

## **5. Proposed Directive Text**

### **FOREST SERVICE HANDBOOK**

#### **2709.11 – SPECIAL USES HANDBOOK**

#### **Chapter 40 – Special Uses Administration**

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#### **41.53 – Outfitting and Guiding**

For related authorities, policies, responsibilities, and definitions, see 36 CFR 251.50 and FSM 2320, 2340, and 2701 through 2705. Direction on fees for outfitting and guiding is in section 37 of this handbook.

Administer permits for outfitting and guiding conducted on National Forest System lands in accordance with sections 41.53a through 41.53o. Outfitting and guiding include but are not limited to packing, hunts, education, float trips, canoe or horse liveries, vehicle shuttle services, ski touring, helicopter skiing, jeep tours, boat tours, and fishing trips and may be conducted by, among others, educational, rehabilitation, and interpretive ventures and outdoor institutional organizations, including both for-profit and non-profit entities.

#### **41.53a – Authorities**

1. Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)), which authorizes issuance of special recreation permits.

2. Term Permit Act of 1915 (16 U.S.C. 497), which authorizes term permits for structures or facilities on NFS land.

#### **41.53b – Objectives**

1. Provide for outfitting and guiding services that address concerns of public health and safety and that foster successful small businesses consistent with the applicable land management plan.

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.

**41.53c – Policy**

For related direction, see FSM 2340.3 and 2703.

1. Authorize only those outfitting and guiding activities that are consistent with the applicable land management plan and that meet the screening criteria in 36 CFR 251.54(e) and FSH 2709.11, chapter 10.

2. Do not authorize any development or permanent improvements in non-wilderness in the National Forest System for outfitting and guiding services, except when there is a demonstrated public need and the structures, improvements, or installations have negligible value and minimal impact on national forest resources, as with hitching posts, corrals, tent frames, permitted routes, and shelters.

3. Do not authorize any development, improvements, installations, or caches in wilderness areas, except as necessary to meet minimum requirements for administration of the area for the purposes of the Wilderness Act (16 U.S.C. 1133c).

4. Work with other Federal agencies, State and local authorities, outfitters and guides, and outfitting and guiding 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 preventing 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 or horseback riding) to a holder of a permit or term permit for a commercial public service site (such as a pack station or resort) when the outfitting or guiding activities are part of commercial public service site operations and the commercial public service site would not exist without the outfitting and guiding activities. Include the outfitting and guiding activities in a supplement to the term special use permit.

6. Do not authorize use when an applicant owns no tangible assets, lacks the prerequisites to conduct outfitting and guiding (such as a state license, liability insurance, and equipment), and would serve only as an intermediary for others providing those services on National Forests System lands.

#### **41.53d – Definitions**

See FSH 2709.11, section 37.05, for definitions relating to land use fees for outfitting and guiding.

Allocation of Use. An amount of use allocated to a holder that is measured in service days or quotas and that is enumerated in a programmatic or project decision that is consistent with the applicable land management plan.

Assigned Site. A location that is authorized for use and occupancy by the authorized officer and for which a fee is paid by the holder.

Commercial Use or Activity. Any use or activity on National Forest System lands (a) where an entry or participation fee is charged or (b) where the primary purpose is the sale of a good or service and, in either case, regardless of whether the use or activity is intended to produce a profit (36 CFR 251.51).

Controlling Interest. In the case of a corporation, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

Guiding. Providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups on National Forest System lands. The term "guide" includes the holder's employees and agents.

Holder. An individual or entity that holds a special use permit authorizing outfitting or guiding activities on National Forest System lands.

Livestock Use. See FSM 2234.11.

Needs Assessment. An assessment of public or agency need for authorized outfitting or guiding activities.

Outfitting. Renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment. The term "outfitter" includes the holder's employees and agents.

Priority Use. Authorization of use for up to 10 years, based on the holder's past use and performance and applicable programmatic or project decision to allocate use. Except as provided in 36 CFR Part 251, Subpart E, authorizations providing for priority use are subject to renewal (FSH 2709.11, sec. 41.53k).

Quota. An allotment of use measured as the number of stock per trip, people at one time, trips per hour or per day, the number of launches per day, or other unit of measure other than a service day that is consistent with the applicable land management plan guidance and established in a programmatic or project decision.

Renewal. The issuance of a new priority use permit for the same use to the same holder upon expiration of the holder's current priority use permit.

Resource Capacity. Amount of overall use an area can sustain without detrimental social or physical resource impacts.

Service Day. An allocation of use derived from a day or any part of a day on National Forest System lands for which an outfitter or guide provides services to a client, multiplied by the number of clients on the trip.

Temporary Use. Authorization of a minor, non-recurring outfitting or guiding activity for 1 season or less.

**41.53e – Needs Assessment, Resource Capacity Analysis, and Allocation of Use**

Allocate outfitting and guiding use in a project decision pursuant to 36 CFR part 215 or in a programmatic decision pursuant to a wilderness plan, a wild and scenic river plan, or plan for another type of congressionally designated area. Follow the direction in section 41.53e, paragraphs 1 and 2, as applicable. These procedures also may be used to allocate outfitting and guiding use when competitive interest exists for the same resources or type of use or when considering significant changes to current use or demand.

Allocate use in service days or quotas for both temporary and priority use (sec. 41.53j and 41.53k).

1. Conduct a needs assessment to determine the public or agency need for authorized outfitting and guiding activities. A needs assessment may be conducted as part of public scoping during a NEPA analysis. Consider accessibility, size of the area, difficulty of the terrain, current levels of outfitting and guiding, and demographics of visitors to the area.

- a. When conducting a needs assessment for outfitting and guiding activities in a wilderness area, assess whether these activities are necessary for realizing the recreational or other wilderness purposes of the area and the extent to which the activities may be authorized consistent with maintaining the wilderness character of the area. Consider whether authorizing the activities would impede the Forest Service's ability to meet the recreational and other goals of the Wilderness Act.

b. Review previous needs assessments when reauthorizing use to ensure that they remain relevant to current and projected use trends, and update them if necessary.

2. When reliable information suggests that resource capacity has been reached, conduct a resource capacity analysis to assess the amount of use and types of activities that may be conducted without detrimental environmental and associated impacts. The analysis may be conducted at a programmatic level or at a project level to address specific activities or geographic areas. In analyzing resource capacity, consider:

- a. The applicable land management plan and other applicable programmatic and project decisions.
- b. Inventoried conditions.
- c. Current visitor use (amount, type, length of stay, and group size).
- d. Correlation of visitor use to plan guidance and inventoried conditions.
- e. The results of management actions, such as vegetation treatments, watershed rehabilitation, and findings from monitoring.

3. Determine the allocation of use between outfitted and guided and non-outfitted and guided visitors. Further determine the allocation of outfitting and guiding use between priority and temporary use. In allocating between priority and temporary use, consider:

- a. Visitor needs for outfitting and guiding services, based on visitor preference surveys, use records, and trends.
- b. Type, location, and amount of outfitting and guiding services that would help meet agency objectives.
- c. Current levels of outfitting and guiding use and projected growth.

Distribute the allocation for temporary use pursuant to section 41.53j, paragraph 7.

#### **41.53f – When Permits Are Required**

1. Individuals or entities conducting outfitting or guiding activities on National Forest System lands must be authorized under a special use permit, either form FS-2700-XX for temporary use, form FS-2700-4i for priority use, or a supplement to form FS-2700-5 or FS-2700-5c when outfitting and guiding are authorized in connection with a commercial public service site.

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.

- a. 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.
- b. No permit is necessary if an operator's customers transport rented equipment to and from National Forest System lands or if services are

provided to Forest Service employees, Forest Service contractors, or other federal officials in the course of their official duties.

#### **41.53g – Issuance of New Outfitting and Guiding Permits**

1. Generally, authorize outfitting and guiding under the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)). Authorize outfitting and guiding under the Term Permit Act of 1915 (16 U.S.C. 497) when the outfitting or guiding activities are part of commercial public service site operations and the commercial public service site would not exist without the outfitting and guiding activities.

2. New outfitting and guiding permits may be issued when one or more of the following occurs:

a. An allocation of use is increased, a resource capacity analysis demonstrates that capacity exists, or a needs assessment supports a public need.

b. A permit is revoked or terminates and a new permit is not issued to the holder.

c. Service days or quotas allocated to a holder are reduced.

d. Competitive interest in an area or activity arises where no outfitting and guiding permits have been issued for that area or activity and where the proposed use is consistent with the applicable programmatic or project decision.

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

3. Determine whether there is competitive interest in the opportunities described in section 41.53g, paragraph 2a through 2c. For opportunities in which competitive interest exists, including the opportunity described in paragraph 2d, solicit applications through issuance of a prospectus (FSM 2712.2).

a. When evaluating applications submitted in response to a prospectus, consider the applicants' experience, knowledge of the area to be authorized, financial capability, performance record as an outfitter or guide, and other pertinent factors. Use form FS-2700-4i, or a supplement to form FS-2700-5 or FS-2700-5c, as applicable, when issuing outfitting and guiding permits through a competitive process.

4. For opportunities described in paragraphs 2a through 2c in which no competitive interest exists and for an application meeting the criteria in paragraph 2e, document the determination of no competitive interest, and issue a permit if the applicant meets applicable requirements (36 CFR 251.54; FSM 2712).

#### **41.53h – Applications for Outfitting and Guiding Permits**

1. Encourage proponents and applicants to submit proposals and applications using standard form SF-299, Special Use Application and Report (FSH 2709.11, sec. 11.3). Require proponents and applicants to identify the services to be performed, proposed number of service days or quotas, National Forest System lands to be occupied,

modes of transportation to be used, proposed season of use and itinerary, and other matters relating to the proponents' and applicants' operations in sufficient detail for the authorized officer to make a decision on the request in accordance with regulatory requirements.

2. Proposal, application, and authorization procedures in 36 CFR 251.54 and FSM 2712 apply to proposals and applications for outfitting and guiding permits.

3. Conduct environmental analysis for outfitting and guiding applications in accordance with FSH 1909.15, the National Environmental Policy Act Handbook.

#### **41.53i – Requirements for Temporary and Priority Use Permits**

1. Record the following on temporary and priority use permits:

a. The type of authorized service or activity (such as big game hunting, white water rafting, or fishing trips).

b. The resource area (such as wilderness area, river, or administrative unit) in which the activity is to be conducted.

c. The allocation of use in terms of service days or quotas, including the unit of measure for the quotas.

d. The modes of transportation to be used and other factors necessary to reflect the nature and scope of the activity.

2. Require an approved operating plan for the term of the permit and, if appropriate, an annual itinerary. Specify authorized use of assigned sites in the operating plan and annual itinerary.

3. Specify in the permit the amount of livestock to be used for transportation of people and equipment, and specify if grazing is permitted. Do not issue a separate livestock use permit. Include a clause that requires the holder to record and report the amount of authorized grazing that occurs. Grazing should be reported using the Annual Grazing Statistical Report (form FS-2200-j).

4. Require holders to submit a report of actual use within 30 days of the close of their operating season.

5. Require the holder or the holder's employees to conduct the day-to-day activities authorized by the permit, except as provided in paragraphs 5a through 5c. To ensure that services and equipment contracted under paragraphs 5a through 5c are covered by the contracting holder's insurance policy, require the insurance policy obtained by the holder to include an endorsement covering contracted services and equipment. Use the endorsement in FSM 2713.1, paragraph f, exhibit 01, for this purpose.

a. Ancillary services that support the use authorized by the permit may be provided by a party other than the holder or the holder's employees, but (other than unanticipated, intermittent services authorized by paragraph 5c) only with prior written approval from the authorized officer. Examples of ancillary services covered by this subparagraph include provision of:

- (1) Special equipment or livestock.
- (2) Food and shuttle services.
- (3) For a limited number of trips, a specialized guide for people with disabilities or for highly technical trips.

Require applicants and holders who would like to contract for ancillary services to submit the contract for these services with their application or at the beginning of each operating season, as appropriate. When the holder contracts for ancillary services, the holder is responsible for compliance with all terms and conditions of the permit in connection with provision of the ancillary services. Ensure that the ancillary services are covered under the holder's operating plan, and that the contract for ancillary services states that the holder remains responsible for compliance with all the terms and conditions of the permit, including the operating plan.

b. A holder authorized to provide solely outfitting services may contract with a guide, but only with the prior written approval of the authorized officer, based upon a finding that the following conditions are met:

- (1) The services of the contracted guide are covered under the contracting holder's operating plan.
- (2) The contracted guide has all required state licenses.

(3) The contract for the guiding services states that the contracting holder remains responsible for compliance with all the terms and conditions of the permit, including the operating plan.

(4) The contracting holder will exercise management authority over all the day-to-day field operations of the business, including the guiding services covered by the contract.

Require applicants and holders who would like to contract for guiding services to submit the contract for these services and additional documentation establishing that all the foregoing requirements are met.

Require applicants and holders to submit this documentation with their application or at the beginning of each operating season, as appropriate. A holder contracting for guiding services is responsible for compliance with all the terms and conditions of the permit in connection with provision of those services.

c. When on a particular day a holder lacks sufficient equipment or guides to accommodate the holder's customers, allow the holder, without prior written approval from the authorized officer, to contract for additional equipment or guides from another holder. When a holder contracts for additional equipment or guides from another holder under this subparagraph, the contracting holder is responsible for compliance with all the terms and conditions of the permit in connection with provision of the contracted equipment and services.

6. Do not approve requests to transfer 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 allocation of use. If appropriate, assign all or part of the holder's use to others in accordance with section 41.53l, paragraph 4.

#### **41.53j – Issuance of Temporary Use Permits**

1. Authorize temporary use on form FS-2700-XX, Temporary Use Permit, for 1 season or less. Allocate a maximum of 100 service days or the equivalent in quotas.
2. Only 1 temporary use permit may be issued per holder, including holders of priority use permits, per area specified in the needs assessment, capacity analysis, or other pertinent analysis, per calendar year.
3. Issue temporary use permits non-competitively.
4. Issuance of a temporary use permit does not commit the Forest Service to authorize outfitting and guiding use in the future. Temporary use permits are not subject to renewal.
5. Those that do not hold a priority use permit may apply for a temporary use permit 12 months in advance of the proposed use.
6. Holders of a priority use permit may not apply for a temporary use permit until 30 days in advance of the proposed use.

7. Allocate temporary use service days or quotas from a common pool. The authorized officer may issue temporary use permits on a first-come, first-served basis, through a lottery system, or through some other method of allocation.

8. Upon termination of a temporary use permit, all service days or quotas allocated to the holder of that permit shall be returned to the common pool for redistribution during the next calendar year.

9. Priority use service days or quotas that have not been used within the first 5 years of a priority use permit or upon renewal of a priority use permit may be reallocated to the common pool for temporary use permits (sec. 41.531, para. 4).

10. Add national or regional clauses to a temporary use permit as necessary to address site-specific circumstances.

11. Annual performance evaluations are not required for temporary use permits.

12. Requiring an operating plan for a temporary use permit is at the discretion of the authorized officer. Require a daily itinerary when an operating plan is not required.

#### **41.53k–Issuance of Priority Use Permits**

1. Authorize priority use for up to 10 years. Generally, use form FS-2700-4i, Special Use Permit for Outfitting and Guiding, to authorize priority use. When outfitting or guiding activities are part of commercial public service site operations and the commercial public service site would not exist without the outfitting and guiding activities, use the supplement to form FS-2700-5, Term Permit, or form FS-2700-5c, Resort/Marina Term Permit, to authorize priority use. When authorizing outfitting and

guiding with a term permit, the use may be authorized for the entire term of the term permit, provided that the environmental analysis evaluated the use for that term and the decision based on that analysis approved that term.

2. When a proponent or applicant for a priority use permit has no previous record of providing outfitting and guiding services that are equivalent or similar to the services to be authorized under the permit, issue a priority use permit for 2 years, with an option to extend the term for up to 8 years.

3. If the holder of a 2-year priority use permit performs acceptably for the first 2 years, and if the holder's use is consistent with the applicable land management plan or project implementation decision, the authorized officer shall extend the permit for up to 8 years. If the holder receives an unacceptable performance rating at the end of the 2-year period, the permit shall terminate.

4. Except as provided in 36 CFR 251.124(b), when a priority use permit terminates, the permit is subject to renewal without competition, provided that the use authorized by the permit is consistent with the applicable land management plan, applicable laws and regulations, and the terms of the permit and the holder has performed satisfactorily as demonstrated by acceptable annual performance ratings. These determinations are at the sole discretion of the authorized officer and shall be made in accordance with 36 CFR 251.54 (proposal and application requirements and procedures); 36 CFR 251.58 (cost recovery); 36 CFR 251.64 (renewal); and FSH 2709.11, section 11.2, paragraph 2 (proposals involving existing uses).

5. In renewing a priority use permit, the authorized officer may prescribe new terms and conditions. Make any changes to use allocations in accordance with section 41.531, paragraph 3.

6. When a priority use permit for activities other than sport hunting and fishing in a Conservation System Unit in Alaska expires, the permit shall not be reissued if there is a need to limit use and there is competitive interest by preferred operators in providing visitor services (16 U.S.C. 3197; 36 CFR 251.124(b)).

7. When notified by a holder that a change in ownership of or a controlling interest in the holder's business entity is being considered, inform the holder that:

- a. A priority use permit is a privilege acquired by demonstrated acceptable performance and is not transferable, either upon the sale of the business entity or the sale of a controlling interest in the business entity;
- b. The permit is not real property, does not convey any interest in real property, and may not be used as collateral;
- c. Upon consummation of a change of ownership of or controlling interest in the business entity, the holder's permit terminates; and
- d. 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.

8. Instruct the holder to submit form FS-2700-3a, Request for Termination of an Application for Special-Use Permit, for relinquishment of the permit.

9. Instruct the party who acquires ownership of or a controlling interest in the business entity to submit:

- a. An application for a permit on Form SF-299 or the equivalent.
- b. Documentation of the change in ownership, including properly executed documents showing a transfer of ownership of the equipment or other assets used by the business, and for businesses based on private land, properly executed documents showing a transfer of ownership of the real and personal property used by the business; or
- c. Documentation of a change in a controlling interest, including properly executed documents showing a transfer of a controlling interest in the business entity.

10. If the change of ownership or control is not consummated and the original holder has relinquished the permit, the permit may be reissued to the original holder. Prior to reissuing the permit, require the original holder to submit documentation establishing ownership of or a controlling interest in the business entity.

#### **41.531–Allocation of Use for a Priority Use Permit**

1. When issuing a priority use permit, allocate use in accordance with the applicable land management plan, the applicable project implementation decision, or other appropriate analysis.

2. During the 5<sup>th</sup> year of a priority use permit, review actual use, and adjust the allocation of use to match the highest amount of actual use in 1 calendar year during that period.

a. Add an additional 10 percent to this amount in consideration of market fluctuations, availability of state hunting licenses, and natural phenomena that may have adversely affected the holder's ability to utilize the authorized use fully, provided that the combination of the highest amount of actual use in 1 calendar year and the additional 10 percent of use shall not exceed the original amount of allocated use.

b. Amend the permit to reflect the adjusted allocation of use.

3. When renewing priority use permits, the allocation of use may be maintained, increased, or decreased, provided that the allocation is consistent with paragraph 1.

a. When a priority use permit is about to terminate and the holder has applied for renewal of the permit, review actual use during the last 5 years of the permit, and adjust the allocation of use to match the highest amount of actual use in 1 calendar year during that period.

b. Add an additional 10 percent to this amount in consideration of market fluctuations, availability of state hunting licenses, and natural phenomena that may have adversely affected the holder's ability to utilize the authorized use fully, provided that the combination of the highest amount of actual use in 1

calendar year and the additional 10 percent of use shall not exceed the amount of allocated use during the last 5 years.

4. When use is not allocated pursuant to paragraphs 2 and 3:
  - a. Reallocate the use to the common pool for temporary use permits;
  - b. Reallocate the use through a solicitation process; or
  - c. Reserve the use pending completion of a resource capacity analysis.

#### **41.53m–Reduction of Use Based on New or Changed Decisions**

New or changed decisions may establish a level of outfitting and guiding that results in a permanent reduction of a holder's allocation of use. When considering renewal of priority use permits in this situation:

1. Request holders to reduce use voluntarily;
2. Proportionally reduce use for affected holders; or
3. Reallocate the amount of available use through issuance of a prospectus.

Limit the solicitation to holders of a priority use permit. Base allocation of available use on the applicants' proposed services, experience, knowledge of the area to be authorized, financial capability, performance record as an outfitter or guide, and other appropriate factors.

#### **41.53n–Administration of Outfitting and Guiding Permits**

1. Ensure that the terms and conditions of permits, including operating plans, are met and that the authorized use is consistent with applicable federal, state, and local law.

2. The authorized officer may revoke or suspend a temporary or priority use permit:

- a. For noncompliance with federal, state, or local laws and regulations;
- b. For noncompliance with the terms of the permit;
- c. For failure of the holder to exercise the rights and privileges granted by the permit;
- d. With the consent of the holder; or
- e. At the discretion of the authorized officer, for specific and compelling reasons in the public interest (36 CFR 251.60(a)(2)(i)).

3. The authorized officer shall give the holder notice before revoking or suspending a permit pursuant to section 41.53n, paragraph 2a through 2d. The authorized officer shall give the holder a reasonable opportunity to correct noncompliance before revocation or suspension of a permit pursuant to paragraph 2a and 2b (36 CFR 251.60(e)).

4. The authorized officer may impose an immediate suspension of all or part of a permit when deemed necessary to protect public health or safety or the environment in accordance with 36 CFR 251.60(f). The authorized officer does not need to give the holder prior notice and an opportunity to correct deficiencies before imposing an immediate suspension (36 CFR 251.60(e)).

5. Monitor outfitting and guiding operations by conducting inspections (FSM 2716.5). Notify the holder in writing of the results of the inspection. Include in the notice:

- a. Any noncompliance;
- b. A time frame for correcting the noncompliance and;
- c. The consequence for failing to correct the noncompliance within the stated time frame.

6. Take immediate action, including imposing a temporary suspension, if there is an immediate threat to public health or safety.

7. Findings from inspections are not subject to administrative appeal.

8. Inspections and other documentation shall be used as a basis for annual performance ratings (sec. 41.53o, para. 4).

#### **41.53o—Administration of Priority Use Permits**

1. Priority Use Authorized Under a Term Permit. Treat outfitting and guiding authorized under a term special use permit as priority use.

2. Monitoring. Monitor operations authorized under priority use permits to verify compliance with permit terms and conditions during the season of use. Extension of a 2-year priority use permit depends on documentation of satisfactory performance.

3. Performance Standards. Forest Supervisors shall develop specific, objective performance standards for inclusion in each permit or operating plan in consultation with

District Rangers and holders, outfitting and guiding licensing agencies, advisory councils, and other federal and state land management agencies. At a minimum, Forest Supervisors shall develop specific standards for compliance with the terms of the permit, the operating plan, and the itinerary; public service; and protection of natural resources. Forest Supervisors also shall develop a scoring system or other means for correlating the standards to the performance ratings in section 41.53o, paragraph 4.

4. Ratings. Evaluate the holder's overall performance using 3 performance ratings: acceptable, probationary, and unacceptable. Base these ratings on the specific performance standards included in the holder's permit or operating plan.

5. Rating System. Rate the holder at the end of the holder's operating season.

a. Probationary Rating. If the holder receives an annual rating of probationary, issue a letter of probation, and consider in the letter of probation suspending all or part of the permit as a result of the probation. If the holder receives a rating of probationary in the last year of the permit term, consider reissuing a priority use permit for 2 years, with an option to extend the permit term for up to 8 years.

b. Consecutive Probationary or Unacceptable Rating. If the holder's next annual rating is probationary or unacceptable, revoke the permit or outfitting and guiding supplement to a term permit in the notice to the holder of the rating, unless the permit is about to expire. If the permit will expire in the current calendar year, notify the holder in writing that the permit will not be reissued, and allow it to terminate.

c. Consecutive Acceptable Rating. If the holder's next annual rating is acceptable, the holder returns to good standing. Notify the holder in writing that the probation has ended.

d. Unacceptable Rating. If the holder's annual rating is unacceptable, revoke the permit or outfitting and guiding supplement to a term permit in the notice to the holder of the rating, unless the permit will expire in the current calendar year. If the permit is about to expire, notify the holder in writing that the permit will not be reissued, and allow it to terminate.

e. Notice. Provide notice to the holder of the annual rating. Include in the notice a statement of the holder's right to appeal the annual rating, along with suspension or revocation of the permit based on the annual rating pursuant to section 41.53o, paragraph 5a, 5b, or 5d.

6. Before suspending or revoking a priority use permit or outfitting and guiding supplement to a term permit under section 41.53o, paragraph 5a, 5b, or 5d:

a. Notice. Give written notice to the holder after a mid-season evaluation (or end-of-season evaluation, for a short operating season where a mid-season evaluation is not feasible) that failure to correct identified noncompliance will result in an annual rating of probationary or unacceptable, as applicable. For a potential annual rating of probationary, include in the notice that a first annual rating of probationary may result in suspension of the permit and that a second consecutive annual rating of probationary will result in revocation of the permit or outfitting and guiding supplement to a term permit. For a potential

annual rating of unacceptable, include in the notice that a single unacceptable rating will result in revocation of the permit or outfitting and guiding supplement to a term permit.

b. Opportunity to Correct Deficiencies. Give the holder a reasonable opportunity to take corrective action prescribed by the authorized officer. The period between the evaluation and the annual rating constitutes adequate opportunity to take corrective action for purposes of suspension or revocation of a permit or outfitting and guiding supplement to a term permit.

7. Administrative Appeal. Holders may appeal annual ratings of probationary and unacceptable, along with suspension or revocation based on those ratings pursuant to paragraph 5a, 5b, or 5d, under applicable federal regulations. As provided by 36 CFR 251.60(a)(2)(iii), termination of a permit is not subject to appeal.

### **Chapter 30—Fee Determination**

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### **Section 37—Outfitter and Guide Fees.** \* \* \*

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#### **37.21b—Flat Fee for Temporary Use Permits**

Charge a flat fee for temporary use permits of \$150 for permits authorizing 1 to 50 service days or the equivalent in quotas, or \$300 for permits authorizing 51 to 100 service days or the equivalent in quotas. Provided however that if revenue will exceed \$10,000 for up to 50 service days or \$20,000 for 51 to 100 service days or the equivalent in quotas, determine the fee pursuant to 37.21c.

### **FOREST SERVICE MANUAL**

## CHAPTER 2710–SPECIAL USE AUTHORIZATIONS

### FSM 2713–Preparing Special Use Authorizations

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#### 2713.1–Liability and Insurance

##### 1. Inherent Risks.

a. Engaging in most activities on National Forest System lands involves inherent risks. Swimming, boating, skiing, horseback riding, mountain climbing, and even hiking, camping, and picnicking involve inherent risks.

b. All concession activities authorized by the Forest Service (see FSM 2340.5), including resorts, ski areas, marinas, and outfitting and guiding that cater to the vacationing or traveling public, involve hazards to users in varying degrees.

c. Individuals engaging in activities on National Forest System lands, regardless of whether they involve concessions, assume these risks. While concessionaires must provide a safe operation, safe equipment, and good supervision and meet other requirements relating to public safety, the public assumes inherent risks not related to these operating requirements, such as encountering dangerous weather or being injured by snakes or other wild animals.

##### 2. Insurance.

a. When to Require Liability Insurance. To protect the public and the Federal Government from injury, loss, or damages for which concessionaires may be liable, require concessionaires to carry liability insurance. Require other holders to carry liability insurance if appropriate based on the likelihood and severity of injury.

b. Imposing Insurance Requirements

(1) Permit Requirements. When a holder is required to carry liability insurance, include clause B-10 in the permit from FSH 2709.11, section 52.2, unless an insurance clause is already included in the applicable Forest Service standard form. This clause requires the holder to provide the Forest Service with a copy of the insurance policy. In addition, before issuance of the permit, require the holder to submit a certificate of insurance on industry standard form ACCORD 25-S that lists the policy limits of coverage.

(2) Naming the United States as Additional Insured. Ensure that any insurance policy covering use and occupancy of National Forest System lands names the United States as an additional insured. Obtain documentation, such as an endorsement or declarations page, from the holder to verify that this requirement has been met.

c. Type of Coverage. Require liability insurance to provide coverage for third-party property damage, personal injury, and death that arise in connection with the authorized use and occupancy. Liability insurance may be either in the split limit or combined single limit format.

(1) Split Limit. A policy in the split limit format lists separate coverage limits for third-party property damage, personal injury or death to 1 person, and personal injury or death to more than 1 person.

(2) Combined Single Limit. A policy in the combined single limit format lists a single coverage limit for third-party property damage, personal injury or death to 1 person, and personal injury or death to more than 1 person.

d. Minimum Amount of Coverage Generally. Except as provided in paragraph 2e below for National Forest System roads subject to an investment sharing agreement or a reciprocal easement, this paragraph addresses minimum amounts of coverage for liability insurance. At a minimum, require split limit policies to meet the applicable coverage amount in all three columns of the following table. At a minimum, require combined single limit policies to meet the coverage minimum of the applicable coverage amount for injury or death to 2 or more persons.

Level of Risk	Third-Party Property Damage	Injury or Death To 1 Person	Injury or Death To 2 or More Persons
Low <sup>1</sup>	\$30,000	\$ 300,000	\$ 500,000
Medium <sup>2</sup>	\$30,000	\$ 500,000	\$1,000,000
High <sup>3</sup>	\$30,000	\$1,000,000	\$2,000,000

<sup>1</sup> Low-associated injuries generally are not likely to result in death or permanent disability and are not likely to occur.

<sup>2</sup> Medium-associated injuries are likely to result in death or permanent disability, but are not likely to occur or are not likely to result in death or permanent disability, but are likely to occur.

<sup>3</sup> High-associated injuries generally are likely to result in death or permanent disability and are likely to occur.

(1) The Regional Forester may increase the minimum coverage amounts in the table above on the basis of the amount of use, likelihood and severity of injury, protection of users, potential liability of the United States, and cost of the insurance.

(2) The Forest Supervisor may increase the national or regional minimum coverage amounts based on a case-specific risk assessment. The same coverage limit in an insurance policy may apply both per occurrence and in the aggregate, that is, a coverage limit may apply a limit per incident and per year, regardless of how many incidents occur. Therefore, it may be appropriate to increase the minimum coverage amounts that apply to claims in the aggregate, especially if a holder has operations in multiple locations on National Forest System lands.

e. National Forest System Roads Subject to an Investment Sharing

Agreement or a Reciprocal Easement. National Forest System roads that have been jointly developed and are cooperatively owned by the Forest Service and large corporate landowners or state land management agencies are subject to an investment sharing agreement or a reciprocal easement (FSM 7731.3). The investment sharing agreement or reciprocal easement has requirements for commercial users to carry liability insurance for personal injury and third-party property damage. Regions that have these roads under their jurisdiction

shall establish a minimum amount of liability insurance for commercial users of these roads.

f. The Boy Scouts of America (BSA). BSA operates several organization camps under a special use permit and conducts a variety of events and programs on National Forest System lands. BSA's insurance policy is on file with the Forest Service National Insurance Center. Therefore, it is unnecessary to obtain a copy of BSA's insurance policy or a certificate of insurance from BSA when issuing a permit to BSA.

g. Endorsement for Contracted Outfitting and Guiding Services and Equipment. To ensure that services and equipment contracted by an outfitter or guide pursuant to FSH 2709.11, section 41.53i, paragraphs 5a, 5b, or 5c, are covered by the outfitter's or guide's insurance policy, require the endorsement in exhibit 01 to this paragraph to be included in the outfitter's or guide's policy.

\* \* \* \* \*

**FSM 2713.1, Paragraph f, Exhibit 01**

Endorsement for Contracted Outfitting and Guiding Services and Equipment

The following contracts entered into by the insured for the provision of services and equipment in connection with outfitting and guiding authorized under a Forest Service special use permit are insured contracts for purposes of this policy **[Include the provisions below that apply, with additional detail as necessary, and delete the rest.]**:

1. Contracts for ancillary services that support the use authorized by the permit, such as provision of:

- a. Special equipment or livestock.
- b. Food and shuttle services.
- c. For a limited number of trips, a specialized guide for people with disabilities or for highly technical trips.

2. When the insured is authorized to provide only outfitting services, contracts for guiding services.

3. Contracts for additional equipment or guiding services entered into when on a particular day the insured lacks sufficient equipment or guides to accommodate the insured's customers.