

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Docket No. PY-95-002]

#### Tentative Voluntary Poultry Grade Standards

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Agricultural Marketing Service (AMS) is announcing that it is approving the test marketing of USDA grade identified raw, ready-to-cook, boneless-skinless poultry products, based on tentative grade standards.

**DATES:** This test-market period begins June 12, 1995 and ends June 12, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Larry W. Robinson, Chief, Grading Branch, Poultry Division, 202-720-3271.

**SUPPLEMENTARY INFORMATION:**

#### Background

Poultry grading is a voluntary program provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), and is offered on a fee-for-service basis. It is designed to assist the orderly marketing of poultry products. Quality in practical terms refers to the usability, desirability, and value of a product, as well as its marketability. Poultry grade standards identify and measure degrees of quality in poultry products. They permit important quality attributes to be evaluated uniformly and accurately; they provide a way for buyers and sellers to negotiate using a common language.

Once poultry has been graded according to these standards, it may be identified with the USDA grademark. Over the years, processors have found it advantageous to market grade-identified poultry products and consumers have come to rely on the USDA grademark as

assurance that they are getting the quality they want.

Poultry producers and processors are continually developing new, innovative products. Chicken and turkey, in particular, have been transformed into numerous boneless and/or skinless products, thus increasing poultry's share of the consumer's food dollar and responding to consumer demand for food with more built-in convenience and less fat. Current regulations (7 CFR part 70) provide grade standards for boneless poultry breasts, thighs, and tenderloins (§ 70.231), as well as for skinless carcasses and parts (§ 70.232). In addition, on March 30, 1995, the Agency approved the test marketing of USDA grade-identified, boneless/skinless poultry legs and drumsticks, based on tentative grade standards, through April 1, 1996 (60 FR 16428).

The Agency has now been requested by industry to permit the grade identification of raw, ready-to-cook, boneless-skinless poultry products without added ingredients. These products include poultry that has been reduced in size by cutting, slicing, cubing, or similar means and products that are currently marketed ungraded because there are no grade standards for them.

The Agency recognizes that before new standards of quality can be established or current standards of quality can be amended, appropriate investigation is needed. This includes the test marketing of experimental packs of grade-identified poultry products to determine production requirements and consumer acceptance, and to permit the collection of other necessary data. Current regulations (§ 70.3) provide the Agency with the flexibility needed to permit such experimentation, so that new procedures and grading techniques may be tested.

The Agency has worked in partnership with members of the industry to develop tentative grade standards for raw, ready-to-cook, boneless-skinless poultry products without added ingredients and is granting permission for a 1-year test marketing period. At the expiration of this 1-year period, the Agency will then evaluate the test results to determine if the current poultry grading regulations should be amended, through notice-and-comment rulemaking, to include the following tentative standards.

#### Tentative Grade Standards for Ready-to-cook, Boneless-skinless Poultry Products Without Added Ingredients—A Quality

1. The raw, ready-to-cook, boneless-skinless poultry products without added ingredients must be labeled in accordance with 9 CFR part 381.

2. The poultry product must be derived from ready-to-cook carcasses or parts.

3. The skin and bones shall be removed in a neat manner without undue mutilation of adjacent muscle.

4. The poultry products may be further processed and subdivided by cutting, slicing, cubing, or similarly reducing the size prior to grading. Individual subdivided pieces of poultry must be of sufficient, and relatively uniform, size and shape to determine grade with respect to the quality factors set forth in this section.

5. The poultry products shall be free of cartilage, tendons extending more than 1/2 inch beyond the meat tissue, blood clots, bruises, and discolorations other than slight discolorations, provided they do not detract from the appearance of the product.

6. Trimming and minor flesh abrasions due to preparation techniques are permitted provided they result in a relatively smooth outer surface with no angular cuts, tears, holes, or undue muscle mutilation in the meat portion.

Dated: June 6, 1995.

**Lon Hatamiya,**

*Administrator.*

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#### Forest Service

RIN 0596-AB53

#### Outfitting and Guiding Permit Administration and Fees

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; adoption of final policy.

**SUMMARY:** The Forest Service is adopting final policy and procedures for issuing and administering permits and assessing fees for outfitting and guiding activities on National Forest System lands. This policy has been revised to respond to comments on the proposed and interim policies previously published in the **Federal Register** and to address recommendations in several General

Accounting Office reports on administration of Federal concessions. This policy will ensure consistency in outfitter and guide program administration and fees throughout Forest Service units. The text of this policy, which has also been edited and reorganized for clarity, is set forth at the end of this notice.

**EFFECTIVE DATE:** The final policy is effective June 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Shilling, (202) 205-1426, Recreation, Heritage, and Wilderness Resources Management Staff (2340), Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090-6090.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Outfitting and guiding includes a wide range of activities, such as river rafting, horseback trips, guided wildlife photography excursions, and mountain-bike tours. Annually, some 2,800 special use permits are in effect for outfitting and guiding on National Forest System lands. The majority of these are for commercial operations. Fees are generally three percent of the revenue generated from the use of National Forest System lands.

On April 8, 1983, the Forest Service published a proposed policy for notice and comment on issuance and administration of permits and assessment of fees for outfitting and guiding activities on National Forest System lands (48 FR 15296, Apr. 8, 1983). On February 15, 1984, the agency gave notice of adoption of a final policy as an interim directive to the Forest Service Manual which addressed issues raised in comments received on the proposed policy (49 FR 5782, Feb. 15, 1984). The same interim directive was reissued without change in 1988.

When that interim directive could no longer be reissued, the Forest Service published a notice of interim direction and request for comments on April 18, 1990 (55 FR 14445, Apr. 18, 1990). With only minor differences, the April 18, 1990, interim directive continued the direction contained in the 1983 proposed policy, the 1984 interim directive, and the 1988 interim directive which it replaced. The 1990 interim directive has been reissued several times and cannot be reissued again pursuant to agency directive policy.

Since April 1990, commercial recreation concessions on Federal lands have been the subject of several General Accounting Office (GAO) studies. In June 1991, GAO released a report, "Federal Lands: Improvements Needed in Managing Concessioners" (GAO/

RCED-91-163, June 11, 1991), that directed the Federal land-management agencies to develop policies that achieve greater consistency in the management of concession programs and authorizing instruments. A subsequent report issued by GAO, "Federal Lands: Improvement Needed in Managing Short-Term Concessioners" (GAO/RCED-93-177, Sept. 14, 1993), made further recommendations for improving administration of Federal concessions. The 1993 report specifically addressed short-term concessions, including outfitting and guiding.

The address the concerns expressed in these reports, to address the comments received on the previously published proposed policy and interim directive, and to improve consistency in program administration, the Forest Service is adopting final policy and procedures governing administration of outfitting and guiding permits and calculation of fees. This policy is being issued as amendments to chapters 30 and 40 of Forest Service Handbook (FSH) 2709.11, Special Uses Handbook. The text of these amendments is set out at the end of the notice.

This final policy makes substantive changes to the direction previously issued in the 1990 interim directive. This final policy also differs in certain nonsubstantive ways from the 1990 interim directive. The agency has reorganized, clarified, and edited the 1990 interim directive to conform with current agency requirements for the content, format, and style of Forest Service directives.

In response to a lawsuit, *Wilderness Watch v. Robertson*, No. 92-0740 (D.D.C., Apr. 8, 1993) and in accordance with the court's 1993 order in the case, this final policy revises terminology and clarifies and expands policy on the kinds of structures, improvements, or installations that may be authorized for use in outfitting and guiding operations.

The agency has also clarified its direction on permit renewal. At this time, where outfitting and guiding services have been previously authorized and the authorization is expiring, the agency favors noncompetitive reissuance of special use authorizations to outfitters and guides who have a history of satisfactory performance over providing new competitive opportunities (see sec. 41.53f, para. 3 of the policy set out at the end of this notice). In the future, however, the agency may publish for notice and comment a proposed policy providing for competition for outfitting and guiding permits.

The 1990 interim directive defined "priority use" as "a Forest Service commitment to the holder of a permit for outfitting and guiding to give priority consideration to granting the holder a specific amount of available future use." The Forest Service has redefined "priority use" in this final policy to reflect more accurately the duration of the authorized use, factors determining the amount of use, and renewability of permits providing for priority use. Priority use is now defined in section 41.53c as: "Authorization of use for a period not to exceed five years. The amount of use is based on the holder's past use and performance and on forest land and resource management plan allocations. Authorizations providing for priority use are subject to renewal." Under the final policy, outfitting and guiding permits may be renewed without competition when the holder has performed satisfactorily (sec. 41.53f, para. 3). Renewal will be at the sole discretion of the authorized officer. This final policy is consistent with applicable Federal regulations and continues direction contained in the 1983 draft policy, the 1984 interim directive, and the 1990 interim directive.

Further, the final policy in section 41.53f provides that an authorized officer may issue a permit without competition to the party who acquires ownership of or a controlling interest in an outfitting and guiding business entity, if the authorized officer determines that the prospective holder meets requirements under Forest Service regulations (36 CFR 251.54).

#### **Summary of Key Revisions**

The Forest Service received nine comments on the 1990 interim directive within the specified comment period: three from outfitter and guide associations; three from outfitters and guides; two from State outfitter and guide licensing boards; and one from an individual.

The following is a section-by-section analysis of the final policy in chapters 30 and 40 of FSH 2709.11 and the Forest Service's response to the comments received on the 1990 interim directive, relevant court rulings, and recommendations from GAO reports.

#### **Chapter 30—Fee Determination**

##### *Sections 37 to 37.24—Outfitter and Guide Fees*

In *Wilderness Watch v. Robertson*, plaintiffs contended that certain outfitting and guiding activities as authorized under special use permit and administered by the Forest Service in

the Frank Church River of No Return Wilderness (Frank Church Wilderness), located in the Boise, Challis, Payette, Salmon, Bitterroot, and Nez Perce National Forests in Idaho, violated the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*). The court ruled in favor of plaintiffs on several issues, including authorization of permanent structures and installations (such as caches and water transmission systems) in the Frank Church Wilderness and continuing, exclusive use of campsites reserved by outfitters and guides in the Frank Church Wilderness. The court ordered the parties to confer and submit a joint remedial plan to ensure compliance with applicable provisions of the Wilderness Act and Forest Service regulations.

The 1990 interim directive included caches as acceptable installations and included the term "reserved site." In accordance with the holding in *Wilderness Watch* and the requirements of the Wilderness Act, the final policy does not authorize permanent structures in wilderness areas. The agency has replaced the term "reserved site" with the term "assigned site," which is defined as a site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the period of occupancy (sec. 37.05). In addition, the agency has revised the administrative practice of reserving sites for use by outfitters and guides under special use permits. Under the final policy, the authorized officer must specify and describe the proposed use of specific assigned sites in operating plans and annual itineraries (sec. 41.53j).

**Section 37.01—Authority.** The agency has added this section to include cross-references to other sections of the Forest Service Handbook (FSH) and Forest Service Manual (FSM) that provide direction on laws, regulations, and other authorities for administration of special uses programs (including outfitting and guiding) and fees on NFS lands.

**Section 37.03—Policy.** The agency has added this section to provide direction and cross-references to other FSH and FSM sections that provide additional direction. The section includes direction on the use of the graduated rate fee system (GRFS) to determine fees for outfitting and guiding activities authorized in connection with a commercial service site under permit. This direction originally appeared in a different section of the 1990 interim directive, and the agency has determined that this direction is more appropriately coded to the policy section.

**Section 37.04—Responsibility.** The agency has added this section to provide a cross-reference to an FSM section that provides related direction and to add the responsibility of the Director of Recreation, Heritage, and Wilderness Resources Management for adjusting the minimum fee and the assigned campsite fee every three years with 1993 as the base year, based on the Gross Domestic Product—Implicit Price Deflator Index.

**Section 37.05—Definitions.** The agency has added definitions for "adjustment for use off National Forest System lands," "assigned site," "client days" (including "National Forest System client days" and "total client days"), "non-use," "revenue additions," "revenue exclusions," "short-stop fee," and "unapproved non-use." The agency has revised definitions for "adjusted gross revenue," "gross revenue," "service day," and "duration of the outfitted or guided trip." "Average adjusted service day client charge" is retitled "average client-day charge."

"Reserved site" is replaced with "assigned site," which is defined as a site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the authorized period of occupancy.

"Adjustment for use off National Forest System lands" is defined as the reduction in the fee for commercial use to account for the portion of the outfitted or guided trip that occurs off National Forest System lands.

"Client days" is defined as either "National Forest System client days" or "total client days." "National Forest System client days" is defined as the number of service days (that is, days on the National Forest System) for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. "Total client days," which applies where there is use both on and off National Forest System lands, is defined as the total number of days for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. Client days are used to calculate the average client-day charge and the adjustment for use off National Forest System lands in determining the fee for commercial use.

"Non-use" was previously undefined, although the term was used in final fee calculation. Lack of a definition for "non-use" has resulted in inconsistent fee assessments and miscalculations in various Forest Service units.

Consequently, the agency has defined "non-use" in the final policy as authorized use the holder did not use. In addition, the agency has defined "unapproved non-use" as authorized

use the holder did not use and for which the holder has not properly requested and received a waiver. Under the final policy, the holder must pay for unapproved non-use. See the direction in section 37.21g set forth at the end of this document.

To conform with agency policy on fiscal management and accounting, including generally accepted accounting principles or other comprehensive basis of accounting, and to improve consistency in fee calculation when fees are based on gross revenue, the agency has added the definition of "revenue additions," which is defined as the value of gratuities and sales of certain kinds of goods and services; specified which items are excluded from gross revenue; and included a definition for "revenue exclusions."

The new term "short-stop fee" refers to a fee established by Regional Foresters for trips with two service days or less spent on National Forest System lands. (An example would be an Alaskan tour which stops for one day or less at a National Forest System site.) Under the 1990 interim directive, Regional Foresters were allowed to establish additional discounts for use off National Forest System lands. The Alaska Region of the Forest Service has suggested the short-stop fee for use in that Region. Since the short-stop fee may have applicability in other Regions, the agency has provided for its Servicewide use in the final policy (sec. 37.21c, para. 3).

The revised definition for "gross revenue" is revenue from goods or services provided during the outfitted or guided trip; revenue received for scheduling or booking the trip; and revenue provided off National Forest System lands, unless specifically excluded.

The term "adjusted gross revenue" is defined as gross revenue and revenue additions less applicable exclusions. "Revenue exclusions" is defined as revenue derived on private land from the sale of items not directly related to the outfitting or guiding operation conducted on National Forest System lands; revenue conveyed to the State for hunting and fishing licenses; and revenue from the sale of operating equipment.

The agency has edited the definitions for "service day" and "duration of outfitted or guided trip" for clarity and format.

**Section 37.21—Fees.** To clarify direction on fee calculation, the agency has reordered the sequence of topics in this section (including sections 37.21 to 37.21j) covering fees to be collected for

specific uses associated with outfitting and guiding activities.

**Section 37.21a—Minimum fee.** For 1993–96, the agency has established a minimum annual fee of \$70 per permit. Using 1993 as a base year, the agency will adjust the minimum annual fee per permit every three years based on the Gross Domestic Product—Implicit Price Deflator Index. In addition, the agency has edited this section to conform with Forest Service directive format and style.

**Section 37.21b—Fee for Incidental Use for Temporary Special-Use Permits.** To provide clarity and to ensure consistency in fee collection, the agency has added direction on collecting a minimum fee when commercial outfitting and guiding is authorized by a temporary permit. Form FS–2700–25, Temporary Special-Use Permit.

**Section 37.21c—Fee for Commercial Use.** Portions of the direction in this section previously appeared in a section entitled “Final Fee.” The agency has included this section to ensure consistent fee calculation and collection for commercial outfitting and guiding activities on National Forest System lands. Further, to provide clear direction and to ensure consistent fee calculation, the agency has expanded this section to include examples of fee calculations for option A, option B, and the short-stop fee. Option A establishes a fee based on an average client-day charge. Option B establishes the fee as three percent of the adjusted gross revenue. A short-stop fee is established for activities of short duration (two service days or less).

**Section 37.21d—Determining Service Days.**

**Comment:** Three respondents objected to the definition for “service day,” but did not offer alternative wording.

**Response:** The agency believes that the revised definition for “service day” (previously discussed under section 37.05) is clearer and will make fee calculations easier to perform and more accurate.

**Comment:** One respondent suggested a method for calculating service days for drop-off services that would account for the complete number of days a holder is providing goods or services to a client. The respondent recommended that all drop-off and packing days be counted as service days. Another respondent concurred with this view, observing that all full or fractional days on which supply, spot, dunnage, or drop-off services are provided by an outfitter or guide should be counted as service days.

**Response:** The agency with these comments. Under the final policy the

agency counts service days in three drop-off situations. In the first situation, a holder guides a client to a specific drop-off site on National Forest System lands; the holder neither retrieves the client, nor returns to the drop-off site to guide the client. In the second situation, the holder guides the client to a specific drop-off site on National Forest System lands and returns to pack the client out. In the third situation, the holder guides the client to a specific drop-off site on National Forest System lands, the client occupies the holder’s assigned site, and the holder packs the client out.

In the first situation, the agency would count one full service day for fee purposes. In the second situation, the agency would count one full service day for drop-off services and one full service day for pick-up services. In the third situation, the agency would count one full service day for drop-off services, one full service day for pick-up services, and one service day for each day in between.

The agency has expanded this section to include direction on the three situations to clarify counting of service days for fee calculation when drop-off and pick-up services are provided. To conform to Forest Service directive organization, the agency has removed the definition for “service day” that formerly appeared in this section of the 1990 interim directive and has included the definition in section 37.05, Definitions.

**Section 37.21e—Adjustment for Use Off National Forest System Lands.** The agency has edited this section to conform with Forest Service directive format and style.

**Section 37.21f—Fee for Additional Use.** The agency has edited this section to conform with Forest Service directive format and style.

**Section 37.21g—Payment for Unapproved Non-Use.** To ensure consistency in fee collection, the agency has clarified the direction to charge the holder for unapproved non-use when the holder has not properly requested and received a waiver for authorized non-use.

**Section 37.21h—Fee for Assigned Sites.** In accordance with the court order in *Wilderness Watch* and the requirements of the Wilderness Act, the agency has replaced the term “reserved site” with the term “assigned site.” For 1993–96, the agency has established an annual fee of \$140 for the use of each assigned site. Using 1993 as a base year, the agency will adjust the minimum annual fee for each assigned site every three years based on the Gross Domestic Product—Implicit Price Deflator Index.

**Section 37.21i—Fee for Grazing Livestock.** The agency has edited this section to conform with Forest Service directive format and style.

**Section 37.21j—Fee for Nonprofit Organizations.** To ensure consistency in fee calculation, the agency has stated that the fee for nonprofit organizations is three percent of annual adjusted gross revenue. The 1990 interim directive did not clearly state that nonprofit organizations pay a fee based on a percentage of annual adjusted gross revenue.

**Section 37.21k—Fee for Educational Institutions.** To ensure consistency in fee calculation, the agency has stated that the fee for educational institutions is three percent of annual adjusted gross revenue. The 1990 interim directive did not clearly state that educational institutions pay a fee based on a percentage of annual adjusted gross revenue.

**Section 37.22—Estimated Fee.** To ensure consistency in fee collection, the agency has clarified direction on collecting a portion or all of the fee in advance.

**Section 37.23—Final Fee.** To ensure consistency in fee calculation, the agency has clarified direction on calculating the final fee.

**Section 27.24—Billing and Refunds.** Related direction in section 41.53f of the final policy, Applications and Issuance of Permits, directs the authorized officer to collect fees for outfitting and guiding under the authority of the Land and Water Conservation Fund (LWCF) Act of 1964. This is an administrative change; previously, fees were deposited into the general receipts of the Treasury. Fees collected under the LWCF Act are deposited into the LWCF. Once appropriated by Congress, LWCF monies may be used for management of Federal outdoor recreational resources and facilities.

## Chapter 40—Special Uses Administration

### Sections 41.53 to 41.531—Outfitters and Guides

**Comment:** Two respondents commented generally on the administrative topics of assignment and management of temporary use, applications and issuance of permits, reductions, and permits for institutional and semi-public outfitting and guiding. These respondents were representatives of State outfitter and guide licensing boards who expressed general concern about the policy but did not specify wording changes in the sections covering these topics.

The respondents requested exception for their States (Wyoming and Idaho) from certain sections of the policy, specifically: Assignment and Management of Temporary Use; Applications and Issuance of Permits; Reductions; and Permit Administration, including Performance Evaluation. They contended that their respective State laws, State outfitting and guiding rules and regulations, and memoranda of understanding with local Forest Service offices exempt them from Federal law and national policy.

*Response:* Forest Service Regional Offices in Missoula, Montana, Portland, Oregon, and Ogden, Utah have memoranda of understanding that were executed in 1985 with the States of Wyoming and Idaho. The memoranda describe local coordination and implementation procedures as agreed upon between those Regional Offices and the States of Wyoming and Idaho in the context of State laws and regulations. These memoranda do not provide any basis, however, for exempting these States from the requirements of Forest Service regulations or national policy for issuing and administering permits and assessing fees for outfitting and guiding activities; These requirements ensure consistency in program administration throughout the National Forest System units.

Applicable Federal regulations (36 CFR 251.50) require a special use authorization for commercial use and occupancy of National Forest System lands, including outfitting and guiding activities. The Forest Service further implements its delegated land-management authority by issuing national policy in the Forest Service Manual and Handbooks, including policy on outfitting and guiding activities. These regulations and policies cannot be waived by Regional memoranda of understanding. The final policy maintains the longstanding Forest Service policy that permit holders must agree to comply with all applicable State laws. Applicable State laws, including those enforced by State outfitter and guide licensing boards and game-management agencies, apply to holders of permits authorizing the use of National Forest System lands for outfitting and guiding activities.

*Section 41.53a—Objectives.* The agency has added the objective that outfitting and guiding activities be conducted in a manner that protects environmental resources.

*Section 41.53b—Policy.*

*Comment:* One respondent recommended that the term for outfitters and guides who are operating

without a permit be changed from "pirate" to "illegal."

*Response:* applicable Federal regulations, commercial use and occupancy of National Forest System lands requires a special use authorization. Commercial use and occupancy of National Forest System lands without a special use authorization is defined as "unauthorized." Therefore, the agency has replaced the term "pirate outfitters" with the term "unauthorized outfitting and guiding activities" in paragraph 4.

In accordance with the holding in *Wilderness Watch* and the requirements of the Wilderness Act as described previously in the discussion of sections 37 to 37.24, the final policy in paragraphs 2 and 3 does not authorize permanent structures in wilderness. The agency has replaced the term "reserved site" with the term "assigned site," which is defined in section 27.05. In addition, the proposed use of specific assigned sites must be specified and described in operating plans and annual itineraries (sec. 41.53j).

To ensure consistency in permit administration, the agency has included in paragraph 5 of this section direction not to issue a separate special use authorization for commercial service sites (such as a lodge or resort) that have outfitting and guiding activities as part of the authorized operation. (Section 37.03, Policy, provides direction on the use of the Graduated Rate Fee System to determine fees for outfitting and guiding activities authorized in connection with a commercial service site under permit.)

Also, the agency has added "hitching posts" to the list in paragraph 2 of structures or improvements with negligible value and has moved "pack stations" from the list of structures or improvements with negligible value to the list of commercial public service sites in paragraph 5. This change more accurately acknowledges the value of pack station facilities.

*Section 41.53c—Definitions.*—The agency has made the following revisions to this section: adds definitions for "incidental use" and "renewal" and revises the definitions for "priority use," "temporary use," and "transportation livestock." The definitions for "guiding" and "outfitting" have been edited for clarity.

"Incidental use" was previously undefined, although the term was used in direction to allow the authorized officer to waive permit requirements. The lack of a definition for "incidental use" has created discrepancies in determining impacts on the environment and on the quality of services provided to the public. The

agency has defined "incidental use" and has added it to this section.

The agency has clarified the definition for "priority use" in conformance with Forest Service directive style; included the five-year maximum term specified in earlier interim directives; provided for determination of use based on the holder's past use and performance and on forest land and resource management plan allocations; and provided for renewal subject to certain conditions.

This policy is consistent with applicable Federal regulations (36 CFR 251.64) and with direction contained in the 1983 draft policy, the 1984 interim directive, and the 1990 interim directive. These earlier directives provided for a five-year maximum term for priority use; reductions in priority use assignments and the number of permit holders based on forest land and resource management plan allocations; reductions in priority use assignments for reasons in the public interest, such as protection of forest resources and public health and safety; and changes in priority use assignments based on past use and performance.

The agency has edited the definitions for "temporary use" and "transportation livestock" to conform with Forest Service directive format and style.

*Section 41.53d—When Permits Are Required.* The agency has revised this section to conform with Forest Service directive format and style. In addition, the agency has clarified that a permit is not needed when services are being provided to Forest Service contractors or Federal officials in the course of their official duties.

*Section 41.53e—Incidental Use.* The agency has expanded and clarified this section by providing direction on authorizing incidental use. As defined in 41.53c, use is incidental when the proposed annual use is 50 service days or less and is anticipated to have little or no impact on public health and safety, the environment, or other authorized uses and activities.

The agency developed Form FS-2700-25, Temporary Special-Use Permit, in June 1992 for authorizing use that is seasonal or of short duration and that involves minimal improvements or investment. The agency has included direction in the final policy on use of Form FS-2700-25. The agency has also included direction on use of Form FS-2700-4, Special-Use Permit, rather than Form FS-2700-25, when the incidental use involves the following activities: white water travel, use of firearms, livestock or aircraft, or all-terrain or off-highway vehicle travel.

**Section 41.53f—Applications and Issuance of Permits.**—The agency has added this section to clarify the application process and the process for issuance of permits under applicable Federal regulations (36 CFR 251.54) and Forest Service policy. Paragraph 3 has been added which addresses renewal of terminating permits. The final policy states that direction in FSM 2712.2 on issuance of prospectuses applies to new outfitting and guiding opportunities.

The final policy directs the authorized officer to collect fees for outfitting and guiding under the authority of the LWCF Act of 1965. (Further discussion of this policy appears earlier in this notice under section 37.24.)

The agency also has revised this section to include direction in paragraph 4 on change of ownership or control of the business entity. The agency has added the term “business entity” to distinguish this change in ownership from change in ownership of personal or real property. The agency also has expanded and edited this section to conform with direction in FSM 2716, Change of Ownership.

**Section 41.53q—Assignment and Management of Temporary Use.** The agency has edited this section to conform with Forest Service directive format and style.

**Section 41.53h—Assignment and Management of Priority Use.** To ensure consistency in administration and compliance with standards and guidelines in forest land and resource management plans, the agency has added that assignment of priority use and the amount of priority use shall be at the discretion of the authorized officer and shall be consistent with direction in forest land and resource management plans.

To ensure consistency in administration, the agency has revised direction on reduction in the amount of priority use. The final policy (para. 3b) requires reduction in the amount of priority use if the holder has utilized less than 70 percent of the assigned amount for three consecutive years. The 1990 interim directive required reduction in the amount of priority use if the holder had used less than 70 percent of the assigned amount in at least two of the past five years. This direction has been subject to broad interpretation and misapplication. The agency believes that a period of three consecutive years of under-utilization is easier to quantify and demonstrates a trend of lack of business due to a decrease in customer demand for services.

**Section 41.53i—Reduction of Use or Service Days.** The agency has added

direction that prior to reassigning use that may be available after a reduction, the authorized officer must solicit applications from current holders assigned priority use and base assignment of use on services proposed and performance.

**Section 41.53j—Permit Terms and Conditions.** The agency has edited this section of the final policy to conform with Forest Service directive format and style and with standard terms and conditions in special use permits.

**Section 41.53k—Permit Administration.** For clarity, the agency has put direction on performance standards and performance ratings of holders in separate paragraphs and provided more detailed direction, such as mid-season review and evaluation for all holders. This procedural direction is needed to meet due process requirements under Federal law for giving holders notice and the opportunity to comply. In addition, the section in the 1990 interim directive entitled “Subletting of Use” has been retitled “Assignment of Use” as paragraph 2 in this section of the final policy.

**Section 41.521—Permits for Institutional and Semi-Public Outfitting and Guiding.** This section now states that permits must be consistent with forest land and resource management plan direction.

### Regulatory Impact

This final policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy. The final policy does not have an effect of \$100 million or more on the economy; substantially increase prices or costs for consumers, industry, or State or local governments; or adversely affect competition, employment, investment, productivity, innovation, or the ability of domestic companies to compete in foreign markets. The final policy consists primarily of technical and administrative changes for authorization of occupancy and use of National Forest System lands.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final policy will not have a significant economic impact on a substantial number of small entities because it will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market. As stated previously, this

final policy consists primarily of technical and administrative changes concerning authorization of occupancy and use of National Forest System lands.

### No Takings Implication

This policy has been reviewed for its impact on private property rights under Executive Order 12630 of March 15, 1988, as implemented by the United States Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings. Executive Order 12630 does not apply to this final policy because it consists primarily of technical and administrative changes governing authorization of occupancy and use of National Forest System lands. Forest Service special use authorizations for outfitting and guiding do not grant any right, title, or interest in or to lands or resources held by the United States.

### Civil Justice Reform Act

This policy has been reviewed under Executive Order 12778, Civil Justice Reform. After adoption of this final policy, (1) All State and local laws and regulations that conflict with this policy or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final policy; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

### Controlling Paperwork Burden on the Public

This final policy contains information collection requirements as defined in 5 CFR 1220 that have been approved by the Office of Management and Budget and assigned control number 0596-0082. The agency estimates that the reporting burden for the collection of information in the policy is 5 to 10 hours per response.

### Environmental Impact

This final policy consists primarily of technical and administrative changes related to the authorization of occupancy and use of National Forest System lands. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180 Sept. 18, 1992), categorically excludes from documentation in an environmental assessment (EA) or environmental impact statement (EIS) “rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions.” Based on the nature and scope of this final policy, the agency has determined that it falls within this category of actions and that no extraordinary circumstances exist which

would require preparation of an EA or an EIS.

Dated: May 30, 1995.

**Mark A. Reimers,**  
Acting Chief.

### Final Handbook Revision

The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, that are the subject of this notice are set out here. The audience for this direction is Forest Service employees charged with issuing and administering special use permits for outfitting and guiding.

### CHAPTER 30—FEE DETERMINATION

**37—Outfitter and Guide Fees.** (For related direction on special uses administration, see sec. 41.53).

**37.01—Authority.** (Sec. 30.1; FSM 2701.1).

**37.03—Policy.** (Sec. 31; FSM 2715.03).

**37.03a—Fees for Activities Associated with Commercial Public Service Site.** Use the Graduated Rate Fee System (GRFS) (FSM 2715.11) to determine fees for outfitter and guide activities (such as cross-country skiing or horseback riding) authorized by the Forest Service in connection with an authorized commercial public service site on National Forest System lands (such as a resort or lodge). Where applicable, require holders under GRFS to pay additional fees for assignment of sites (sec. 37.21h) and livestock grazing use (sec. 37.21i).

**37.03b—Fees for Activities Not Associated with Commercial Public Service Site.** Require payment of fees according to the direction in sections 37.21 to 37.24 for outfitter and guide activities authorized as a distinct activity not associated with a public service site.

**37.04—Responsibility.** (FSM 2704.13). The Washington Office Director of Recreation, Heritage, and Wilderness Resources Management is responsible for adjusting the minimum fee and the assigned site fee every three years with 1993 as the base year, based on the Gross Domestic Product-Implicit Price Deflator Index.

**37.05—Definitions.** See section 41.53c for additional definitions for "guiding," "holder," "incidental use," "outfitting," "priority use," "renewal," "temporary use," and "transportation livestock".

**Adjusted Gross Revenue.** Gross revenue and revenue additions less applicable exclusions.

**Adjustment for Use Off National Forest System Lands.** The reduction in the fee for commercial use to account

for the portion of the outfitted or guided trip that occurs off National Forest System lands (sec. 37.21e).

**Assigned Site.** A site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the authorized period of occupancy. Examples include but are not limited to base and drop camps, picnic sites, loading facilities, boat launches, and helispots.

**Average Client-Day Charge.** Adjusted gross revenue divided by the total number of client days for the duration of the outfitted or guided trip.

**Client Charge.** The outfitter's or guide's charge per client for an outfitted or guided trip.

**Client Days.**

**1. National Forest System Client Days.** The number of service days (that is, days on National Forest System lands) for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

**2. Total Client Days.** Where there is use both on and off National Forest System lands, the total number of days for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

**Duration of Outfitted or Guided Trip.** The period that begins when the client first comes under the care and supervision of the outfitter or guide, including arrival at the holder's headquarters or local community, and ends when the client is released from the outfitter's or guide's care and supervision. Duration of the outfitted or guided trip is used to calculate client days, which in turn are used to determine the average client-day charge and the adjustment for use off the National Forest System lands. See section 37.21c for related direction.

**Gross Revenue.** The total amount of receipts from the sale of goods or services provided by the holder in connection with the outfitted or guided trip. These receipts include:

**1.** Revenue received by the holder from clients for goods or services provided during the outfitted or guided trip (the client charge per trip multiplied by the total number of clients on each trip);

**2.** Revenue received by the holder or the holder's employees or agents for scheduling or booking the outfitted or guided trip; and

**3.** Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded.

**Non-Use.** Authorized use the holder did not use (see also "Unapproved non-use").

**Revenue Additions.** The market value of the following items which are added to gross revenue:

**1.** The value of goods and services that are donated or the value of goods and services that are bartered in exchange for goods and services received that are directly related to the outfitted or guided trip; and

**2.** The value of gratuities, which are goods, services, or privileges that are not available to the general public and that are donated or provided without charge or at a discount to organizations; individuals; the holder's employees, owners, or officers; or immediate family members of the holder's employees, owners, or officers.

**Revenue Exclusions.** The following items which are excluded from gross revenue:

**1.** Revenue derived from goods or services sold on private land that are not related to outfitting and guiding operations conducted on National Forest System lands, such as souvenirs, telephone toll charges, and accident insurance sales;

**2.** Amounts paid or payable to a State government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets; and

**3.** Revenue from the sale of operating equipment, rental equipment, capitalized assets, or other assets used in outfitting and guiding operations. Examples are horses, tack, watercraft, and rental skis and boots, which are sold periodically and replaced.

**Service Day.** A day or any part of a day on National Forest System lands for which an outfitter or guide provides goods or services, including transportation, to a client.

**Short-Stop Fee.** Fees for trips that use National Forest System lands incidental to the purpose of the trip, such as a bus tour that takes clients on a sightseeing trip. The rate is established by the Regional Forester for trips with two service days per client or less spent on national Forest System lands.

**Unapproved Non-Use.** Authorized use days the holder has not used and for which the holder has not properly requested and received a waiver (see also "Non-use").

**37.1—Commercial Services Associated with Commercial Public Service Site.** Use the Graduated Rate Fee system to determine outfitter and guide fees associated with such sites (sec. 37.03a and FSM 2715.11).

**37.2—Commercial Services Not Associated with Public Service Site**



**37.21—Fees.** Fees are assessed against adjusted gross revenue. Fees are also assessed against all unapproved non-use.

**37.21a—Minimum Fee.** The minimum fee for outfitting and guiding on National Forest System lands is \$70 annually per permit for 1993–1996. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management adjusts the minimum fee every three years based on the Gross Domestic Product-Implicit Price Deflator Index.

**37.21b—Fee for Temporary Use Permits for Incidental Use.** When commercial outfitting and guiding is authorized by a temporary permit, use Form FS–2700–25, Temporary Special-Use Permit, to collect the minimum fee (sec. 3721a). The authorized officer may waive the minimum fee only if the use meets the criteria listed in 36 CFR 251.57 and section 31.21k.

**37.21c—Fee for Commercial Use.** Calculate and collect a fee for commercial outfitting and guiding occurring on National Forest System lands. Charge for any commercial use of National Forest System lands for outfitting or guiding, even if unauthorized.

Upon the authorized officer's approval of the prospective holder's application for a special use permit, advise the applicant to select option A or B (para. 1 and 2) to be used in calculating the fee. Include the selected method as a condition of the permit issued to the holder, and use that method to calculate the fee for the period authorized.

1. **Option A.** The fee is based on an average client-day charge using the following schedule of rates:

#### SCHEDULE OF RATES

Average client-day charge (for client days on and off NFS lands)	Client-day fee
Less than \$8.00 .....	\$.25
8.01–20.00 .....	.40
20.01–35.00 .....	.80
35.01–50.00 .....	1.30
50.01–75.00 .....	1.90
75.01–100.00 .....	2.60
100.01–125.00 .....	3.40
125.01–150.00 .....	4.10
150.01–175.00 .....	4.90
175.01–200.00 .....	5.60
200.01–250.00 .....	6.75
250.01–300.00 .....	8.25
300.01–400.00 .....	10.00
Over 400.00 .....	3 percent of the average, client-day charge.

Calculate the fee as follows:

a. **Client Days (National Forest System and Total).** To determine the number of National Forest System client days, multiply the number of service days for the duration of the outfitted or guided trip by the number of clients on each trip. To determine the number of total client days, multiply the total number of days for the duration of the outfitted or guided trip by the number of clients on each trip. See example A–2 in this section for additional direction on determining total client days.

b. **Adjusted Gross Revenue.** Multiply the client charge per trip by the total number of clients on each trip, add any other gross revenue and applicable

revenue additions, and subtract any applicable revenue exclusions (sec. 37.05). This figure represents adjusted gross revenue for the duration of the outfitted or guided trip.

c. **Average Client-Day Charge.** Divide the adjusted gross revenue by the number of client days (National Forest System or total) for the duration of the outfitted or guided trip. This figure is the average client-day charge.

d. **Client-Day Fee.** Refer to the preceding Schedule of Rates, and use the average client-day charge to determine the client-day fee.

e. **Interim Calculation for Fee for Commercial Use.** Where use is strictly on National Forest System lands, multiply the number of National Forest System client days by the client-day fee to determine the fee for commercial use. Where use is both on and off National Forest System lands, multiply the number of total client days by the client-day fee to determine the interim calculation for commercial use, and adjust for use off National Forest System lands under the following paragraph f.

f. **Adjustment for Use off National Forest System Lands.** Adjust for use off National Forest System lands, if applicable, by dividing the number of National Forest Client days (or hours, miles, and so forth) by the number of total client days (or hours, miles, and so forth) to determine the amount of time spent on National Forest System lands. Refer to the schedule in section 37.21e to determine the appropriate percentage of fee reduction. See section 37.21e for the use of other equitable units of measure to determine adjustment for use off National Forest System lands.

**Example A–1:** In one operating season, the holder is authorized to provide two trips, both of which are solely on NFS lands:  
July 27–29 for 3 clients @ \$450/client  
August 18–21 for 7 clients @ \$500/client

a. **Client Days (all NFS):**

3 service days × 3 clients = 9 NFS client days  
4 service days × 7 clients = 28 NFS client days  

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37 NFS client days

b. **Adjusted Gross Revenue:**

\$450 × 3 clients = \$1,350  
\$500 × 7 clients = \$3,500  

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\$4,850 gross revenue, plus \$0 revenue additions and minus \$0 revenue exclusions.

c. **Average Client-Day Charge (all NFS client days in this example):**

\$4,850 adjusted gross revenue  

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37 NFS client days = \$131

d. **Client-day Fee (all NFS client days in this example):**

\$131 average client-day charge from step c corresponds to a \$4.10 client-day fee.

e. **Fee for Commercial Use:**

37 NFS client days × \$4.10 client-day fee = \$151.70 fee.



*Example A-2:* In one operating season, the holder is authorized to provide two trips. Both Trips include time on and off NFS lands.

July 4-13 for 8 clients @ \$2,000/client

August 10-23 for 7 clients @ \$3,000/client

During each trip, 3 of the 10 days are on NFS lands.

a. Client Days (Total):

10 total days  $\times$  8 clients = 80 total client days

10 total days  $\times$  7 clients = 70 total client days

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150 total client days

b. Adjusted Gross Revenue:

\$2,000  $\times$  8 clients = \$16,000

\$3,000  $\times$  7 clients = \$21,000

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\$37,000 gross revenue, plus \$0 revenue additions and minus \$0 revenue exclusions.

c. Average Client-Day Charge:

$\frac{\$37,000 \text{ adjusted gross revenue}}{150 \text{ total client days}} = \$246.67$

d. Client-Day Fee:

\$246.67 average client-day charge corresponds to a \$6.75 client-day fee.

e. Interim Calculation for Fee for Commercial Use:

150 total client days  $\times$  \$6.75 client-day fee = \$1,012.

f. Adjustment for use off NFS lands:

NFS client days:

3 service days  $\times$  8 clients = 24 NFS client days

3 service days  $\times$  7 clients = 21 NFS client days

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45 NFS client days

$\frac{45 \text{ NFS client days}}{150 \text{ total client days}} = 30\%$

Which corresponds to a 40% fee reduction (sec. 37.21e):

\$1,012  $\times$  40% = \$404.80

\$1,012 - \$404.80 = \$607.20 fee for commercial use, which can be rounded to \$607.

**2. Option B.** The fee is 3 percent of the annual adjusted gross revenue, minus any applicable adjustment for use off National Forest System lands. Determine the gross revenue, add any applicable revenue additions, and subtract any applicable revenue exclusions to determine the adjusted gross revenue. Multiply the adjusted gross revenue by 3 percent; then adjust, if applicable, for use off National Forest System lands to determine the fee for commercial use (sec. 37.05; 37.21c, para. 1.b, and 37.21e).

*Example B-2:* For one year, the holder had an annual adjusted gross revenue of \$4,850 and used all 100 authorized use days.

\$4850  $\times$  0.03 = \$145.50 fee for actual commercial use.

*Example B-2:* For one year, the holder had an annual adjusted gross revenue of \$4,650

and used 90 days of 100 authorized use days. Unapproved non-use accounted for 10 days.

\$4,650  $\times$  0.03 = \$139.50 fee for 90 days of commercial use.

$\frac{\$139.50}{90 \text{ days}} = \$1.55 \text{ per day}$

\$1.55 per day  $\times$  10 days = \$15.50 fee for 10 days of unapproved non-use.

\$139.50 + \$15.50 = \$155 fee for commercial use.

*Example B-3:* An off-road tour outfitter has an adjusted gross revenue of \$250,000. The travel routes used are across NFS lands and private lands. The time spent on NFS lands is 50 percent of the duration of the outfitted or guided trips.

\$250,000  $\times$  0.3 = \$7,500

50 percent duration on NFS lands corresponds to a 40% fee reduction (sec. 37.21e):

\$7,500  $\times$  40% = \$3,000

\$7,500 - \$3,000 = \$4,500 fee for commercial use.

**3. Short-Stop Fee.** (Sec. 37.05). Fees are calculated from rates established by the Regional Forester for situations in which commercial tours and trips involve only very short stops or visits on National Forest Systems lands of two service days or less.

*Example 1:* A float plane company markets fishing trips to the National Forest, flies anglers to high mountain lakes, drops them off, and picks them up. The company has 175 passenger trips. In this example, the Regional Forester has established a short-stop rate of \$2.00 per client for this service.

175 passenger trips  $\times$  \$2.00 = \$350 fee for commercial use.

*Example 2:* A bus company markets fall foliage tours and sends out 50 bus trips per season with 35 paying passengers. They stop at a National Forest Visitor Center for an average of 40 minutes. The Regional Forester

has established a short-stop rate of \$2.00 per client.

35 people  $\times$  50 buses  $\times$  \$2.00 = \$3,500 fee for commercial use.

**37.21d—Determining Service Days.**

Count any full or fractional part of a day the client receives goods or services as a full service day.

1. When livery, rental, supply, or drop-off service to customers is provided, count only the day on which the outfitter or guide provides services or goods.

2. When the outfitter or guide provides drop-off and pick-up service on two separate days, count one service day for drop-off and one service day for pick-up.

3. When the outfitter or guide provides drop-off and pick-up service and the clients occupy an outfitter's assigned site and/or the outfitter or guide furnishes equipment and supplies, count one service day for drop-off, one service day for pick-up, and one service day for each day in between.

**37.21e—Adjustment for Use off National Forest System Lands.** Reduce the fee or estimated fee if the outfitter or guide's clients occupy National Forest System lands for 60 percent or less of the duration of the outfitted or guided trip according to the schedule in paragraph 1. When days are the unit of measure, at least one entire day must be off National Forest System lands to qualify for the adjustment. Other units of measure besides days may be used where equitable to calculate the percentage on and off National Forest System lands. For example, trail distance may be used at Nordic centers.

1. Apply the following schedule in calculating adjustments for use off National Forest System lands:

**SCHEDULE OF FEE REDUCTION FOR USE OFF NFS LANDS**

Percentage on NFS Lands	Fee reduction
Less than 5 percent .....	80 percent.
5 to 60 percent .....	40 percent.
Over 60 percent .....	None.

Request the holder to provide documentation of the duration of trips, such as the itineraries for outfitted or guided trips, to support a request for a fee reduction based on use off National Forest System lands.

2. When use off National Forest System lands occurs on lands administered by another Federal agency and the holder is authorized by that agency, coordinate the fee calculations so that overcharges do not occur.

**Example:** An outfitter conducts a 10-day trip with 8 clients; 5 days are spent on NFS lands and 5 on Bureau of Land Management (BLM) lands. Assume the fee for the trip would be \$100 if all 10 days were on either NFS or BLM lands. Coordinate with the BLM to charge the outfitter \$100, and split the fee equitably between the two agencies. Do not adjust for use off NFS lands which would result in a higher fee of \$120 (\$60 for the Forest Service and \$60 for the BLM).

**37.21f—Fee for Additional Use.** If the holder requests advance approval of additional use and if capacity is available, the authorized officer may approve the request and collect any additional estimated fees. When option A (sec. 37.21c, para. 1) is used to calculate the fee for commercial use, use the schedule of rates to calculate the additional fee. When option B (sec. 37.21c, para. 2) is used to calculate the fee for commercial use, estimate the additional adjusted gross revenue associated with the approved additional use, and include it in the calculation of the estimated and final fees (sec. 37.22 and 37.23). See sections 41.53g and 41.53h for additional direction.

**37.21g—Payment for Unapproved Non-Use.** Charge the holder for unapproved non-use when the holder does not properly request and receive a waiver for authorized use (see sec. 41.53h, para. 4). Add the amount calculated for unapproved non-use to the final fee total. This provision applies to calculation of the fee under option A or B.

**37.21h—Fee for Assigned Sites.**

1. The minimum annual fee for each assigned site is \$140.

2. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources Management adjusts the minimum annual fee (in para. 1) that applies to each assigned site every three years based on the Gross Domestic Product-Implicit Price Deflator Index (sec. 37.04). The assigned site fee is in addition to the minimum permit fee and other mandatory fees for commercial outfitting and guiding (sec. 37.21c).

3. The Regional Forester may establish higher fees if necessary to obtain fair market value.

4. Authorized officers may not prorate assigned site fees. Apply the full annual fee for each assigned site.

5. Authorized officers may not authorize refunds or credits for assigned site fees.

**37.21i—Fee for Grazing Livestock.**

Assess livestock grazing fees when the Forest Service authorizes the holder to graze animals used for transport on National Forest System lands. Do not assess a grazing fee when the animals

travel on National Forest System lands but the holder is not authorized to graze them. Charge grazing fees in accordance with direction in FSM 2238. Do not authorize refunds or credits for authorized but unused grazing use.

**37.21j—Fee for Nonprofit**

**Organizations.** The fee for nonprofit organizations is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2). Include the amount of donations and grants as gross revenue if the holder requires the customer or client to make a donation or grant as a condition of receiving the service. Do not consider donations or grants made voluntarily by customers to support the programs or activities of the holder.

**37.21k—Fee for Educational**

**Institutions.** The fee is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2).

1. **Credited Programs.** Exclude tuition and other payments made by students which are unrelated to the use of National Forest System lands authorized for outfitting and guiding purposes if the program provided under the permit is recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

2. **Non-Credited Programs.** Include all payments made by students for authorized outfitting and guiding services if the program provided under the permit is not recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

**37.22—Estimate Fee.**

1. Consult with the applicant or holder to estimate the anticipated number of service days and adjusted gross revenue. Use financial and related documents furnished by the applicant or holder, including records of the previous year's business activity, planned customer rate schedules, and itineraries. Retain documents used for fee calculations in the case folder.

2. Based on authorized use, calculate the total estimated annual fee, including the fee for commercial use, assigned site fee, and livestock grazing fee, on a fee determination statement (sec. 31.4) prior to the operating season.

3. Establish payment due dates prior to the start of the operating season for all payments.

4. Calculate the total estimated fee as a single amount, and collect the fee from the holder as follows:

a. Collect the total annual estimated fee in advance when it is less than \$500.

b. Collect half of the total annual estimated fee in advance and the remainder by mid-season when the total

is equal to or greater than \$500, but less than \$2,500.

c. Collect one-third of the total annual estimated fee in advance and the remainder in two equal payments by mid-season when the total is \$2,500 or more.

d. Deposit fees collected to the Land and Water Conservation Fund (FSM 6530).

#### 37.23—Fee for Commercial Use.

Record in the holder's operating plan the date established by the authorized officer and the holder by which the holder must submit financial records and records of use required to calculate the fee for commercial use.

In calculating the fee for commercial use, follow the procedure described in section 37.22, paragraph 1. Use financial records and records of use appropriate for the fee option selected (sec. 37.21c).

37.24—*Billing and Refunds.* Calculate the fee for commercial use and adjust for use off National Forest System lands, if applicable. Charge the holder for any unapproved non-use. Charge the holder for any unauthorized use.

1. When the final fee exceeds the paid estimated fee, bill the holder for the balance due.

2. When the final fee is less than the paid estimated fee and more than the minimum fee, refund the difference to the holder. If the holder is authorized to operate with a priority use assignment, at the holder's request credit the overpayment toward the next year's fee. If the holder is authorized to operate with a priority use assignment and the authorization is due to expire that year, refund the difference to the holder.

Follow billing and refund procedures found in FSH 6509.11k. Under the authority of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601–6a (c) and (i)(1)), deposit fees into the Land and Water Conservation Fund (FSM 6530).

### Chapter 40—Special Uses Administration

41.53—*Outfitters and Guides.* (For related authorities, policies responsibilities, and definitions, see FSM 2340 and FSM 2701–2705.

Direction on fees for outfitters and guides is in section 37 of this Handbook). Administer permits for outfitters and guides operating on National Forest System lands in accordance with the direction in sections 41.53a through 41.531. Outfitting and guiding services include but are not limited to packing, hunts, float trips, canoe or horse liveries, ski touring, helicopter skiing, jeep tours, boat tours, and fishing trips.

#### 41.53a—Objectives.

1. As identified in forest and resource management plans, provide for

commercial outfitting and guiding services that address concerns of public health and safety and that foster small businesses.

2. Encourage skilled and experienced individuals and entities to conduct outfitting and guiding activities in a manner that protects environmental resources and ensures that National Forest visitors receive high quality services.

#### 41.53b—Policy. (FSM 2340.3, 2703).

1. Authorize only those outfitting and guiding activities that are consistent with forest land and resource management plans.

2. Do not authorize any development or permanent improvements on the National Forest System for outfitting and guiding services, except for temporary structures or improvements or installations with negligible value, such as hitching posts, corrals, tent frames, and shelters.

3. Do not authorize any development, improvement, or installation in wilderness for the purpose of convenience to the holder or the holder's clients. The authorized officer may authorize temporary structures, improvements, or installations in wilderness only when necessary to meet minimum requirements for administration of the area for the purposes of the Wilderness Act (16 U.S.C. 1121 (note)).

4. Work with other Federal agencies, State and local authorities, outfitters, and outfitter and guide organizations to ensure that outfitting and guiding activities are consistent with applicable laws and regulations and to identify unauthorized outfitting and guiding activities. Follow procedures in FSM 5300 in investigating and taking action to prevent the occurrence of unauthorized outfitting and guiding activities.

5. Do not issue a separate permit for outfitting or guiding activities (such as cross-country skiing and horseback riding) to a holder of a permit or term permit for a commercial public service site (such as a pack station, lodge, or resort) when the outfitting or guiding operations are part of commercial public service site operations. Include the outfitting and guiding activities in the commercial service site's annual operating plan. Attach the annual operating plan to the commercial service site permit or term permit and consider it part of the permit or term permit. See section 37.03 for related direction on fees.

41.53c—*Definitions.* See section 37.05 for additional related definitions for "adjusted gross revenue," "adjustment for use off National Forest System

lands," "assigned site," "average client-day charge," "client days," "duration of the outfitted or guided trip," "non-use," "revenue additions," "revenue exclusions," "service day," "short-stop fee," and "unapproved non-use."

*Guiding.* Providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, interpretation, or other assistance to individuals or groups in their pursuit of a natural resource-based outdoor activity) for pecuniary remuneration or other gain. The term "guide" includes the holder's employees, agents, and instructors.

*Holder.* An applicant who has received a special use authorization to conduct outfitting or guiding activities.

*Incidental Use.* Annual use that is proposed to be 50 service days or less and is anticipated to have little or no significant impact on public health and safety, the environment, or other authorized uses and activities.

*Outfitting.* Providing through rental or livery any saddle or pack animal, vehicle or boat, tents or camp gear, or similar supplies or equipment, for pecuniary remuneration or other gain. The term "outfitter" includes the holder's employees, agents, and instructors.

*Priority Use.* Authorization of use for a period not to exceed five years. The amount of use is based on the holder's past use and performance and on forest land and resource management plan allocations. Authorizations providing for priority use are subject to renewal (sec. 41.53f).

*Renewal.* The issuance of a new special use authorization for the same use to the same holder upon the expiration of the holder's current authorization.

*Temporary Use.* An amount of use assigned the holder of a permit with a period of one season or less.

*Transportation Livestock.* Pack and saddle animals authorized in connection with an outfitter or guide permit and expressed in animal months and by class of animal (FSM 2234.11).

#### 41.53d—When Permits Are Required.

1. Individuals or organizations conducting outfitting or guiding activities on National Forest System lands must have a permit unless the authorized officer (FSM 2705) issues a Temporary Special-Use Permit (Form FS-2700-25) for incidental use (sec. 41.53e).

2. Outfitters based off National Forest System lands who rent and deliver equipment or livestock to the public on National Forest System lands must obtain a permit if they, their employees, or agents occupy or use National Forest

System lands or related waters in connection with their rental programs. For example, a permit is required if a boat livery operator provides service, including delivery or pickup of boats, at sites on National Forest System lands. No permit is necessary nor is a fee charged if an operator's customers transport rented equipment to and from the National Forest System lands or if an operation serves Forest Service employees, Forest Service contractors, or other Federal officials in the course of their official duties.

**41.53e—Incidental Use.** When the proposed annual use is 50 service days or less and is expected to have little or no impact on public health and safety, the environment, or other authorized uses and activities on National Forest System lands, the use may be authorized by a temporary permit, Form FS-2700-25, Temporary Special-Use Permit. The following activities and uses shall not be authorized by a temporary permit and shall be authorized only by Form FS-2700-4, Special Use Permit: white water travel, use of firearms, livestock, or aircraft, or all-terrain and off-highway vehicle travel.

**41.53f—Applications and Issuance of Permits.**

1. *Applications.* Provide outfitter and guide applicants with Form FS-2700-3, Special Use Application and Report, to specify the services to be performed, the number of service days, the lands to be occupied, modes of transportation, season of use, scheduling, and other matters relating to the applicant's operation. Application and authorization procedures established in 36 CFR 251.54 and FSM 2712 are fully applicable to outfitter and guide applications. See FSM 2712.2 for direction regarding prospectuses for new opportunities as described in paragraphs 2a through 2d of this section.

Conduct environmental analyses for outfitter and guide applications in accordance with procedures in FSH 1909.15, National Environmental Policy Act Handbook.

2. *Issuance.* Outfitting and guiding permits may be issued when one or more of the following occurs:

- a. An increased allocation, capacity, or public need is identified through the forest planning process;
- b. An existing permit is revoked;
- c. A reduction of service days by an existing holder or holders makes additional service days available;
- d. Competitive interest in an area, unit, or activity arises where no previously authorized use exists and where the proposed use is compatible

with objectives in forest land and resource management plans;

e. An application has been submitted to provide outfitter and guide services for an area or activity that has not previously been authorized and for which there is no competitive interest; or

f. An existing permit terminates.

For situations fitting the criteria in the preceding paragraphs 2a through 2d, solicit applicants by issuing a prospectus and contacting all parties who have expressed an interest. See FSM 2712.2 for additional direction on issuing a prospectus.

For an application fitting the criteria in the preceding paragraph 2e, document the determination of no competitive interest and then issue a permit to the qualified applicant. In issuing the permit, classify authorized use as temporary use until the holder has performed acceptably for at least two consecutive years.

When determining the most qualified applicants, consider past experience and knowledge of the area, financial capability, economic viability of existing holders, performance record, return to the Government, and other factors. The authorized officer may classify the use as priority if the selected applicant has a two-year record of acceptable performance as a holder of a permit for an outfitting and guiding operation similar to the proposed use. Process requests to expand a current holder's operations as an application for temporary use under section 41.53g. For a selected applicant with no previous record, classify the use as temporary.

Issue temporary permits and permits under the authority of the Land and Water Conservation Fund Act of September 3, 1964 (16 U.S.C. 460l-6a(c)), on Form FS-2700-25, Temporary Special-Use Permit, and on Form FS-2700-4, Special-Use Permit, respectively.

3. *Renewal without Competition.*

When a permit of a holder assigned priority use terminates (preceding para. 2f) the permit is subject to renewal without competition, provided the current holder has performed satisfactorily as demonstrated by acceptable annual performance inspections. Renewal shall be at the sole discretion of the authorized officer and shall be in accordance with 36 CFR 251.64. In renewing the permit, the authorized officer may modify the terms and conditions of the permit.

4. *Change of Ownership or Control of Business Entity.*

a. Upon notification by the holder that a change in ownership of or a controlling interest in the business

entity is being considered, the authorized officer shall inform the holder of the following:

(1) The permit is a privilege and is not transferable, either upon the sale of the business entity or the sale of a controlling interest in the business entity;

(2) Priority use is a privilege acquired by demonstrated acceptable performance and is not transferable;

(3) The permit is not real property, does not convey any interest in real property, and may not be used as collateral;

(4) Upon consummation of a change of ownership of or controlling interest in the business entity, the holder's permit terminates; and

(5) The party who acquires ownership of or a controlling interest in the business entity may be issued a permit if the authorized officer determines that the prospective holder meets Forest Service requirements, including financial and technical capability.

b. The authorized officer shall inform the holder to submit Form FS-2700-3a, Request for Termination of an Application for Special-Use Permit, for relinquishment of the permit.

c. The authorized officer shall inform the party who acquires ownership of or a controlling interest in the business entity to submit:

(1) An application for a permit on Form FS-2700-3, Special Use Application and Report; and

(2) Documentation of change of ownership, including properly executed documents showing a bona fide conveyance of the equipment or other assets previously used by the business, and for businesses based on private land, properly executed documents showing a bona fide conveyance of the real and personal property used by the business; or

(3) Documentation of a change of control, including properly executed documents showing a bona fide change of a controlling interest in the business entity.

d. If the change of ownership or control is not consummated and the original holder has relinquished the permit, the authorized officer may reissue the permit to the original holder. Prior to reissuance, the authorized officer must request the original holder to submit documentation establishing ownership or control of the business entity.

**41.53g—Assignment and Management of Temporary Use.**

1. *Eligibility.* All qualified applicants, including institutional and semi-public entities and holders of permits assigned priority use, are eligible to receive

temporary use assignments. Current holders assigned priority use and proposing to expand their use may also submit an application. Approved additional use may be assigned as temporary use.

2. *Assignment of Temporary Use.* If capacity is available, temporary use may be authorized if the need for the use exists and the use is consistent with the forest land and resource management plans (FSM 1920). If forest land and resource management plans do not address the use and/or capacity levels, assignments shall be at the discretion of the authorized officer subject to the requirements of the National Environmental Policy Act (FSH 1909.15). A temporary use assignment does not commit the Forest Service to authorizing that use for a similar number of service days in the future.

3. *Conversion to Priority Use.* A holder authorized for at least two years may be eligible for assignment of priority use if it is in the best interest of the Forest Service and the use is compatible with forest land and resource management plans. Assignment of priority use shall be based on documented acceptable performance by the holder for two consecutive years. The amount of use authorized may be based on the previous two-year average authorized use which was actually used. See section 41.53h, paragraph 2, for limitations on assignment of priority use.

#### 41.53h—Assignment and Management of Priority Use.

1. *Eligibility.* Previously authorized outfitters or guides who have made their services available to all members of the public and who have performed acceptably for the previous two consecutive years may be eligible for assignment of priority use.

Outfitters or guides who provide services only to private or restricted clientele are not eligible for assignment of priority use. See section 41.531 for additional direction on semi-public outfitting and guiding.

2. *Assignment of Priority Use.* Assignment of priority use shall be at the discretion of the authorized officer and shall be consistent with forest land and resource management plans. Base any assignment of priority use on the capacity of the area or standards and guidelines as established in forest land and resource management plans.

a. Use may be based on the average of the highest two years of actual use authorized use which was actually used during the previous five years.

b. Record the following on the permit:

(1) The amount of authorized use in terms of service days, season, months, weeks, people-at-one-time (PAOT), or similar time factors that may apply;

(2) The nature of the authorized service or activity (such as big game hunting, white water rafting, or fishing trips);

(3) The resource area (such as wilderness, river, or administrative unit) within which the service or activity is to be authorized; and

(4) The various modes of transportation to be used and other factors necessary to define the quality and scope of the activity.

#### 3. *Management of Priority Use.*

a. Establish use in terms of service days. Where recreation use levels are planned and managed in terms of launches and people per launch, camps and people per camp, or trips and people per trip, specify numbers of launches, campsites, and/or trips authorized for those service days.

b. When a permit is about to terminate and the holder has applied for renewal of the permit, the assignment of priority use for the new permit shall be at the discretion of the authorized officer and shall be consistent with forest land and resource management plans. Consider general market and other economic fluctuations, availability of state hunting licenses, and natural phenomena which may have adversely affected the ability of the holder to utilize the authorized use fully. The authorized officer may assign priority use consistent with the level of use utilized effectively under the former permit. If capacity is available and environmental analyses have been completed, authorize the amount of additional use that has been effectively used during the temporary use period. Base the amount of use recorded in the new permit as described in the preceding paragraph 2b(2). Reduce the authorized use if the holder has utilized less than 70 percent of the assigned amount in each of three consecutive years. Make no reductions in use assignment if non-use was approved by the authorized officer in accordance with the following paragraph 4.

4. *Approved Non-Use.* Prior to allowing the holder to operate, the authorized officer must review and approve a holder's annual proposed itinerary and requests for amendments to an operating plan. Any deviations from the assigned amount of use (referred to as "approved non-use") must be approved by the authorized officer. The authorized officer must document the basis for approving non-use and provide a copy to the holder.

The holder is not responsible for fee payment on approved non-use.

Non-use may be approved:

a. To protect natural resources, to address concerns of public health and safety, or to prevent conflicts with other authorized uses of National Forest System lands; or

b. When requested by a holder far enough in advance to allow the authorized officer to reassign the approved non-use to other holders, if appropriate.

41.53i—*Reduction of Use or Service Days.* See section 41.53h, paragraph 3b, for additional direction on calculating reductions.

1. Amendments to or revisions of forest land and resource management plans may establish a level of outfitting and guiding that could result in a reduction of a holder's use or service days. When considering renewal of the permit, the authorized officer has three options:

a. Request holder(s) to reduce use voluntarily;

b. Proportionally reduce use for holders; or

c. Reassign the amount of use through solicitation of applications by issuing a prospectus. Limit solicitation to current holders who are assigned priority use. Base assignment of use on services proposed and performance. When reassigning use or service days, consider the holder's performance, experience and knowledge of the area, financial capability, performance record, return to the Government, economic viability of other holders, and other appropriate factors.

#### 41.53j—*Permit Terms and Conditions.*

1. For new applicants, authorize use for periods not to exceed one year. For holders who are assigned priority use, a period of up to five years may be authorized. To the extent possible, issue permits with a length coinciding with time periods in forest land and resource management plans, as appropriate.

2. For applicants who have a limited record or no record of performance, a one-year permit subject to a conditional one-year renewal may be issued to provide a performance evaluation period. Renew the use and amend the permit term, unless the permit is revoked after the first year under section 41.53k, paragraph 1e(2).

3. Use the standard mandatory clauses for outfitter and guide service as defined in section 52. Include standard clauses from section 53 as appropriate.

4. Enter the total number of service days in each use category on the permit. Specify in the permit, operating plans, and annual itineraries all of the various modes of transportation authorized.

Show amounts and class of use. If applicable, enter the number of launches and people per launch, camps and people per camp, or trips and people per trip associated with the use.

5. Require an annual operating plan for the period of the permit and approval of an annual itinerary as a provision of the permit.

6. Indicate in the permit the amount of livestock used for transportation of people and equipment in connection with the activity, and specify if the livestock may graze. Do not issue a separate livestock use permit. Include a clause that requires the holder to record and report the amount of livestock grazing use that will actually occur with the outfitting or guiding use. Report livestock grazing use in the Annual Grazing Statistical Report (Report FS-2200-j). Do not report occupancy by animals that were not authorized to graze.

7. Specify and describe proposed use of specific assigned sites in operating plans and annual itineraries.

8. Allow holders to choose one of two alternative fee systems based on FSH 2709.11, section 37.21c (option A or B).

9. Require holders to provide accurate information through an actual use report within 30 days of the close of the operating season.

10. Require holders to maintain accounting records in accordance with generally accepted accounting principles or other comprehensive bases of accounting, to make those records available to the Forest Service for review, and to retain them for at least five years.

11. The holder may be required to have public liability insurance under FSM 2713.32. The holder's insurance must name the United States Government as an additional insured.

#### 41.54k—Permit Administration.

1. *Performance Review and Evaluation.* Monitor authorized operations to verify compliance with permit terms and conditions during the season of use. Assignment of priority use depends on documentation of satisfactory performance. More frequent reviews may be necessary to achieve compliance with the permit terms and conditions. Conduct a mid-season performance review and evaluation of the holder's operations. See FSM 2716.5 for additional direction.

a. *Performance Standards.* Forest Supervisors shall develop specific performance standards for inclusion in each permit and/or operating plan in consultation with District Rangers and individual holders, outfitter and guide licensing agencies, advisory councils, and other State and Federal land

management agencies. At a minimum, Forest Supervisors shall develop specific standards for the degree of compliance with terms of the permit and operating plans and itineraries, customer satisfaction, and protection of natural resources.

b. *Performance Ratings.* Evaluate the holder's overall performance using three performance ratings: Acceptable, Probationary, and Unacceptable. Base these ratings on the specific performance standards included in the holder's permit and/or operating plan.

c. *Mid-Season Review and Evaluation.* Conduct a mid-season review and evaluation of all holders. Notify the holder in writing of the results of this mid-season review and evaluation. Include:

(1) Any deficiencies or items of noncompliance; and

(2) A time frame for remedying deficiencies and correcting noncompliance.

d. *Second Review and Evaluation.* Conduct a second review and evaluation at the end of each operating season if the mid-season review and evaluation disclose deficiencies or items of noncompliance that would substantiate a rating of Unacceptable, or in the case of holders assigned priority use, a rating of Unacceptable or Probationary. Notify the holder in writing of the results of this second review and evaluation. Include:

(1) Any deficiencies or items of noncompliance identified at mid-season and not remedied or corrected; and

(2) Any deficiencies or items of noncompliance identified during the second review.

e. *Annual Ratings.* Rate every holder at the end of the operating season. Provide the holder with a copy of the rating, and include notification of the holder's right to appeal.

(1) *Holders Assigned Priority Use.*

(a) If a holder receives an annual rating of Probationary at the end of the permit year, reduce the term of the permit to no more than one additional year. If at the end of that period the holder receives an annual rating of Probationary or Unacceptable, the authorized officer shall not renew the permit and shall allow the permit to terminate. If at the end of the additional year the holder receives an annual rating of Acceptable, the holder may again be assigned priority use, and the permit is subject to renewal under section 41.53f, paragraph 2f.

(b) If a holder receives an annual rating of Unacceptable, the permit shall be revoked. In the case of a permit that is about to expire, it shall be allowed to terminate.

(c) Holders may appeal final ratings of Probationary and Unacceptable under applicable Federal regulations. Termination of a permit is not subject to appeal.

(2) *Holders Not Assigned Priority Use.*

(a) If a holder receives an annual rating of Acceptable at the end of the permit year, the authorized officer may renew the permit for no more than one additional year. If at the end of that period the holder receives an annual rating of Acceptable then the holder may be eligible for assignment of priority use. See section 41.53g for additional direction on conversion to priority use.

(b) If a holder receives an annual rating of Unacceptable, the permit shall be revoked or allowed to terminate.

(c) Holders may appeal an annual rating of Unacceptable under applicable Federal regulations. Termination of a permit is not subject to appeal.

2. *Assignment of Use.* Do not approve requests to assign all or part of the authorized use to others. If a holder is unable or unwilling to provide the services authorized by the permit, revoke the permit or reduce the authorized use. If appropriate, assign the amount of use to others in accordance with section 41.53h.

#### 41.53i—Permits for Institutional and Semi-Public Outfitting and Guiding.

Permits may be issued to institutional and semi-public outfitting and guiding applicants consistent with forest land and resource management plan direction for commercial use and group size. Schedules and services may fluctuate from season to season or year to year. Applicants may include a variety of membership or limited-constituency institutions, such as religious, conservation, youth, fraternal, service club, and social groups; educational institutions, such as schools, colleges and universities; and similar common interest organizations and associations. This category may also include applicants who operate commercially on a limited or intermittent basis in providing service to selected customer clientele rather than to the public at large. Outfitting and guiding activities conducted by institutional or semi-public groups may be authorized regardless of whether a fee or other consideration is collected from participants.

1. Issue permits when the use furthers the public interest and can be accommodated without causing unacceptable resource impacts or conflicts with other authorized users. The authorized activities must be consistent with applicable laws, regulations, and forest land and

resource management plans. See 36 CFR Part 251, Subpart B, for additional requirements on when a permit is required.

2. Ensure that applicants demonstrate financial and technical capability to meet the terms and conditions of the permit.

3. Issue a temporary permit, Form FS-2700-25, Temporary Special-Use Permit, if the permit period is for one year or less, such as for a single trip. See section 41.53e for direction on incidental use.

4. Do not assign priority use to holders of permits for institutional or semi-public outfitting and guiding.

5. Require an operating plan for permits issued for continuing intermittent use. An operating plan may also be necessary for single-trip permits to ensure public safety and resource protection, depending on the nature and scope of the trip.

6. Document performance evaluation as described in section 41.53k is optional.

7. Determine fees and fee waivers based on chapter 30 of this Handbook.

[FR Doc. 95-14361 Filed 6-9-95; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 060595E]

#### Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of scientific research permit no. 959 (P418A).

**SUMMARY:** Notice is hereby given that Mason T. Weinrich, Cetacean Research Unit, Gloucester, MA 01930, has been issued a permit to take humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), right whales (*Eubalaena borealis*), and sei whales (*Balaenoptera glacialis*) for the purpose of scientific research.

**DATES:** Written comments or requests for a public hearing must be received on or before July 12, 1995.

**ADDRESSES:** The permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, (508/281-9150); and

Director, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702-2432 (813/570-5312).

#### FOR FURTHER INFORMATION CONTACT:

Kellie Foster (301/713-1401).

**SUPPLEMENTARY INFORMATION:** On March 16, 1995, notice was published in the **Federal Register** (60 FR 14270) that a permit had been requested by the above-named individual. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the Regulations Governing the Taking, Importing, and Exporting of Endangered Species (50 CFR part 222).

The permit authorized the holder to take 400 humpback whales (*Megaptera novaeangliae*), 250 fin whales (*Balaenoptera physalus*), 50 right whales (*Eubalaena borealis*), and 50 sei whales (*Balaenoptera borealis*) per year for 5 years for the purpose of photo-identification and behavioral studies.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species that is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 6, 1995.

**Ann D. Terbush,**

Chief, Permits & Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95-14354 Filed 6-9-95; 8:45 am]

BILLING CODE 3510-22-F

## COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

### Notice of Meeting

This notice announces the third in a series of monthly meetings of the Commission on Protecting and Reducing Government Secrecy. Pursuant to Title IX of Pub. Law 103-236, dated April 30, 1994, the Commission consists of twelve members, four appointed by the President, two each by the Speaker of the House and the House Minority

Leader and two each by the Senate Majority and Minority Leaders. The Commission will remain in effect for two years from the date of its first meeting.

*Time and Date:* 2:00 P.M., June 20, 1995.

*Place:* S-116, Committee on Foreign Relations Hearing Room, The Capitol.

*Status:* Open.

*Agenda:* Overview of classification and declassification policies; speakers from the National Archives and Records Administration and the Congressional Research Service.

*Contact Person for More Information:* Eric Biel, Staff Director, Commission on Protecting and Reducing Government Secrecy, (202) 857-0002; FAX: (202) 457-0128.

**Eric Biel,**

Staff Director, Commission on Protecting and Reducing Government Secrecy.

[FR Doc. 95-14307 Filed 6-9-95; 8:45 am]

BILLING CODE 6820-ER-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 6, 1995.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** June 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6704. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used during the July 1, 1994 through December 31, 1994 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff