherwise approved by the authorized officer, as in cases of split billing and actual use billing. Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan or functional equivalent, is unauthorized use and may be dealt with under § 222.50(k) of this part. If allotment management plans, or the functional equivalent, provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance. Repeated delays in payment of actual use billings, or noncompliance with the terms and conditions of the grazing permit and allotment management plan, or the functional equivalent, shall be dealt with through non-compliance procedures and be cause to revoke provisions for actual use billing.

(j) The unauthorized grazing use rate shall be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under the terms of the grazing permit. This rate is charged for unauthorized forage or forage in excess of authorized use and is separate from any penalties that may be assessed for a violation of a prohibition issued under 36 CFR part 261.7 or from an administrative permit action. This rate shall apply to, but not be limited to, the following circumstances: excess number of livestock grazed; livestock grazed outside the permitted grazing season; livestock grazed in areas not authorized under a grazing permit and a bill for collection; or livestock grazed without a permit. Pursuant to paragraph (a) and (c) of this section, a grazing fee shall be charged for each animal unit month of livestock grazing or use, unless the use is calculated at less than one animal unit month, in which case a minimum of one animal unit month shall be charged. This includes any unauthorized grazing use. The authorized officer may waive monetary fees for unauthorized grazing use only when all three of the following conditions are met:

(1) The unauthorized use was a result of unforeseen or uncontrollable circumstances on behalf of the permittee or non-permittee, and the livestock associated with such use were removed by the permittee or non-permittee within the timeframe required by the authorized officer;

(2) The forage consumed by the unauthorized use is not significant; and

(3) National Forest System lands have not been damaged significantly by the unauthorized use.

(k) Credits on a bill for collection may be allowed under justifiable conditions and circumstances as the authorized officer may specify.

(l) Refunds may be approved at the discretion of the authorized officer unless the request for refund is necessary due to a duplicate or overpayment.

(m) The fee year for the purpose of charging grazing fees will be March 1 through the following February.

(n) The data year for the purpose of collecting beef cattle price data for computing indexes will be November 1 through the following October and apply to the following fee year.

(o) For annual billing prior to the turn-on date and the first bill for collection in a split-billing schedule, bills for collection should be sent to the permittee at least 40 days, but not more than 60 days, before the authorized on-date.

(p) Failure to pay the bill for collection within 15 days of the due date specified in the bill shall result in a late fee assessment of $25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed $250.00. Payment made later than 15 days after the due date shall include the appropriate interest, administrative fee, and penalty. Failure to make payment within 30 days after the due date is a violation of the term grazing permit and shall result in permit action in accordance with § 222.4(a)(3).

■ 24. Revise § 222.51 to read as follows:

§ 222.51 National Forests in 16 Western States and National Grasslands.

(a) Grazing fees are established on lands designated as national forests and land utilization projects in the 16 contiguous Western States: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wyoming, and on all national grasslands.

(b) Notwithstanding the provisions of § 222.50(b) of this part, the calculated grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100, as follows:

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

Where:

GF = *Grazing Fee,* the estimated economic value of livestock grazing, defined by Congress as the fair market value of the forage.

BV = *Base Value* of $1.23, the base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey.

FVI = *Forage Value Index,* the weighted average estimate of the annual rental charge per animal unit month for pasturing cattle on private rangelands in the eleven Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California), computed by the National Agricultural Statistics Service from the June Enumerative Survey, divided by $3.65 and multiplied by 100.

BCPI = *Beef Cattle Price Index,* the weighted average annual selling price for beef cattle (excluding calves) in the eleven Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October, computed by the National Agricultural Statistics Service, divided by $22.04 per hundredweight and multiplied by 100.

PPI = *Prices Paid Index,* the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services, adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: Fuels and Energy (14.5); Farm and Motor Supplies (12.0); Autos and Trucks (4.5); Tractors and Self-Propelled Machinery (4.5); Other Machinery (12.0); Building and Fencing Materials (14.5); Interest (6.0); Farm Wage Rates (14.0); and Farm Services (18.0).

(c) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(d) The grazing fee for any year shall not be less than $1.35 per animal unit month.

(e) *Fee reductions for authorized land use practice expenditures.*

(1) The authorized officer may authorize fee reductions on national grasslands and land utilization projects when the permittee incurs approved expenditures for authorized land use practices, including conservation practices and, when applicable, administrative costs. To qualify for a fee reduction, expenditures for approved land use practices must be documented in writing and verified by the authorized officer. Fee reductions apply only to national grasslands and land utilization projects and are not available on national forests.

(2) Fee reductions for administrative activities are only available to grazing associations and grazing districts (''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. 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.

(i) 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. These costs must be approved in advance by the authorized officer and may include routine administrative and clerical expenses related to issuing association-issued permits, collecting grazing fees, monitoring livestock use, enforcing permit terms and conditions, recordkeeping, and other expenses such as salaries and benefits, payroll taxes, postage, copying, depreciation, office space, utilities, legal and accounting fees, and directors' expenses necessary to administer the agreement.

(ii) Administrative costs shall not include any expenses related to legal challenges or fees of any kind. Association costs for memberships in, dues for, or contributions to advocacy groups are not allowable administrative expenses.

(f) *Fee credits.* A permittee can fund an approved rangeland improvement up-front, then receive fee credits in future years as compensation for the government's cost-share portion of the project. Fee credits may be used on national grasslands where a direct permittee is involved and, in some situations, when a grazing association is involved.

(1) Credit shall not be allowed, and work plans shall not be approved, for more than the number of years remaining of the permittee's 10-year grazing permit. However, 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.

(2) When grazing associations are involved and they are working in conjunction with all of their benefitting members, associations may secure and obligate larger amounts of money to complete large or expensive conservation practice rangeland improvements (such as drilling a one-time water well or installing a water pipeline system).

(3) When total project costs exceed conservation practice funds available in that one year, fee credits may be allowed in future years under approved work plans to credit the association for its initial advance funding provided to complete the project. Credit shall not be allowed, and work plans shall not be approved, for more than the number of years remaining of the 10-year grazing agreement.

■ 25. Remove § 222.52 (National Grasslands).

■ 26. Redesignate § 222.53 as § 222.52, and amend the newly redesignated § 222.52 by revising paragraphs (a), (b), and (c) introductory text, (c)(1) introductory text, (c)(1)(i) through (iii), and adding paragraph (d), to read as follows:

§ 222.52 Grazing fees in the Eastern States—noncompetitive procedures.

(a) *Scope.* Except as provided in § 222.53 of this subpart, the fee charged for commercial livestock grazing use and occupancy on National Forest System lands in the States of New York, Missouri, Vermont, West Virginia, Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Texas, and Virginia shall be determined through noncompetitive, fair market value procedures. These rules do not apply to grazing fees on National Forest System lands in Oklahoma or national grasslands in Texas. Grazing permits under the noncompetitive fee method in the Eastern States are subject to the rules governing grazing permit administration in subpart A of this part.

(b) *Applicability.* The rules of this section apply to the establishment of grazing fees for existing permittees on the lands identified in paragraph (a) of this section, including grazing associations in New York and Missouri as of March 1, 1990, to any livestock on-and-off permits defined in subpart A of this part, and to any allotments advertised for competitive bidding which were not bid on (§ 222.53(h) of this subpart). Noncompetitive permits vacated or terminated by an existing permittee, and any new allotments created after the effective date of this rule, shall be offered on a competitive bid basis as specified in § 222.53 of this subpart. As provided in subpart A of this part, holders of term permits have first priority for receipt of a new permit.

(c) *Fee system.* The grazing fee charged under this section shall be based on fair market value, as determined by using comparable private grazing lease rates, adjusted for the difference in the costs of grazing comparable private leased lands and National Forest System lands, or by reference to prevailing prices in

competitive markets for other Federal or State leased or permitted grazing lands that are the same as, or substantially similar to, grazing lands offered or administered by the Forest Service in the Eastern States, with comparability adjustments as appropriate. Rates for grazing on comparable private lands shall be adjusted for the difference between the total costs of operating on private grazing lands and the total costs (other than grazing fee costs) of operating on National Forest System lands.

(1) *Establishing base grazing value.*

(i) The authorized officer shall determine an estimated base market value of grazing use and occupancy on National Forest System lands in the Eastern States for the following designated subregions:

(A) Corn Belt (Illinois, Indiana, Missouri, and Ohio);

(B) Lake States (Michigan, Minnesota, and Wisconsin);

(C) Northeast (Maine, New Hampshire, New York, Pennsylvania, and Vermont);

(D) Appalachia (Kentucky, North Carolina, Tennessee, Virginia, and West Virginia);

(E) Southeast/Delta (Alabama, Arkansas, Georgia, Louisiana, Mississippi, South Carolina, and Texas); and

(F) Florida.

(ii) The authorized officer shall revise or update estimated market values of grazing use and occupancy as necessary to respond to significant changes in the agricultural economy in the Eastern States, and to ensure that fees represent fair market value.

(iii) The authorized officer, where sufficient market data exist, may establish the base grazing value for grazing allotments using comparable, local rates for leasing private grazing lands.

(d) *Surcharge for leased livestock.* A surcharge for authorized leasing of livestock owned by persons other than the permittee, equal to 35 percent of the non-competitive grazing fee for the Eastern States per animal unit month for the appropriate Subregion, as determined by the National Agricultural Statistics Service. Targeted exemptions would be available for livestock owned by properly documented mentees, beginning ranchers, permittee successors, immediate or extended family members, and operators receiving relief from drought, fire, or other natural causes.

* * * * *

■ 27. Redesignate § 222.54 as § 222.53, and amend the newly redesignated § 222.53 by revising paragraphs (a)(1), (a)(2), (b), (d), (e), and (h), and adding paragraph (i), to read as follows:

§ 222.53 Grazing fees in the Eastern States—competitive bidding.

(a) *General procedures.*

(1) *Applicability.* The rules of this section apply to grazing fees for any allotment established or vacated on National Forest System lands in Illinois, Indiana, Ohio, Michigan, Minnesota, Missouri, New Hampshire, Maine, Pennsylvania, Vermont, West Virginia, Wisconsin, Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Texas, and Virginia, after February 26, 1990, as well as to grazing fees for existing allotments for such lands that have already been established under competitive procedures as of the date of this rule. Permits offered for competitive bidding in the Eastern States are subject to the rules governing grazing permit administration in subpart A of this part. The rules of this section do not apply to negotiated livestock use permits or to permits with on-and-off grazing provisions as authorized in subpart A of this part. Holders of term permits have first priority for receipt of a new term grazing permit in accordance with subpart A of this part. These rules also do not apply to grazing fees on National Forest System lands in Oklahoma or national grasslands in Texas.

(2) *Allowable bidders.* Bids for grazing permits shall be accepted from individuals, partnerships, grazing associations (formed after February 26, 1990), joint ventures, corporations, limited liability companies, and other organizations.

(b) *Establishment of minimum bid price.* Authorized officers shall establish a minimum bid price for each available allotment as described in § 222.52 of this subpart.

* * * * *

(d) *Submission of bid.* Each applicant shall submit an application for the grazing permit and a sealed bid for the grazing fee.

(e) *Qualifications.* Upon opening applicants' bids, the authorized officer shall determine whether each bidder meets the qualifications to hold a permit as set forth in subpart A of this part.

* * * * *

(h) *No bids received.* If qualified sealed bids are not received, the authorized officer reserves the right to conduct an oral auction using the minimum bid price established under paragraph (b) of this section, or to establish grazing fees through noncompetitive grazing fee procedures specified in § 222.52 of this subpart.

(i) *Surcharge for leased livestock.* A surcharge for authorized leasing of livestock owned by persons other than the permittee, equal to 35 percent of the non-competitive grazing fee for the Eastern States per animal unit month for the appropriate Subregion, as determined by the National Agricultural Statistics Service. Targeted exemptions would be available for livestock owned by properly documented mentees, beginning ranchers, permittee successors, immediate or extended family members, and operators receiving relief from drought, fire, or other natural causes.

Michael K. Boren,

Under Secretary, Natural Resources and Environment.

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