

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

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

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

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

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

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

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

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

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

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

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

Summary of Key Revisions

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

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

Chapter 30—Fee Determination

Sections 37 to 37.24—Outfitter and Guide Fees

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