

commodities; (5) and are not likely to harm other organisms, such as bees, that are beneficial to agriculture. APHIS has also concluded that there is a reasonable certainty that new lepidopteran-resistant cotton varieties bred from these lines will not exhibit new plant pest properties, i.e., properties substantially different from any observed for the lepidopteran-resistant cotton lines already field tested or those observed for cotton in traditional breeding programs.

The effect of this determination is that insect-resistant cotton lines designated as 531, 757, and 1076 are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the permit and notification requirements pertaining to regulated articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject cotton lines or their progeny. However, the importation of the subject cotton lines or seeds capable of propagation is still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that the subject cotton lines and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 6th day of July 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–17080 Filed 7–12–95; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

RIN NO. 0596–AB49

Ski Area Permit Fee System

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for public comment.

SUMMARY: The Forest Service proposes to revise existing procedures for determining permit fees for the use of National Forest System lands by ski areas. Permit fees for most ski areas operating on National Forest System lands are determined under the graduated rate fee system (GRFS). As applied to large ski areas, GRFS is complex and costly to administer and has been the subject of several audits, administrative appeals, and lawsuits. Under the proposed policy, the agency would determine permit fees by site-specific appraisal of the use of National Forest System lands by ski areas. The proposed system would produce ski area permit fees that are based on fair market value as required by law; would be simpler and less costly to administer than GRFS; would eliminate the need for burdensome audits of ski area assets and revenues for those ski areas under the new system; and would make individual fee determinations in a nationally consistent manner.

DATES: Comments must be received in writing by September 11, 1995.

ADDRESSES: Send written comments to the Recreation, Heritage, and Wilderness Resources Staff (2340), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Lyle Laverty, Director, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1706.

SUPPLEMENTARY INFORMATION:

Background

Today there are 155 national forests comprising approximately 191 million acres in 42 States, the Virgin Islands, and Puerto Rico. These forests, together with 20 national grasslands, land utilization projects, purchase units, and other lands, constitute the National Forest System.

The National Forest Ski Area Permit Act of 1986 authorizes the Forest Service to issue permits for the use and occupancy of suitable lands within the National Forest System for nordic and alpine skiing operations and purposes (16 U.S.C. 497b). Ski area permits issued before the effective date of the National Forest Ski Area Permit Act are authorized by the Term Permit Act (16 U.S.C. 497) and the Forest Service's

Organic Act (16 U.S.C. 551). The Forest Service issues special use permits to ski areas for the use and occupancy of National Forest System lands in accordance with 36 CFR part 251, subpart B. Permit fees for ski areas operating on National Forest System lands must be based on fair market value (16 U.S.C. 497b(b)(8); 31 U.S.C. 9701; 36 CFR 251.57).¹ Direction on the graduated rate fee system (GRFS), the current permit fee system for most ski areas operating on National Forest System lands, can be found in Forest Service Manual Chapter 2710, Special Uses Management, Section 2715, Fees.

There are 120 alpine or alpine and nordic ski areas operating on National Forest System lands that pay annual permit fees determined under GRFS. Seventeen alpine or alpine and nordic ski areas operating on National Forest System lands pay annual flat permit fees based either on GRFS principles or a percentage of land value.

Graduated Rate Fee System (GRFS)

GRFS has been in effect for more than two decades and is complex and difficult to administer for ski areas.

GRFS uses a standardized formula to obtain a percentage of the ski area's gross revenues. Fees are calculated by applying scheduled rates to the ski area's sales revenue. Which rate applies is determined by the proportion of the ski area's sales revenue to the ski area's gross fixed assets (GFA): as sales revenue increases in relation to GFA, a higher rate is applied and the total fee increases; as sales revenue decreases in relation to GFA, lower rates apply and the total fee decreases.

GRFS divides the ski area's sales revenue into nine business categories (such as revenue from lifts, tows, and ski schools; rentals and services; and merchandise) and applies a different profitability indicator or break-even point to each category. The break-even point, expressed as the ratio of sales revenue to GFA, is the point at which a business begins to show a return on investment.

¹ In this context, fair market value is the annual amount in cash or on terms reasonably equivalent to cash for which in all probability the property(ies) would be permitted to be used, sold, or leased by a knowledgeable owner willing but not obligated to permit the use or sell or lease the property(ies) to a knowledgeable permit holder, buyer, or lessee who desires but is not obligated to hold the permit or buy or lease the property(ies). In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value (see Interagency Land Acquisition Conference, "Uniform Appraisal Standards for Federal Land Acquisitions," pp. 3–4 (1992)).

Each business category has two rates: a rate base and a balance-of-sales rate. The rate base is the percentage of sales revenue the average ski area pays as a fee when sales revenue is up to twice the break-even point. A higher balance-of-sales rate is applied to all sales revenue exceeding twice the break-even point.

To account for varying levels of productivity, fees are calculated in three steps: (1) The fee applied to sales revenue up to the break-even point is 50 percent of the rate base; (2) the fee applied to sales revenue between the break-even point and twice the break-even point is 150 percent of the rate base; and (3) the fee applied to sales revenue over twice the break-even point is the balance-of-sales rate.

If a ski area generates income from more than one business category, each category's break-even point, rate base, and balance-of-sales rate are multiplied by the percentage of the ski area's total sales revenue that results from that category. Results for all categories are totaled to obtain a composite break-even point, rate base, and balance-of-sales rate. Composites are applied to gross sales revenue to determine the fee. Fee determinations for each ski area are periodically subject to audit by the Forest Service through the examination of each ski area's financial records.

GRFS has proven to be very controversial, primarily because of questions concerning whether GRFS meets the legal requirement to charge a permit fee based on the fair market value of the use of National Forest System lands by ski areas. The controversy surrounding GRFS and assessment of the appropriate permit fee has generated appeals and litigation and several audits by the General Accounting Office and the Department of Agriculture's Office of Inspector General. These audits concluded that GRFS does not ensure that the Forest Service receives a permit fee based on fair market value from ski areas operating on National Forest System lands.

Due to the historical controversy of the ski area permit fee issue and the need for multidisciplinary expertise in this area, a Departmental Working Group was formed in July 1994. This group, which includes representatives from the Forest Service, the Office of Inspector General, the Office of General Counsel, and the Office of the Chief Financial Officer, has met regularly to expedite development of a new ski area permit fee system based on fair market value.

Methods for Determining Fair Market Value

On September 26, 1994, the Forest Service awarded a contract to identify methods pertinent to determining the fair market value of the use of National Forest System lands by ski areas and to recommend promising methods for testing. The contractor assembled a team of specialists in various fields, including real estate appraisal, land economics, and financial analysis, to work on the contract.

The contractor's December 19, 1994, report analyzes 14 valuation techniques: Six land valuation methods (sales comparison, ground rent capitalization, land residual, sales allocation, extraction, and subdivision development); seven business valuation methods (capitalization of earnings, excess earnings on assets, excess earnings on sales, discounted cash flow, price/earnings ratio, dividend payout, and net worth); and one additional valuation method (competitive bidding). The report discusses the theoretical basis of each method, its advantages and disadvantages, the required frequency of updating for each method, and its applicability to assessing the fair market value of the use of National Forest System lands by ski areas. The report recommends testing seven valuation techniques in order of preference: four land valuation methods (sales comparison, ground rent capitalization, residual (both land and business), and allocation (in conjunction with land residual)) and three business valuation methods to be used in conjunction with the land valuation methods (capitalized earnings, excess earnings on assets, and excess earnings on sales).

At the request of the Departmental Working Group, the Forest Service contracted for a technical written review of the contractor's report by two expert real estate appraisers. The two real estate appraisers were asked to assess (1) whether the contractor's analysis identifies all pertinent techniques for determining the fair market value of the use of National Forest System lands by ski areas and (2) whether the methods recommended by the contractor for testing are the most likely methods on which a new ski area fee system could be based.

In their reports and during a teleconference with the Departmental Working Group, the two appraisers advised that the contractor's report covered all land valuation methods and the common business valuation methods. With regard to the contractor's recommendations, the appraisers advised that there is no need to test any

of the business valuation methods because none of these methods gives an independent estimate of land value. Rather, these methods provide an estimate of the value of a business. Consequently, neither appraiser believed that any of the business valuation methods identified by the contractor would assist in estimating the fair market value of the use of National Forest System lands by ski areas.

To determine land value, one of the appraisers advised that the first and most important step is to develop a database of sale and rental transactions involving land used for skiing or for a use comparable to skiing. He stated that based on his own research and experience, data are available for comparable sales and rentals of land used for skiing.

The appraiser explained that once the database of comparable transactions is developed, the agency would be able to ascertain whether the fair market value of the use of National Forest System lands by ski areas can be determined. He advised that the direct comparison and ground rent capitalization methods would provide the most objective basis for making this determination.² From this information, the agency may then be able to decide whether subjective methods, such as land residual, should be considered.

Both appraisers underscored the weaknesses and subjectivity inherent in applying the land residual method, particularly in developing an estimate of business value³ that is independent from the value of the land.⁴ Neither

²The direct comparison method produces a value estimate for land by comparing the property being appraised to similar properties that have sold recently, applying appropriate units of comparison, and making adjustments to the sale prices of the comparables based on the elements of comparison (United States Department of Agriculture, Forest Service, "An Analysis of Methodologies for Determining the Fair Market Value of the Use of National Forest System Land by Ski Areas" [hereinafter Contractor's Report], p. 6 (1994)).

The ground rent capitalization method applies when property is leased for a ground rent or some other type of fee. Ground rent is the amount paid for the right to use and occupy land according to the terms of a ground lease. Market-derived capitalization rates are used to convert ground rent into the market value of the property. While a Forest Service ski area permit is not a lease and does not convey any interest in real property, the permit may be analogous to a lease for the purpose of assessing the applicability of the ground rent capitalization method to determine the fair market value of the use of National Forest System land by ski areas (Contractor's Report, pp. 10-11).

³Business value accrues from items of intangible personal property, such as marketing and managerial skill, an assembled work force, working capital, trade names, trademarks, franchises, patents, contracts, leases, and operating agreements (Contractor's Report, Glossary).

⁴The land residual method produces a value estimate for land as a component of an investment

appraiser knew of an accepted methodology for independently estimating business value, since it is always the final residual. Both appraisers agreed that the land residual method could be applied only as a back-up method to information gleaned from the direct comparison and ground rent capitalization methods.

Determination of Fair Market Value

The foregoing conclusions of the two appraisers were confirmed by the Departmental Working Group in informal discussions with the Assistant Chief Appraiser for the United States Department of Justice. In addition, the Departmental Working Group discussed the potential feasibility of performing site-specific appraisals to determine the fair market value of the use of National Forest System lands by ski areas. The Assistant Chief Appraiser informally advised that if site-specific appraisals were performed, they should be complete, self-contained appraisals prepared in accordance with the latest editions of the "Uniform Standards of Professional Appraisal Practice," published by the Appraisal Foundation, and the "Uniform Appraisal Standards for Federal Land Acquisitions," published by the Interagency Land Acquisition Conference. The purpose of the appraisal would be to determine the fair market value of the use of National Forest System lands by ski areas.

Specifically, he explained that the most defensible approach would be to research leases of land comparable to the subject property, i.e., land suitable for nordic and alpine skiing. The appraiser would analyze these leases to estimate the market rent for the comparable land, which would be the fair market value fee for the subject property.

If there were inadequate market data to use this approach, the appraiser would research and analyze sales of land comparable to the subject property to estimate the market value of this land and compare it with the subject property, making whatever adjustments were necessary. Using the market value of the land derived from comparable sources, the appraiser would determine the market value of the subject property. Using the lease transactions and any other information available (e.g., the rate of return on purchased land), the appraiser would estimate a market-derived rate of return: the percentage to apply to land value to determine a fair

market value fee for the use of the land. The appraiser would then apply the market-derived rate of return to the market value of the subject property to determine the fair market value fee for the use of the subject property.

To confirm the soundness of using site-specific appraisals, the Departmental Working Group conducted additional discussions with appraisers from several Federal agencies and one appraiser outside the Federal Government. These appraisers agreed that site-specific appraisals are the best tool for developing a new permit fee system.

Based on the contractor's report, the subsequent peer review of that report, discussions with appraisers, and internal research and discussions of the information gathered, the Forest Service decided that a permit fee system based on site-specific appraisals is the most technically and legally defensible way to meet the fair market value requirement in the National Forest Ski Area Permit Act.

The agency believes that this approach would produce ski area permit fees that are based on fair market value as required by law; simplify the fee system; eliminate the need for burdensome audits of ski area assets and revenues for those ski areas under the new system; and make fee determinations in a nationally consistent manner. The site-specific appraisals would produce value determinations derived from the market. Rather than using a complex formula like GRFS, the new system would establish permit fees by site-specific appraisal. The new system would replace annual Forest Service calculation and verification of permit fees with agency monitoring to ensure that ski areas pay the annual permit fee determined by site-specific appraisal. Ski areas under the new system would not have to undergo detailed agency audits of their financial records for purposes of verifying fee determinations. Fee determinations under the new system would be nationally consistent because they would be determined by site-specific appraisals performed under a contract awarded and administered by the Forest Service headquarters office in Washington, D.C.

Site-Specific Appraisals

At approximately the same time as this proposed policy is published in the **Federal Register**, the Forest Service will award a 1-year contract (with four consecutive options to renew) to perform site-specific appraisals of the 137 alpine and alpine and nordic ski

areas operating on National Forest System lands.⁵ Permit fees for each of these ski areas would be determined directly by site-specific appraisal. At this point, the agency anticipates that these appraisals would be updated every five years, based on the five-year cycle for performing site-specific appraisals. Disputes concerning fee determinations under the new policy would be subject to the agency's administrative appeal regulations at 36 CFR part 251, subpart C.

In the first year of the contract, site-specific appraisals will be performed of a sample of 27 ski areas in six different strata based on size of operation and type of fees paid. The universe for the stratified simple random sampling design consists of 120 ski areas identified from GRFS sales revenue data for fiscal year 1991 (the fiscal year for which the most recent information is available), compiled as of January 1995, and 17 ski areas that pay annual flat permit fees based on GRFS principles, or a percentage of land value.

Based on GRFS sales revenue for fiscal year 1991, the 120 ski areas were grouped into strata 1 to 5. The 17 ski areas that pay annual flat fees based on GRFS principles or a percentage of land value were placed in stratum 6.

Six ski areas with zero GRFS sales revenue were placed in stratum 1, and the largest ski area with GRFS sales revenue of over \$40 million was placed in stratum 5. The 113 remaining ski areas were placed in strata 2 through 4 using the Cumulative Square Root of the Frequencies methodology (W. Cochran, "Sampling Techniques," pp. 127-131 (3d ed. 1977)), with respect to the GRFS sales revenue for those ski areas. Fifty-one ski areas with \$0 to \$2 million in GRFS sales revenue were placed in stratum 2; 33 ski areas with over \$2 million and up to \$7.3 million in GRFS sales revenue were placed in stratum 3; and 29 ski areas with more than \$7.3 and up to \$40 million in GRFS sales revenue were placed in stratum 4.

Within each stratum, ski areas were randomly selected for order of appraisal. The ski areas in stratum 1 were selected with equal probability, without replacement. The ski areas in strata 2 through 4 were selected with respect to their GRFS sales revenue using probability proportional to size without replacement. The single ski area in stratum 5 was selected with probability

⁵ There are a small number of nordic ski areas that are authorized independently from alpine ski areas under a Forest Service commercial special use permit. These nordic ski areas are covered by the National Forest Ski Area Permit Act, but would not be subject to the new permit fee system unless site-specific appraisals are performed for these areas.

by capitalizing the net income allocated to land after the net income attributable to all other investment components has been deducted from the total net income (Contractor's Report, p. 11).

equal to one. The ski areas in stratum 6 were selected with equal probability without replacement.

The ski areas in each stratum were distributed as evenly as possible over a five-year period. Site-specific appraisals will be performed for all 137 ski areas, with samples of 27 ski areas selected for years 1 through 3 and samples of 28 ski areas selected for years 4 and 5.

Applicability of New Permit Fee System

This proposed policy would automatically apply only to those ski areas whose permits are issued under the National Forest Ski Area Permit Act. Unlike permits issued under other authorities, these permits contain a clause that allows the Forest Service to apply any new permit fee system to the ski areas authorized by those permits (36 CFR 251.57(h)). This clause currently states that GRFS—

May be replaced in its entirety by the Chief of the Forest Service if a new generally applicable fee system is imposed affecting all holders of authorizations under Public Law 99-522 [the National Forest Ski Area Permit Act]. Replacement shall become effective on the beginning of the holder's business year following establishment.

Ski Area Term Special Use Permit, Clause VI.A.2.

The new permit fee system would be applied to ski areas whose permits are issued under the National Forest Ski Area Permit Act and that are included in the first year of the appraisal contract only after the work performed for that year has been completed, reviewed, and accepted by the Forest Service. The new permit fee system would be applied to ski areas whose permits are issued under the National Forest Ski Area Permit Act and that are included in subsequent years of the appraisal contract only after the work performed for those years has been completed, reviewed, and accepted by the Forest Service. The agency intends to have the new permit fee system in effect for the 1996-97 ski season for those ski areas that are included in the first year of the appraisal contract and whose permits are issued under the National Forest Ski Area Permit Act.

Ski area whose permits are not issued under the National Forest Ski Area Permits Act would be placed under the new permit fee system when they receive a new permit or when they elect to have their existing permits amended. Any amendment to an existing permit would include the new ski area permit fee clause; preference would be given to issuing a new permit under the National Forest Ski Area Permit Act. New permits for ski areas would be issued under the National Forest Ski Area

Permit Act and placed under the new system.

The new fee system would not apply to any other permit holders who pay permit fees to the Forest Service under GRFS.

Public Meeting and Other Public Input Already Received

On February 1, 1995, the Forest Service held a public meeting to obtain input on whether the agency had identified pertinent methods for determining the fair market value of the use of National Forest System lands by ski areas. The Forest Service made a compilation of the methods identified by the contractor available to the public as a basis for providing input. Notice of this meeting was published in the **Federal Register** on January 19, 1995 (60 FR 3835, Jan. 19, 1995). The agency also accepted written comments until February 10, 1995. No methods other than those identified by the contractor were suggested by members of the public.

Nine comments were received, four at the meeting and five in writing. Two respondents commented that the Federal Government needs to get fair market value for the use of National Forest System lands. One of these respondents noted that if the public does not receive fair market value for the use of Federal land, the private activity that occurs on that land is being subsidized and the market for that type of land is distorted. Two other respondents stated that a new fee system should yield the same return as GRFS or a fair return for the use of National Forest System lands.

One respondent commented that the fair market value of National Forest System lands used by ski areas would be very low without timber or the improvements made by ski areas.

Another respondent stated that the National Forest System lands used have no inherent income-producing capability and that the ski industry's return to the Government on what would otherwise be unimproved land is very good, about \$180 to \$200 per acre per year, compared to \$1.80 per head month for Federal land used for grazing. This respondent further commented that operating a ski area is like snow farming without a Government subsidy: the Government makes money even if the ski areas operating on National Forest System lands do not.

Another respondent commented that there is a necessary partnership between the public and private sectors, given that the Government is a risk avoider and that the private sector is a risk taker. This respondent commented that the

Government does not have experience at taking risks and therefore cannot assess risks as well as the private sector. This respondent noted that the ski industry adds value to the National Forest System lands used for skiing, resulting in revenue for the Government. This respondent stated that without this private sector investment, the Government would not get any revenues. This respondent also noted that there are three cardinal rules of real estate: Location, location, and location.

Four respondents commented on GRFS. One noted that some of the revenue from privately owned facilities at the base of the mountain is counted in the GRFS calculation that would not be included if someone besides the permit holder owned those facilities, and that GRFS seems arbitrary as applied to revenue from those facilities.

Two respondents noted that while GRFS has outlived itself, many studies on a new fee system have been done, more studies are unnecessary, and the studies and data available should be used to make a decision on a new system.

One respondent commented that his ski area had flourished under GRFS because of GRFS's ability to adjust the marginal fee rates in response to poor versus good snow years; GRFS's ability to reward capital investment by assigning a lower average fee rate to ski areas with a higher GFA; and his ski area's being totally on National Forest System lands and not having to deal with the complexities of accounting for revenues generated from both National Forest System and private land. This respondent suggested that a new permit fee system should adjust for poor versus good snow years; provide incentives for capital investment; ease the administrative burden on small ski areas; and provide methods for determining fees when part of a ski area's revenues are derived from other than the use of National Forest System lands.

Another respondent criticized the ski area permit fee legislation proposed in 1992, because it did not address the fair market value of the use of National Forest System lands (this respondent stated that the proposed bill was based on a percentage of revenue); because it did not provide incentives for capital improvements that give ski areas a break in fees during their initial start-up periods; and because it did not adjust permit fees for poor snow years. This respondent commented that GRFS is better than the legislation proposed in 1992.

Five respondents commented that the new fee system should be simple. One

respondent commented that there are a lot of expenses associated with a ski area, such as fixed assets and snowmaking, and that it is difficult to determine the value of the lands used by a ski area.

Three respondents noted that a new permit fee system should be consistently applied to ski areas operating on National Forest System lands. One respondent noted that GRFS is subject to too many interpretations. Another commented that a new system should ensure that ski areas of different sizes and characteristics pay equitable permit fees. Four others stated that the new system should balance permit fees between small and large ski areas.

One respondent commented that agency regulations allow for too much flexibility and that industry wants legislation for stability. This respondent noted that the stability of the fee determination should correspond to the stability of the 40-year ski area permit, but that industry would not object to scheduled updating of a legislated fee formula.

One respondent stated that while use of National Forest System lands by private, profit-generating activities may be both beneficial and desirable, commercial permit holders have a responsibility to be conscientious stewards of the land.

Federal Advisory Committee

A federal advisory committee was established on February 17, 1995, to advise the Secretary of Agriculture on development of the new ski area permit fee system (60 FR 9321, Feb. 17, 1995). A notice requesting nominations to the advisory committee was published in the **Federal Register** on February 24, 1995 (60 FR 10346, Feb. 24, 1995). The advisory committee will review and report on the proposed policy during the comment period. The advisory committee's comments will be addressed in the final policy.

Proposed Manual and Handbook Revision

Detailed direction on GRFS is currently set forth in Forest Service Manual (FSM) Chapter 2710, Special Uses Management, Section 2715, Fees. Any outdated Manual direction will be revised or removed when the final policy on the new ski area permit fee system is issued in Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, Chapter 30, Fee Determination, Section 38, Ski Area Permit Fees.

The policy in FSM Chapter 2720, Special Uses Administration, Section 2721.6, Winter Recreation, would be

clarified and revised to replace GRFS with the revised system basing ski area permit fees on site-specific appraisals for those ski areas whose permits are issued under the National Forest Ski Area Permit Act. The form number cited in this section for ski area permits issued under the National Forest Ski Area Permit Act also would be changed from Form FS-2700-24 to Form FS-2700-5b, Ski Area Term Special Use Permit. The new permit fee clause would appear in FSH 2709.11, Special Uses Handbook, Chapter 50, Terms and Conditions, Section 53.1, Fees and Payments, Clause A-19, and in the revised Form FS-2700-5b. The proposed policy from FSM Chapter 2720 and FSH 2709.11, Chapters 30 and 50, appears at the end of this notice.

Summary

The Forest Service believes that establishing ski area permit fees by site-specific appraisal would produce ski area permit fees that are based on fair market value as required by law; would be simpler and less costly to administer than GRFS; would eliminate the need for burdensome audits of ski area assets and revenues for those ski areas under the new system; and would make individual fee determinations in a nationally consistent manner.

Regulatory Impact

This proposed policy was reviewed under Executive Order 12866 on Regulatory Planning and Review. The agency has determined that the proposed policy is a significant action subject to Office of Management and Budget (OMB) review because of the strong public interest expressed in a new permit fee system for ski areas operating on National Forest System lands.

Moreover, this proposed policy was considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Permit fees for ski areas operating on National Forest System lands must without exception be based on fair market value (16 U.S.C. 497b(b)(8); 31 U.S.C. 9701; 36 CFR 251.57). In accordance with the Regulatory Flexibility Act, the agency has conducted an initial Regulatory Flexibility Analysis regarding the impact of this proposed policy on small entities. The agency does not currently have all the data necessary for a comprehensive analysis of the effects of this proposed policy on small entities. Therefore, the agency is inviting comments concerning potential impacts. In particular, the agency is interested in determining the number and kind of small entities that may incur benefits or

costs from implementation of this proposed policy.

No Takings Implications

This proposed policy was 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 would not apply to this proposed policy because it consists of administrative changes governing authorization of the use and occupancy of National Forest System lands. Forest Service ski area permits do not grant any title or interest in lands or resources held by the United States.

Civil Justice Reform Act

This proposed policy was reviewed under Executive Order 12778, Civil Justice Reform. If this proposed policy is adopted, (1) all state and local laws and regulations that conflict with this proposed policy or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed policy; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Controlling Paperwork Burdens on the Public

The information collection requirements that would be imposed by this proposed policy and the new clause for the ski area permit form have been approved for use by OMB through June 30, 1996, and assigned control number 0596-0082. The agency estimates that the public reporting burden for the collection of information in the proposed policy and the new clause for the ski area permit form would be 12 hours per response.

Categorical Exclusion

This proposed policy would consist 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." The agency's preliminary assessment is that this proposed policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or

an EIS. A final determination will be made upon adoption of the final policy.

Dated: April 25, 1995.

Jack Ward Thomas,
Chief.

Proposed Manual and Handbook Revision

The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual (FSM) and Handbook (FSH) 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 ski areas.

Forest Service Manual

Chapter 2720—Special Uses Administration

Section 2721.6—Winter Recreation

2721.61b—Permit Fees. See FSH 2709.11, sections 38.1 and 38.2, for direction on permit fee determinations for ski areas.

2721.61e—Ski Area Permit.

1. Use the National Forest Ski Area Permit Act (16 U.S.C. 497b) and Form FS-2700-5b, Ski Area Term Special Use Permit (FSH 2709.11, sec. 38.1 and 38.2, and 53.1, Clause A-19) to issue new permits for nordic and alpine ski areas.

4. Use the Land and Water Conservation Fund Act (16 U.S.C. 4601-6a(c)) and Form FS-2700-4, Special-Use Permit (FSH 2709.11, sec. 41.) to issue permits for nordic skiing conducted by an outfitter or guide, except when this activity is associated with a ski area subject to the National Forest Ski Area Permit Act.

6. Initiate conversion of existing ski areas to the new permit by writing to current holders, providing them with a blank copy of Form FS-2700-5b, Ski Area Term Special Use Permit, and inviting them to meet individually with the authorized officer or his or her representative to discuss the terms and conditions. The principal areas to be agreed upon are the permit boundary and length of term.

[Following are revised subparagraphs listing examples of conditions which could justify shorter tenure as provided by paragraph 7:]

7d. Capital investment in the ski area is less than \$1 million.

7e. Ownership of the improvements is in transition, for example, in trust, in receivership, or listed for sale.

7f. Public service required in the existing permit is not being provided.

Forest Service Handbook 2709.11—Special Uses Handbook

Chapter 30—Fee Determination

38—Ski Area Permit Fees. This section establishes Forest Service policy for determining permit fees for the use of National Forest System lands by ski areas.

38.01—Authority. (FSM 2701.1; sec. 30.1). The following authorities require that permit fees for ski areas operating on National Forest System lands be based on fair market value: National Forest Ski Area Permit Act (16 U.S.C. 497b), Independent Offices Appropriations Act (31 U.S.C. 9701), and Forest Service special use regulations on permit fees (36 CFR 251.57).

38.02—Objective. Collect permit fees based on the fair market value of the use of National Forest System lands by ski areas.

38.03—Policy. Determine permit fees for ski areas according to one of the following methods as directed by section 38.1:

1. Site-specific appraisal;
2. Graduated rate fee system (GRFS) (FSM 2715); or
3. Flat rate (FSM 2715.14).

38.04—Responsibility.

38.04a—Washington Office, Director, Recreation, Heritage, and Wilderness Resources Staff. The Washington Office Director of Recreation, Heritage, and Wilderness Resources has the responsibility to:

1. Award and administer contracts for performing and updating site-specific appraisals for the use of National Forest System lands by ski areas, in coordination with the Lands Staff and the Procurement and Property Staff and with review by the Office of the General Counsel.

2. Obtain and address recommendations in reports from the Washington Office Director of Fiscal and Accounting Services on review of the objectivity and integrity of the process used to establish or update permit fees based on fair market value by site-specific appraisal.

3. Establish and amend permit fees that are determined by site-specific appraisal of the use of National Forest Service lands by ski areas.

4. Distribute, with supporting documentation, permit fee determinations that are assessed by site-specific appraisal to the Forest Supervisors responsible for administering those fee determinations.

38.04b—Washington Office, Director, Lands Staff. The Washington Office Director of Lands has the responsibility to:

1. Provide technical assistance to the Washington Office Director of Recreation, Heritage, and Wilderness Resources to award and administer contracts for performing and updating site-specific appraisals.

2. Provide a team of qualified appraisers to:

- a. Review site-specific appraisals; and
- b. Prepare a review appraisal report for site-specific appraisals.

38.04c—Washington Office, Director, Fiscal and Accounting Services Staff. The Washington Office Director of Fiscal and Accounting Services has the responsibility to:

1. Monitor and report to the Washington Office Director of Recreation, Heritage, and Wilderness Resources on the objectivity and integrity of the process used to establish or update permit fees for ski areas based on fair market value by site-specific appraisal. The process includes but is not limited to contracting for the services of a qualified appraiser, work performed by the contractor, review and acceptance of the contractor's work, and actions to establish permit fees for ski areas from the work performed under contract.

2. Review adherence to Forest Service policy for ski area permit fees determined by site-specific appraisal to ensure that the amount paid by the ski areas corresponds to the amount determined by site-specific appraisal; report any discrepancies to the Director of Recreation, Heritage, and Wilderness Resources.

3. Review adherence to Forest Service policy on ski area permit fees determined by site-specific appraisal to ensure that site-specific appraisals are updated in accordance with Forest Service policy and permit requirements; report any discrepancies to the Director of Recreation, Heritage, and Wilderness Resources.

4. Establish guidelines for auditing ski area permit fees determined under GRFS and review adherence to Forest Service policy on GRFS and permit requirements; report any discrepancies to the Director of Recreation, Heritage, and Wilderness Resources.

5. Establish guidelines for auditing ski area permit fees determined by a flat rate and review adherence to Forest Service policy on flat rate fees and permit requirements; report any discrepancies to the Director of Recreation, Heritage, and Wilderness Resources.

38.04d—Authorized Officer. The authorized officer has the responsibility to:

1. Amend ski area permits issued under the National Forest Ski Area

Permit Act in conformance with direction in sections 38.11b and 38.12c.

2. Amend ski area permits issued under authorities other than the National Forest Ski Area Permit Act in conformance with direction in sections 38.11b and 38.12c when:

a. The holder agrees to the amendment; or

b. The holder elects to have the permit amended for any other purpose.

3. Issue new ski area permits under the National Forest Ski Area Permit Act in conformance with direction in section 38.2.

4. Establish ski area permit fees that are determined under GRFS (sec. 38.12a).

5. Establish ski area permit fees that are determined by a flat rate (sec. 38.12b).

6. Bill holders for their use and occupancy of National Forest System lands.

7. Ensure that holders are informed of their responsibility to pay their permit fees promptly and in full.

38.1—Permit Fees for Existing Ski Area Permits.

38.11—Permits Issued Under National Forest Ski Area Permit Act. Determine permit fees by site-specific appraisal for all ski areas whose permits are issued under the National Forest Ski Area Permit Act. These permit fees apply to all activities associated with the use and occupancy authorized by the corresponding ski area permits, including nordic and alpine skiing, outfitting and guiding, and recreation events. Appraisals will be reviewed and periodically updated.

38.11a—Effective Date of Permit Fee System Based on Site-Specific Appraisal. If applicable, the determination of permit fees by site-specific appraisal becomes effective on the first day of the holder's business year immediately following implementation of this system and appraisal of the holder's use of National Forest System land.

38.11b—Amendment of Existing Ski Area Permits. Amend ski area term special use permits issued under the National Forest Ski Area Permit Act by replacing the former Clause VI in the permits with the current Clause VI as it appears in Form FS-2700-5b and section 53.1, Clause A-19, of this Handbook. When amending ski area term special use permits that were not issued under the National Forest Ski Area Permit Act (sec. 38.12c), replace the current permit fee clause in the permits with Clause VI as it appears in Form FS-2700-5b and section 53.1, Clause A-19, of this Handbook.

38.12—Ski Area Permits Not Issued Under National Forest Ski Area Permit Act.

38.12a—Graduated Rate Fee System. Determine permit fees under GRFS (FSM 2715.11) for any ski areas whose permits are not issued under the National Forest Ski Area Permit Act and whose annual permit fees were determined under GRFS prior to [date when the system based on site-specific appraisal was implemented], unless the holders elect to have their permits amended (sec. 38.12c).

38.12b—Flat Rate. Determine permit fees by a flat rate (FSM 2715.14) for any ski areas whose permits are not issued under the National Forest Ski Area Permit Act and whose annual permit fees were determined by a flat rate prior to [date when the system based on site-specific appraisal was implemented], unless the holders elect to have their permits amended (sec. 38.12c).

38.12c—Site-Specific Appraisal. Determine permit fees by site-specific appraisal for ski areas whose permits are not issued under the National Forest Ski Area Permit Act when:

1. Holders agree to have permit fees determined in this manner; or

2. Holders elect to have their permits amended for any other purpose. The authorized officer shall give preference to issuing a new permit under the National Forest Ski Area Permit Act.

These permit fees apply to all activities associated with the use and occupancy authorized by the corresponding ski area permits, including nordic and alpine skiing, outfitting and guiding, and recreation events. Appraisals will be reviewed and periodically updated.

38.2—Permit Fees for New Ski Area Permits.

1. Issue all new ski area permits under the National Forest Ski Area Permit Act.

2. Use Form FS-2700-5b, Ski Area Term Special Use Permit, which requires permit fees to be determined by site-specific appraisal. Appraisals will be reviewed and periodically updated.

38.3—Billing. Require holders to pay their annual permit fees on the first day of their business year for that year's use and occupancy of National Forest System lands according to the following:

1. If the annual fee is \$10,000 or less per year, payment is due in full on the first day of the holder's business year. Bill holders 30 days in advance of the first day of their business year.

2. If the annual fee exceeds \$10,000, holders may pay quarterly, with 25 percent of the annual fee due on the first day of each quarter of the holder's

business year. Bill holders 30 days in advance of the first day of each quarter.

Chapter 50—Terms and Conditions

53.1—A—Fees and Payments.

19. *Clause for Ski Area Permit Fees Based on Site-Specific Appraisal.* See sections 38.11b and 38.2 of this Handbook for direction on use of this clause.

VI. PERMIT FEES

A. Determination of Permit Fees by Site-Specific Appraisal. The holder shall pay fair market value, as determined by site-specific appraisal performed by a Forest Service contractor, agent, employee, or other representative, for the use and occupancy of National Forest System lands authorized by this permit. These appraisals shall be performed in accordance with the latest editions of the "Uniform Standards of Professional Appraisal Practice," published by the Appraisal Foundation, and the "Uniform Appraisal Standards for Federal Land Acquisitions," published by the Interagency Land Acquisition Conference. In case of a conflict between these two standards, the latter shall take precedence.

B. Access to Records.

1. For the purpose of administering this permit, including performing or updating a site-specific appraisal of the use and occupancy authorized by this permit to determine the permit fee, the holder shall make all of the accounting books and supporting records for the business activities conducted under this permit (including any documentation relating to the past or future sale of the improvements authorized by this permit), as well as those of sublessees and franchises operating under the authority of this permit, available for analysis by contractors, agents, employees, or other representatives of the Forest Service or Federal agencies authorized to review Forest Service activities.

2. Review of accounting books and supporting records shall be performed on dates convenient to the holder and reviewers.

3. Financial information obtained under this clause shall be treated as confidential to the extent authorized by law.

4. The holder shall retain and keep available for review accounting books and supporting records for the business activities conducted under this permit for 5 year after they are created, unless this requirement is waived by the authorized officer in writing.

c. Corrections in Fee Determinations. Any errors in fee determinations shall

be corrected retroactively, and a bill showing the correct permit fee shall be sent to the holder for the period covered by the original bill. Errors in fee determinations include but are not limited to those based on misrepresentation of amounts, arithmetic or typographical mistakes, or variation from generally accepted accounting principles, the "Uniform Standards of Professional Appraisal Practice," or the "Uniform Appraisal Standards for Federal Land Acquisitions." Any changes in fee determinations resulting from amendment or replacement of the ski area permit fee system shall be made prospectively.

D. Updating of Appraisals. As needed, the Forest Service may update the site-specific appraisals used to establish the permit fee under Clause VI. If a new permit fee is determined by an updated site-specific appraisal, the new permit fee shall become effective on the first day of the holder's business year immediately following the date of the Forest Service review appraisal report on the updated appraisal report.

E. Permit Fee Payments. Permit fee payments shall be due within 30 days of receipt of a bill and shall be submitted to the Collection Officer, United States Department of Agriculture, Forest Service, at the address provided by the authorized officer. Checks or money orders shall be made payable to the United States Department of Agriculture, Forest Service.

F. Interest and Penalties.

1. Under 31 U.S.C. 3717 and 7 CFR Part 3, Subpart B, or subsequent changes to those authorities, interest shall be charged on any permit fee payment that is not received on the date it is due.

2. Interest shall be assessed using the higher of (1) The most current rate prescribed by the United States Department of the Treasury Financial Manual (TFM-6-8025.40) or (2) the prompt payment rate prescribed by the United States Department of the Treasury under Section 12 of the Contract Disputes Act (41 U.S.C. 611). Interest shall accrue from the date the permit fee payment is due.

3. Administrative charges may be assessed to cover processing and handling of delinquent permit fee payments.

4. A penalty of 6 percent per year shall be assessed on any permit fee payment that is more than 90 days overdue and shall accrue from the date the fee payment is due. This penalty is in addition to any interest and other charges assessed under Clauses VI.F.1-3.

5. Delinquent permit fee payments, interest, penalties, and any other charges assessed under Clause VI.F shall be subject to all the rights and remedies afforded the United States under federal law and implementing regulations (31 U.S.C. 3711 et seq.).

G. Consequences of Nonpayment. The holder's failure to make timely payment of any permit fees, interest, penalties, or other charges assessed under Clause VI.F shall be grounds for revocation of this permit. This permit terminates when any payments owed under Clause VI are more than 90 days overdue.

H. Accounting Records. The holder shall follow generally accepted accounting principles or other comprehensive bases of accounting acceptable to the Forest Service in recording financial transactions and in reporting results to the authorized officer. When requested by the authorized officer, the holder at its expense shall have its annual accounting reports audited or prepared by a licensed independent accountant acceptable to the Forest Service. When requested by the authorized officer, the holder at its expense shall prepare and maintain any special records and accounts that may be specified by the authorized officer. The holder shall require sublessees and franchises to comply with these same requirements.

I. Financial Statements. Within 3 months of the last day of the holder's business year, the holder shall provide financial statements representing the holder's financial condition as of the last day of the holder's business year and the results of the holder's operation for that year. When requested by the authorized officer, the holder shall require sublessees to comply with this requirement.

J. Replacement of Permit Fee System. The system requiring ski area permit fees to be determined by site-specific appraisal may be replaced in its entirety by the Chief of the Forest Service with a new permit fee system if it applies to all holders of permits issued under the National Forest Ski Area Permit Act. The new permit fee system shall become effective on the first day of the holder's business year immediately following implementation of the new system.

[FR Doc. 95-17131 Filed 7-12-95; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Wednesday, August 2, 1995, at Reichhold Chemicals, Inc., Conference Room 15, 3rd Floor, 2400 Ellis Road, Research Triangle Park, North Carolina 27703. The purpose of the meeting is: (1) to discuss the status of the Commission and its Advisory Committees; (2) to hear reports on civil rights progress and/or problems in the State; (3) hear a report on the Chairpersons' meeting held in Washington; and, (4) to hold a brief orientation session for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Asa Spaulding, Jr., at 919-990-7689 or Bobby D. Doctor, Director of the Southern Regional Office, 404-730-2476 (TDD 404-730-2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 6, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.
[FR Doc. 95-17133 Filed 7-12-95; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 752]

Designation of New Grantee For Foreign-Trade Zone 103, Grand Forks, North Dakota; Resolution and Order

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following Order:

After consideration of the request with supporting documents (FTZ Docket 25-94, filed 6/10/94) of the Grand Forks Development Foundation, grantee of Foreign-