

Proposed Rule Impacting U.S. Forest Service Directives and Guidance

Natural Resource Users Law and Policy Center

On July 1st, the Forest Service issued a proposed rule that seeks to revise and clarify the relationship between internal guidance documents and change how they share required public notices associated with the formulation of standards, guidelines, and or criteria.¹ According to the Administrative Procedures Act (APA), internal guidance generally contains two categories of documents: interpretive rules for employees and general statements of policy. Amongst federal agency personnel and outside stakeholders, there is some confusion about which documents or guidance are considered binding. The courts are in widespread agreement that general policy statements contained in guidance are nonbinding on Agency employees, but there is less uniformity as to whether interpretive rules are binding or preserve an agency's discretion.² The proposed rule seeks to clarify the Agency's interpretation of the role of the Forest Service Manuals and Handbook and align the Directive System with that interpretation.

The Forest Service issues its guidance through the Forest Service Directive System, which contains both Manuals and Handbooks. Under the proposed rule, the Agency would redefine Manuals to be the “sole source of continuing, mandatory direction”, only a select few Agency personnel may deviate from with valid documentation and justification.³ The Handbooks would be redefined as “advisory and informational guidance” that any “agency employees may deviate from without documenting or justifying”, allowing them to exercise their discretion on a case-by-case basis.⁴ The rule also initiates a review process of all Forest Service handbooks to ensure consistency with the new directive structure.

Finally, the rule states that statutorily required public notices can be made via any broadly accessible public forum, including on Agency websites. The Forest and Rangeland Resources Renewable Planning Act of 1974 requires that the agency provides federal, state, and local government, as well as the public “adequate notice and an opportunity to comment” on the formulation of standards, criteria, and guidance applicable to Forest Service programs. The agency currently satisfies that requirement by posting public notices in the Federal Register. Under the new rule, the agency will be able to satisfy this requirement by posting public notices on their website.

¹ U.S. Department of Agriculture, Forest Service, *Organization, Functions, and Procedures; Public Notice and Comment for Standards, Criteria, and Guidance Applicable to Forest Service Programs*. 91, no. 125 (July 1, 2025) <https://www.federalregister.gov/documents/2026/07/01/2026-13281/organization-functions-and-procedures-public-notice-and-comment-for-standards-criteria-and-guidance>

² Congress.GOV Legal Sidebar. *Agency Use of Guidance Documents* <https://www.congress.gov/crs-product/LSB10591>

³ Forest Service, *Organization, Functions, and Procedures*, 39,948.

⁴ Forest Service, *Organization, Functions, and Procedures*, 39,948.

Along with the proposed change, the Agency has requested public comments identifying Forest Service Handbook provisions that may warrant codification in the Code of Federal Regulations. This is a valuable opportunity for input from natural resource stakeholders who engage with the Forest Service to provide input on how the agency executes its day-to-day operations and management of programs including grazing permit administration, timber management, and mineral leasing. This white paper explains the significance of the proposed rule and identifies example provisions contained within the Grazing Permit Administration handbook that may warrant codification.

Why does this rule matter?

Guidance documents, such as the Forest Service Manual and Handbooks, help employees of the federal agencies understand how to carry out the day-to-day responsibilities of their job, according to statutory obligations and the general posture of the current administration. Although guidance issued in the Forest Service Manuals and Handbooks do not themselves carry the force of law, they often shape how permits are administered, environmental analyses are conducted, grazing fees are assessed, and agreements are implemented. Changes to these documents can therefore influence the consistency and predictability of Agency decision-making even when the underlying statutes and regulations remain unchanged.

With the proposed change, Forest Service employees are being told that the Forest Service Manual should be considered mandatory guidance, while providing the authority to deviate the provisions in the Handbook at their individual discretion. Allowing Agency personnel greater discretion may allow Forest Service personnel to adapt program administration to local conditions and emerging issues without waiting for formal revisions to Handbooks. Yet, as many grazing permittees, forest contractors, and others have historically relied on Handbook provisions to understand how the Forest Service administers its programs, the shift from mandatory to advisory guidance may create uncertainty regarding which procedures employees are expected to follow consistently across administrative units.

The provision announcing a review and revision process of each Forest Service Handbook is significant. The new rule affords the Forest Service broad latitude to revise, remove, or relocate guidance, after which a public comment period will be held for each handbook to discuss the initial proposed revisions. Thousands of pages of operational guidance from Forest Service Handbooks could be revised, removed, or relocated into regulation, affecting the day-to-day administration of Forest Service programs. Following the initial Handbook revisions, future revisions generally would no longer be subject to public notice and comment. The new proposed rule effectively rescinds a final rule established in May 2018 that required

public notice and comment of Forest Service guidance, regardless of whether it is published in the Forest Service Manual or Handbook.⁵

In a broader context, the proposed rule is coming as the agency also reorganizes its organizational structure to a state-based leadership model. Many of the existing directives contained in the Forest Service Handbooks provide guidance for employees based on a regional model of leadership. Under the new structure, these directives may be outdated and no longer relevant for Forest Service employees. The proposed rule and revision process provides an opportunity to remove any specific regional mandates.

However, as the Forest Service undergoes simultaneous processes to revise both its structure and its guidance, confusion may increase amongst employees and stakeholders about how to engage the Forest Service in day-to-day interactions, especially as responsibilities shift and guidance is rescinded. During implementation, employees may be operating under newly revised organizational structures while simultaneously adapting to revised Directives. Stakeholders may therefore encounter differences in how individual Forest Service offices interpret or apply Handbook guidance during the transition period and beyond. The NRULPC recommends that natural resource users maintain clear lines of communication and a strong relationship with the U.S. Forest Service agents they currently engage on a regular basis. Under the proposed rule, the local agents will be granted more flexibility and discretion in making decisions that impact outcomes and processes that directly impact natural resource users.

Assessing the rule's impact on your operations

Given that the Forest Service maintains more than 900 Directive chapters with thousands of pages containing dense technical guidance, natural resource stakeholders should prioritize reviewing the Handbooks most relevant to their operations. The Handbook Chapter titled “National Forest Resource Management” is important as it contains directives impacting rangeland management, environmental management, timber management, and minerals and geology, among others.

To assist grazing permittees in interpreting the new rule, Appendix A is a table identifying a non-comprehensive list of key provisions in the Grazing Permit Administration Handbook. The NRULPC has not reviewed handbooks for other key Forest Service programs. Natural resource stakeholders are encouraged to conduct their own review of Forest Service directives to understand how their operation might be impacted or contact NRULPC staff with specific questions using the information below.

⁵ U.S. Department of Agriculture, Forest Service, *Forest Service Directives*, *Federal Register* 83, no. 62 (March 30, 2018): 13,646–13,649, <https://www.federalregister.gov/documents/2018/03/30/2018-06130/forest-service-directives>

Next Steps for Stakeholders

Consider whether you want to make public comment before July 31st. If you are engaged in mining, forestry, or grazing sectors you may be impacted by changes to how the agency carries out its day-to-day operations. The Forest Service is requesting comments that identify provisions that may warrant codification in the Code of Federal Regulations and is specifically interested in provisions “essential to promote safety, ensure compliance with law, or prevent waste or misuse of public funds”.⁶ Public comments should state who you are, why the proposed rule is relevant to you, and provide concrete suggestions and changes to the proposed regulation. For example, you may wish to provide a comment stating recommending that a certain provision should be codified in the Code of Federal Regulations.

Identify handbook provisions affecting your engagement with the Forest Service and monitor future revisions. The agency has announced at least one additional comment period following the initial set of revisions to each Forest Service Handbook. Natural resource stakeholders can prepare for the next round of public comments by conducting their own analysis of handbook provisions that affect their operations and identify provisions that may warrant revision or codification. When revised Handbooks are published, stakeholders should evaluate the proposed change and consider submitting comments.

Contact the NRULPC with questions. The proposed rule raises complex questions about how the Forest Service will administer its programs and revise its internal guidance. NRULPC staff are available to help stakeholder interpret the proposed rule, identify Handbook provisions relevant to their operations, and better understand opportunities for public engagement throughout the rulemaking process.

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⁵ Forest Service, *Organization, Functions, and Procedures*, 39,948.

Appendix A

Important Guidance within the U.S. Forest Service's Grazing Permit Administration Handbook

Handbook Provision	Subject	Why it matters
2209.13-12.23	Term Grazing Permits	Defines the circumstances for new and beginning agriculturalists to become permittee holders through the phased acquisition of base property and livestock.
2209.13-12.12	Term Grazing Permits	Establishes that government agencies, life estates and DBA organizations are not eligible not be permittee holders
2209.13-12.2	Term Grazing Permits: Qualification Requirements	Defines qualification requirements for an entity to be eligible to hold a term grazing permit, including base property requirements, livestock ownership requirements,
2209.13-11.12	Term Grazing Permits with On-and-Off Provisions	Allows ranchers to operate their private land and FS land as a cohesive unit, and provides guidance for how a term grazing permit with on-and-off provisions should be issued and managed.
2209.13-15.21	Permit Renewal	Affects permittee rights and administrative consistency
2209.13-15.32	Term Grazing Permits – Variable Numbers, Seasons, and Areas to be Grazed	Allows for flexibility in management plan as land conditions vary year to year.
2209.13-16.2	Changes to Term Grazing Permits	Allows to increase or decrease numbers of livestock
2209.13-16.6	Cooperation and Dispute Resolution with Permittees and Other Parties	Fosters discussion with all affected entities.
2209.13-21	Grazing Agreements - Cooperation	Guidance that cites existing statute authorizing the USFS to cooperate with and assist grazing associations.
2209.13-22	Grazing Association Establishment and Recognition	Provides guidance establishing the process and application requirements to formally recognize grazing associations.
2209.13-23	Grazing Agreements	Guidance that establishes that the USFS can form a grazing agreement with grazing associations, and describes the authorities and responsibilities of a grazing association.
2209.13-24	Grazing Agreements: Standard Language	Defines the standard language and provisions of Grazing Agreements with Grazing associations.

<u>2209.13-31</u>	Temporary Grazing and Livestock Use Permits	Defines circumstances when a temporary grazing permit and livestock use permit may be granted. Declares the decision to issue one of these permits is at the discretion of the authorized officer.
<u>2209.13-36.1</u>	Temporary Grazing and Livestock Use Permits	Defines the criteria under which a temporary grazing permit may be issued to traverse National Forest System land to reach other destinations.
<u>2209.13-51.1</u>	Tribal Grazing Rights	States that an authorized Forest Service officer may regulate Tribal reserved grazing rights for the purpose of conservation necessity or the health and safety of the public. States that Tribes can exercise reserved grazing rights on NFS land covered by a treaty and prevents a tribe from permitting non-tribal members to exercise grazing rights.
<u>2209.13-51.11</u>	Tribal Grazing Rights	Allows the Forest Service to issue non-tribal entities a grazing permit in areas covered by a Tribes reserved grazing right if the Tribe is not exercising its reserved rights. Contains suggested guidance to amend these permits with a clause that states the permit may be cancelled if the Tribe chooses to exercise its reserved rights.
<u>2209.13-71.1</u>	Compensation for Permittee Interest in Range Improvements	Defines the conditions in which a grazing permittee is entitled to compensation when the grazing permit has been canceled to devote the land to other public uses.
<u>2209.13-71.2</u>	Compensation for Permittee Interest in Range Improvements	Defines the appraisal methods used to determine the amount of compensation a permittee is entitled to.
<u>2209.13-81.2</u>	Grazing Fees: units of charge	Determines when livestock are considered adult grazing animals and must be charged the grazing fee for occupancy.
<u>2209.13-81.3</u>	Grazing Fees: Bills for Collection	Provides guidance for sending bills for collection and how payment may be collected.
<u>2209.13-81.7</u>	Grazing Fees: Excess Livestock Use	Defines circumstances in which excess livestock use applies, and the actions that may be taken in the case of excess livestock use.

2209.13-81.8	Grazing Fees: Unauthorized Livestock Use	Describes circumstances in which unauthorized livestock use applies, and the actions that may be taken, including billing or impoundment and disposal of unauthorized livestock.
2209.13-81.9	Grazing Fees: Local Agreements	Allows the Forest Service to charge grazing fees on lands outside of its control, through the use of interagency "local agreements" with the BLM and other land management agencies.
2209.13-83.1	Grazing Fee Formula	Defines the formula used to calculate grazing fees in the 16 Western contiguous states. $\text{Grazing Fee} = \text{Base Value } (\$1.23) \times (\text{Forage Value Index} + (\text{Beef Cattle Price Index} - \text{Prices Paid Index})) / 100$
2209.13-83.2	Grazing Fees - Rangeland Improvements under the Range Betterment Fund (RBF)	Defines how the Range Betterment Fund is implemented to finance the construction of rangeland improvements on public lands, including restrictions on how the funds are used.
2209.13-84.22	Conservation Practice Approval Criteria	Defines the criteria in which a grazing permittee may qualify for a reduction in grazing value based on approved land use practices.
2209.13-85.2	Competitive Bid Grazing Fee	Establishes that grazing permits issued after 1990 will be established by a competitive bid. Defines the process for executing a competitive bid and the requirements for application.
2209.13-85.37	Priority for Issuance	Establishes that the current grazing permittee has priority for retaining a permit during a competitive bid process.
2209.13-86	Grazing Without Charge	Defines circumstances when a permittee may not be required to pay a fee under a Temporary Grazing or Livestock Use Permit.
2209.13.90-92	Phases of Rangeland Management Planning	Establishes a two-phase rangeland planning consisting of a plan-to-project analysis to develop and evaluate the proposed action, followed by a site-specific NEPA analysis and project decision, including the use of categorical exclusions where appropriate.
2209.13-91.3	Rangeland Decision Management Decision Making: Actions Taken	Provides nonbinding guidance about the types of actions that can be taken to manage rangeland resources without requiring environmental reviews.

	During Routine Grazing Permit Administration	
2209.13-92.11	Leveraging Landscape Scale Inventory, Monitoring, and Assessments	Provides suggested guidance for agencies to monitor and assess the environment at the landscape scale.
2209.13-92.12g	Elements of the Plan-to-Project Analysis Process. Purpose and Need.	Advises that livestock grazing can be used as a tool to achieve desired resource conditions and/or to utilize forage as identified in the Land Management Plans.
2209.13-92.21	Alternatives	Encourages that a no-grazing alternative is included in Rangeland Management plans, providing a benchmark to contrast management plans.
2209.13 -92.21	Alternatives	States that Forest Service case files for project decisions should contain descriptions of alternative management plans and reasons for elimination.
2209.13-93.2	Annual Operating Instructions or Other Similar Documents	States that Annual Operating Instructions, which specify the annual actions needed to implement the management direction, are documents not required by Forest Service grazing regulations, but are used to foster communication between the grazing permittee and the Forest Service.
2209.13-95	Monitoring	Establishes that required monitoring for rangeland management should be described within the project-level decision, which may be described in further detail through a monitoring plan.
2209.13-95.3	Cooperative Monitoring	Encourages voluntary cooperative monitoring with permittees, states, and third-party partners, while affirming that the Forest Service retains final responsibility for monitoring quality and management decisions.