

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

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

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

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

*Section 41.53b—Policy.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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