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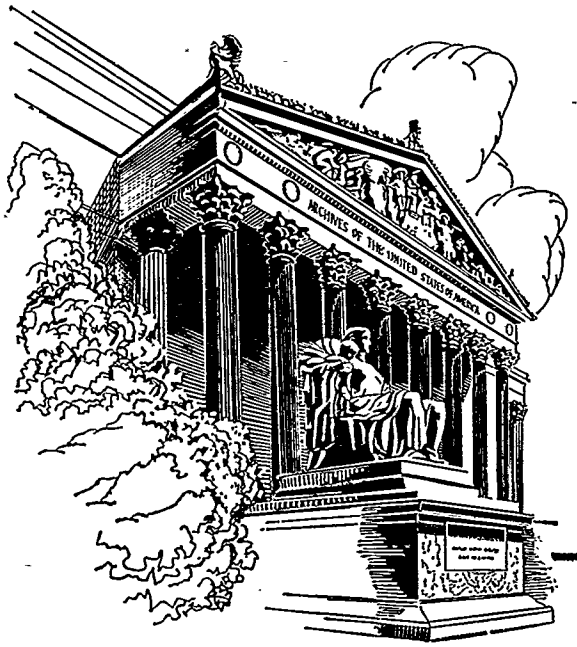

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 151]

GENERAL GRAZING REGULATIONS

Notice of Proposed Rule Making

OCTOBER 10, 1968.

Basis and purpose. This notice is published in the exercise of rule making authority (hereinafter referred to) delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2. Pursuant to the authority vested in the Secretary of the Interior by sections 161, 463, and 465 of the Revised Statutes (5 U.S.C. 301; 25 U.S.C. 2 and 9), and by section 6 of the Act of June 18, 1934 (48 Stat. 986), notice is hereby given that it is proposed to revise Part 151, Subchapter N, Chapter I, Title 25, of the Code of Federal Regulations, as set forth below. The purpose of the revision is to redefine and to clarify the exercise of the Indian's and Secretary's authorities and responsibilities relative to the grazing use of tribally and individually Indian owned rangelands. The objectives are maximum Indian participation in determining the manner of use of Indian grazing resources; achievement of the fullest economic improvement and return attainable; and application of measures necessary to assure full rangeland utilization while affording protection against deterioration and waste of the resource.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed revision and amendments to the Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20242, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Part 151 is revised to read as follows:

PART 151—GENERAL GRAZING REGULATIONS

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§ 151.1 Definitions.

(a) "Secretary" means the Secretary of the Interior.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Area Director" means the Director of any established Area of the Bureau of Indian Affairs.

(d) "Superintendent" means the Superintendent of any Indian Agency of the Bureau of Indian Affairs.

(e) "Individually owned land" means land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

(f) "Tribal land" means land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for Indian Bureau administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476). This term also includes assignments of tribal land. Unless the terms of the assignment provide for the leasing of the land by the holder of the assignment, the tribe must join with the assignee to issue a grazing permit.

(g) "Government land" means land, other than tribal land, acquired or reserved by the United States for Indian Bureau administrative purposes which is not immediately needed for the purposes for which it was acquired or reserved and land transferred to or placed under the jurisdiction of the Bureau of Indian Affairs.

(h) "Range unit" means a tract of range land designated as a management unit for administration of grazing. A range unit may consist of tribal, individually owned or Government land or any combination thereof consolidated for grazing administration.

(i) "Permit" means a revocable privilege granted in writing limited to entering on and utilizing forage by domestic livestock on a specified tract of land.

(j) "Adult tribal member," for the purposes of this part, means a member of an Indian tribe, band, community, pueblo or group, who has attained the age of 21 years.

(k) "Governing body" means the general council or the tribal committee, board, or other body recognized by the Secretary as having the authority to act for the tribe, band, community, pueblo or group of Indians.

(l) "Immediate family" means the spouse, brothers, sisters, lineal ancestors and descendants of an adult tribal member.

(m) "Allocation" means the apportionment of grazing privileges without competitive bidding including the determination of who may graze livestock, the number and kind of livestock, and the place such livestock will be grazed.

(n) "Assignment" means tribal land, the use of which has been transferred by the tribal governing body to a tribal member for his use and benefit, usually for a specified period of time.

§ 151.2 General authority.

It is within the authority of the Secretary to protect individually owned and tribal lands against waste and to prescribe rules and regulations under which these lands may be leased or permitted for grazing. Improper use which threatens destruction of the range and soil resource is properly considered waste. With respect to reservations upon which the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), is applicable, the action of the Secretary must follow the directions in Section 6 of that Act which are: "The Secretary of the Interior is directed to make rules and regulations for the operation and maintenance of Indian forestry units on the principle of sustained-yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes." It is also the Secretary's responsibility to improve the economic well being of the Indian people through proper and efficient resource use.

§ 151.3 Objectives.

It is the purpose of the regulations of this part to:

(a) Preserve, through proper grazing management, the land, water, forest, forage, wildlife, and recreational values on the reservations and improve and build up these resources where they have deteriorated.

(b) Promote use of the range resource by Indians to enable them to earn a living, in whole or in part, through the grazing of their own livestock.

(c) Balance the rights and equities of the individual landowners and tribal programs through the granting of grazing privileges in a manner which will yield a fair return to landowners consistent with sustained yield management.

§ 151.4 Regulations; scope; exceptions.

The grazing regulations of this part apply to individually owned, tribal, and Government lands under the jurisdiction of the Bureau of Indian Affairs, except as superseded by special written instructions from the Commissioner in particular instances, or by provisions of any tribal constitution, bylaws, or charter, heretofore duly ratified or approved, or by any tribal action authorized thereunder. All forms necessary to carry out the purpose of the regulations of this

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part shall be approved by the Commissioner. Grazing lands not in range units established under this part may be leased pursuant to Part 131 of this chapter.

§ 151.5 Establishment of range units.

The conservation, development, and effective utilization of the range resource requires consolidation of small individual and tribal ownerships and the organization of the total range area into management units. The Area Director shall establish range units after consultation with the Indians and consideration of the land status, Indian needs, and land use problems involved, and adjust such units as needed. Any contiguous block of Indian rangeland in excess of 2,560 acres shall be designated as one or more range units. Range units smaller than 2,560 acres may be established at the discretion of the Area Director.

§ 151.6 Grazing capacity.

The Area Director shall prescribe the maximum number of livestock which may be grazed on each range unit and the season, or seasons, of use to achieve the objectives cited in § 151.3. Grazing capacity will include big game requirements. Stocking rates shall be reviewed on a continuing basis and adjusted as conditions warrant.

§ 151.7 Grazing on range units authorized by permit.

All grazing use of range units shall be authorized by a grazing permit except Indians' use of their own land pursuant to § 151.8. The Superintendent shall issue all permits on range units composed of individually owned lands or composed of intermixed tribal and individually owned lands. Permits on range units composed entirely of tribal land may be issued by the governing body, subject to approval by the Superintendent, or by the Superintendent pursuant to § 151.9(b).

§ 151.8 Grazing exempt from permit.

Adult tribal members may, without approval of the Superintendent, graze livestock on their own individually owned grazing land or other grazing land for which they are responsible on behalf of those non compos mentis, on behalf of their minor children and on behalf of minor children or others to whom they stand in loco parentis when such children do not have a legal representative. The term "graze livestock" means the grazing of livestock which are either owned by those persons defined above, or if not owned, are under their direct management and supervision. Grazing of livestock under any other arrangement requires approval of the Superintendent.

§ 151.9 Authority of the Superintendent to include land in grazing permits.

(a) The Superintendent may include individually owned land in grazing permits on behalf of: (1) Persons who are non compos mentis; (2) Undetermined heirs or devisees of a deceased Indian owner; (3) Adults whose whereabouts are unknown; (4) Heirs or devisees, none of whom are using the land and who have not been able to agree upon the permitting of their land during a 3-month period, and after notice from the Superintendent given by posting a general notice in all Post Offices on the reservation and with the tribal governing body; (5) Those Indian owners defined in § 151.8 who give the Superintendent written authority to grant grazing privileges; and (6) The guardian, conservator, or other fiduciary, appointed by a State court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who is non compos mentis or otherwise under legal disability, who gives the Superintendent written authority to grant privileges.

(b) The Superintendent may include tribal land in grazing permits on behalf of governing bodies who give written authority. When timely action is not taken by the governing body to give the Superintendent written authority, or to issue permits pursuant to § 151.10, the Superintendent may proceed to issue permits on tribal land subject to veto of the governing body. The Superintendent shall notify the governing body in writing of the action he proposes to take and allow a 60-day period during which the tribal veto may be exercised. If the tribal veto is exercised and the Area Director determines that resource waste or unreasonable economic loss will result to the tribe or its members, he may present the question to the tribal membership in a referendum vote.

(c) The Superintendent may include Government land in grazing permits provided such land is not already under revocable permit to the tribe, in which case, paragraph (b) of this section applies.

§ 151.10 Allocation of grazing privileges.

The Superintendent may authorize the allocation of grazing privileges without competitive bidding to adult tribal members, Indian corporations, and Indian associations. The eligibility requirements for allocations shall be prescribed by the governing body, subject to approval of the Area Director. Where timely action is not taken by the governing body to prescribe satisfactory requirements, the Area Director shall notify it in writing that it has a 60-day period during which it may present requirements. The Area Director shall prescribe the eligibility requirements after expiration of the 60-day period in the event satisfactory action is not taken by the governing body.

§ 151.11 Competitive and negotiated sale of grazing privileges.

(a) Except as otherwise provided, the Superintendent shall subject to competitive public sale grazing privileges not scheduled for allocation. Advertisements for public sale shall call for sealed bids and may provide for subsequent oral auction at the discretion of the Area Director, who shall approve all advertisements prior to publication. The privilege of meeting high bids of non-Indians shall be limited to adult tribal members as determined by the governing body and approved by the Area Director.

(b) The Area Director may authorize the Superintendent to issue grazing permits by negotiation when in the discretion of the Area Director no useful purpose would be served by advertisement.

(c) Subject to the approval of the Superintendent, governing bodies may negotiate for the sale of grazing privileges on range units composed entirely of tribal land. Permits shall be limited to the carrying capacity established pursuant to § 151.6.

§ 151.12 Kind of livestock.

The Area Director shall determine for range units composed of individually owned lands, and for units composed of tribal lands intermixed with individual lands, the kind of livestock, e.g., cattle, sheep, etc., that may be grazed on each unit. Subject to stocking limitations prescribed by the Area Director, tribal governing bodies may determine the kind of livestock that may be grazed on range units composed entirely of tribal land.

§ 151.13 Establishment of grazing fees.

(a) Except as otherwise provided herein, tribal governing bodies may determine the rate to be charged for all use of tribal lands. Prior to these determinations, the Superintendent shall provide the tribe with all available information including appraisal data concerning the value of the tribal grazing. Indian allocated permittees shall be required to pay not less than the reservation minimum grazing fee established by the Area Director pursuant to paragraph (b) of this section, for all livestock not owned by the permittees which are authorized to graze tribal lands. If the Area Director determines that the rate prescribed by the governing body for the grazing use of tribal lands provides less than a fair return to the tribe, he may present the question to the eligible voters of the tribe in a referendum vote.

(b) The Area Director shall establish a reservation minimum acceptable grazing fee for grazing privileges on individually owned lands, and for tribal lands when the governing body fails to establish a rate pursuant to paragraph (a) of this section. Except as otherwise provided in paragraph (c) of this section, the rate established shall provide a fair annual return to the landowners.

(c) Adult tribal members, in giving the Superintendent written authority to grant grazing privileges on their individually owned land, may stipulate a minimum rate above the reservation minimum set by the Area Director if justified because of above average value. They may also stipulate a lower rate than the reservation minimum, subject to approval of the Superintendent when the permittee is a member of the landowner's immediate family.

§ 151.14 Duration of grazing permits.

(a) The Area Director shall determine the duration of grazing permits on range units composed of individually owned land or intermixed individual land and-

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tribal land, subject to a maximum period of 5 years except when substantial development or improvement is required, in which case the maximum period is 10 years.

(b) Tribal governing bodies may, subject to the same limitations set forth in paragraph (a) of this section, determine the duration of grazing permits on range units composed entirely of tribal land.

(c) Permits for a period in excess of 5 years shall provide for review of the grazing fees by the Superintendent at the end of the first 5 years for adjustment as necessary.

§ 151.15 Assignment, modification, and cancellation of permits.

(a) Grazing permits shall not be assigned, subpermitted, or transferred without the consent of the contracting parties, including the surety, and the approval of the Superintendent.

(b) The Superintendent may modify or cancel a grazing permit on 30 days written notice for violation of the permit or because of termination of trust status of land involved, and on 180 days notice to provide range for allocated Indian use. In the latter case, such modification or cancellation shall be effected only at the end of the annual grazing season and the Indian allocatee shall be required to pay not less than the grazing fees paid by the preceding permittee. Modification of permits requiring higher basic rental rates shall not be made without the consent of the permittee and surety.

§ 151.16 Conservation and land use provisions.

Grazing operations shall be conducted in accordance with recognized principles of good range management. Stipulations or management plans necessary to accomplish this may be made a part of the grazing permit.

§ 151.17 Range improvements; ownership.

Improvements placed on the permitted land shall be considered affixed to the land unless specifically excepted therefrom under the permit terms. Written permission to construct and to remove improvements must be secured from the Superintendent. The permit will specify the maximum time allowed for removal of improvements so excepted.

§ 151.18 Payment of tribal fees and taxes.

Fees and taxes exclusive of annual grazing fees, assessed by the tribe in connection with grazing permits and with the approval of the Commissioner or Secretary, shall be billed for by the tribe and paid annually in advance to the designated tribal official. Failure to make payment will subject the grazing permit to cancellation and may disqualify the permittee for future permits.

§ 151.19 Special permit requirements and provisions.

(a) All grazing permits shall contain the following provisions:

(1) While the lands covered by the permit are in trust or restricted status, all of the permittee's obligations under the permit and the obligation of his sureties are to the United States as well as to the owner of the land.

(2) Nothing contained in the permit shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the permit.

(3) The permittee agrees he will not use, cause, or allow to be used any part of the permitted area for any unlawful conduct or purpose.

(4) The permit authorizes the grazing of livestock only and the permittee shall not utilize the permitted area for hay cutting, hunting, post or timber cutting, or any other use without proper authorization from the Superintendent.

§ 151.20 Bonding and insurance requirements.

(a) A performance bond satisfactory to the Superintendent may be required in an amount that will reasonably assure performance of the contractual obligations. A bond, when required, may be for the purpose of guaranteeing the estimated construction cost of any improvement to be placed on the land which will become the property of the landowner or to insure compliance with special or additional contractual obligations.

(b) The permittee may be required to provide insurance in an amount adequate to protect any improvements on the permitted premises; and may also be required to furnish appropriate liability insurance and such other insurance as may be necessary to protect the landowner's interest.

§ 151.21 Payment of annual grazing fees.

Annual grazing fees for all grazing permits shall be paid in advance and the date due shall be a provision of the permit. Payment shall be made to the Bureau of Indian Affairs unless otherwise provided by the permit.

§ 151.22 Payment of preparation fees.

Permittees shall pay annually in advance the following fee, in addition to the grazing fee, to cover the cost of work performed in the preparation of grazing permits; provided that where all or any part of the expenses of the work are paid from tribal funds an alternate schedule of fees may be approved by the Commissioner:

Annual grazing fee	*Preparation fee (percent)*
On the first $500	3
On the next $4,500	2
On all above $5,000	1
In no event shall the fee be less than $2.00 nor exceed $250.00	

§ 151.23 On-and-off grazing privileges.

The permittee may be allowed credit for the carrying capacity of other range lands not covered by the permit, but which are owned or controlled by him and grazed in common with the permitted lands as a part of the range unit. The carrying capacity will be determined by the Superintendent and shown on the grazing permit.

§ 151.24 Trespass.

The owner of any livestock grazing in trespass on restricted or trust Indian lands is liable to a penalty of $1 per head for each animal thereof for each day of trespass, together with the reasonable value of the forage consumed and damages to property injured or destroyed. The Superintendent shall take action to collect all such penalties and damages and seek injunctive relief when appropriate. All payments for such penalties and damages shall be credited to the landowners where the trespass occurs. The following acts are prohibited:

(a) The grazing upon or driving across any individually owned, tribal, or Government lands of any livestock without an approved grazing or crossing permit.

(b) Allowing livestock to drift and graze on restricted or trust Indian lands without an approved permit.

(c) The grazing of livestock upon restricted or trust Indian lands within an area closed to grazing of that class of livestock.

(d) The grazing of livestock by permittee upon an area of restricted or trust Indian lands withdrawn from use for grazing purposes to protect it from damage by reason of the improper handling of the livestock, after the receipt of notice from the Superintendent of such withdrawal, or refusal to remove livestock upon instructions from the Superintendent when an injury is being done to the Indian lands by reason of improper handling of livestock.

§ 151.25 Control of livestock diseases.

Whenever livestock on Indian lands become infected with contagious or infectious diseases, or have been exposed thereto, such livestock must be treated and the movement thereof restricted in accordance with applicable Federal and State laws and tribal ordinances.

F. M. HAVERLAND,
Acting Commissioner of Indian Affairs.

[F.R. Doc. 68-12591; Filed, Oct. 16, 1968; 8:46 a.m.]

[25 CFR Part 255]

USE OF COLUMBIA RIVER INDIAN IN-LIEU FISHING SITES

Notice of Proposed Rule Making

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Revised Statutes, sections 161 (5 U.S.C. 301) and 463 and 465 (25 U.S.C. 2 and 9) and pursuant to other authorizing acts, it is proposed to amend §§ 255.6 and 255.7 of Part 255, Subchapter W, Chapter I, Title 25, of the Code of Federal Regulations, dealing with the use of Columbia River Indian In-Lieu Fishing Sites. The purpose of this amendment is to remove from the regulations the provision for the construction and maintenance of permanent dwellings or structures on these sites, and thereby restrict the dwelling or structures which may be erected or placed on the sites to portable facilities for temporary use while fishing or related activities are being carried on.

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