

FSH 2709.11 - SPECIAL USES HANDBOOK
Superior National Forest Supplement No. 95-1
EFFECTIVE 10/1/95

CHAPTER 40 - SPECIAL USES ADMINISTRATION

41.53 - Outfitters and Guides

I. INTRODUCTION:

This policy will go into effect October 1, 1995. The current Outfitter/Guide policy will stay in effect until that time. This policy defines who needs an Outfitter/Guide Permit and the procedures for administration and enforcement of the Outfitter/Guide Policy. The purpose of the policy is to provide clarification and guidance to district personnel so all permits are dealt with in a consistent and fair manner across the forest. The objectives of the Outfitter/Guide Permit are:

- a) Protect the visitor, the guide, and the Forest Service through the insurance requirement.
- b) Allow the Forest to recognize and avoid potential conflicts between user groups.
- c) Allow the Taxpayers to share in receipts derived from use of National Forest land.
- d) Resource protection.

II. JURISDICTION:

For other than Towboat Operations, this policy applies to the Superior National Forest and the Boundary Waters Canoe Area Wilderness with the following exceptions:

- a. Water: Where parties come and go from non-federal land and only travel on the water *
- b. Non-Federal land: Where guides use only non-federal land for camping, portages, shore lunches, etc.*
- c. International Portages: Where the only federal land touched is part of an international portage (rest of trip is on water or non-federal land).

* Leased Lands: If the Forest Service leases lands from other agencies/owners the land is perceived as being Forest Service and a permit will be required.

III. DEFINITIONS:

These definitions are Forest Service definitions for the purpose of this policy.

- a) National Forest System land: Land owned by the United States of America under jurisdiction of the Forest Service. Within the Superior National Forest boundary, there are federal, county, state and privately owned lands. This policy only applies to National Forest System land.
- b) Service Days: A day or any part of a day (calendar day), for each individual or client accompanied or provided services, including transportation services, by an outfitter or guide. To calculate service days, multiply the number of clients times the number of days spent on the forest. For example, either 1 guide with 5 clients on a 4 day trip OR 1 guide with 20 clients on a 1 day trip are both equal to 20 service days.
- c) Outfitting: Providing saddle or pack animals, vehicles or boats, tents or camping gear, or similar supplies or equipment. The term "outfitter" includes the holders' employees and agents and instructors.

Outfitters based off National Forest System land who rent equipment or livestock to the public for use on National Forest System land must obtain a permit if they, their employees, or agents occupy or use National Forest System lands in connection with their rental programs. For example, a permit is required if a boat livery operator provides service, including delivery or pickup of boats, at National Forest sites. No permit is necessary if the operator's customers transport the boats to and from the National Forest locations.
- d) Guiding: Providing services or assistance such as supervision, protection, education, training, packing, transportation, subsistence, interpretation or other persons that are not trip leaders who assist individuals or groups in their pursuit of a natural resource based outdoor activity. The term guide includes the holders' employees and agents and instructors.
- e) Livery Service: An Outfitter/Guide who provides a service of dropping off or picking up supplies, equipment, or clients on National Forest lands.

IV. WHEN PERMITS ARE REQUIRED:

Permits for outfitting and guiding will be required for commercial guides or compensated leaders who use Superior National Forest land for all or part of their operation. Typical commercial users who will need permits include, but are not limited to: Guides or leaders of canoe trips, fishing trips, tours using horses, buses or dogsleds, campsite service operations (tent camps), bear and deer hunts, and similar activities within the Superior National Forest. Instead of permits, use cooperative, volunteer, or other agreements as described in FSM 1580 and 1830 for sponsored, organized, and supervised trips approved in advance by the Forest Service for performing work beneficial to the United States in administration and protection of the National Forests.

a) CRITERIA FOR O/G PERMITS

1. Is anyone getting paid to lead or guide the trip?
Is the leader on a salary from the sponsoring group? Is the leader, sponsoring person, or group earning money from this trip?*

*insignificant costs such as free gas or food do not count as payment.

2. Does the applicant advertise?
Was any advertising used outside of the applicant's immediate organization to promote participation in this trip? (for example- outside applicant's Scout troop or specific church)
3. Is a significant portion of the activities of the applicant focused on outdoor activities?
Does the applicant lead or organize public or commercial trips during the year anywhere else in the United States?
4. Are participants getting charged more than the cost of their share of the trip?
Are participants paying more than the direct cost of transportation, food and equipment?

If Criteria 1 is the only yes answer, applicant may be considered for a permit waiver (Examples; church group or a half-way house).

If Criteria 2,3, or 4 generate one or more yes answers an Outfitter/Guide Permit is required.

V. APPLICATIONS:

a) Processing the Application

Applications will be accepted at any Superior National Forest District Office or the Forest Supervisor's Office. The District responsible for the proposed area of operation will process the application. A form letter will be sent if application is incomplete. When the area covers two or more Districts, Special Uses personnel will make the determination as to which district will take the lead, (either greatest use or to balance workload). For new or unusual uses the lead District will consult the other Districts involved before making any decisions about the proposed use, such as what kind of environmental documentation is needed, denying the use or issuing a permit.

The Supervisor's Office will be responsible for following up on information on advertised trips and notify them of requirements for Outfitter/Guide Permits for trips which are planned and guided directly from distant headquarters. These names will then be entered into the Outfitter/Guide Data Base.

b) Information Needed

Applicants will only be asked information necessary to determine if there is a need for an Outfitter/Guide Permit. Applicants may be asked to provide information on the activity, lands used, fees charged, service days, schedules, copy of liability insurance policy, leader qualifications and profit/non-profit status.

VI. APPLICATION REVIEW: Review the application including the operations plan. If there are inadequacies, work with the applicant to correct any deficiencies.

a) Environmental/ Management Analysis

The issuing district will conduct a management review and environmental analysis (based on the National Environmental Policy Act (FSM Chapter 1950). The purpose will be to determine:

if there will be any significant environmental effects,
if the proposed use is compatible with other uses and management of the area and consistent with the Forest Plan,
and

if it is an appropriate use of National Forest land.

Districts can analyze similar or reoccurring uses, such as guiding canoe trips in the BWCAW, together once a year. Only uses that are not similar or reoccurring require permit analysis and preparation of a project or case file and decision memo.

b) Applicant's Qualifications Review

Check applicant's references and past performance or experience in the business to develop a profile of applicant's professional qualifications and service standards.

c) Insurance Review

Determine if insurance requirements are met. The insurance policy does not have to be in effect at time of application. An insurance certificate is needed before applicant starts operation. Insurance waivers may only be issued by the Forest Supervisor.

d) Permit Denial

Permits can be denied for the following reasons:

1. Inadequacies in the application that cannot be rectified, ie unable to meet insurance requirement or operating plan requirements;
2. A history (over the past three years) of negligence, non-compliance with Forest Service regulations or discrimination. If there is a history of non-compliance, a "probationary" permit can be given the first year at the discretion of the District Ranger.
3. The proposed use is incompatible with existing uses, inconsistent with management direction or laws or is environmentally unsound based on review of (a) above.

If a permit is denied, the District Ranger will notify the applicant in writing of the reason for denial and what the applicant can do to rectify the situation. If the applicant corrects the situation, he/she can re-apply immediately.

The decision to deny a permit is appealable under 36 CFR 251. The applicant will be notified of appeal rights and procedures at the time of denial.

e) Permit Waivers for Incidental Use

Upon receipt and after review of a permit application involving proposed annual use of 50 service days or less, the authorized officer may waive the permit requirement when it is determined that the proposed use is expected to have little or no effect on public liability, health, safety and the environment, fees to the Government, or other authorized National Forest uses and activities. Do not grant waivers for activities involving white-water travel, guns, horses, all terrain vehicles or liveries.

Document the waiver and reasons for granting it in a letter to the applicant and retain a copy in the file with the application. Send the applicant a permit waiver card and enter appropriate information into the outfitter/guide data base.

f) Permit Issuance

The term of the permit must be appropriate to the use; if there is winter and summer use, issue a permit based on a calendar year.

For a new permittee, issue a one year temporary permit. After two years of acceptable permit performance, issue a five year permit.

In 1995 and 1996, it is expected there will be an influx of applicants who are well established in their business. For this reason, in 1995 and 1996, if an applicant has been operating in good standing or been a cooperator in 1994 and 1995, they will be considered for a five year permit. Along with the permit, send the permittee an identification card. Outfitter/Guide permittees must carry the card with them on trips.

Send a Forest Land Use Report to the Supervisor's office. The Supervisor's office will compile a list of permitted Outfitter/Guides and include it with the BWCAW information packets.

VII. FEES:

a) Drop-Off/Pick-Up

Outfitter/Guides who provide a livery service (drop-off and/or pick-up of supplies, equipment, clients etc.) will be charged annually the minimum special use fee for Outfitting and Guiding. This fee would be in addition to any other fees, and is non-refundable and non-waivable.

- b) 1. Fees For Guide Services:
Outfitter/Guides will be charged the minimum special use fee which is due prior to the start of the season of use. After the operating season a reconciliation will be made based on actual use.

If fees are grouped into a per day charge (equipment, food, guide service etc.), document how much per day the guide is getting compensated.

2. Final Fee: After the operating season the holder will submit actual use records on which the final fee will be based on 3% of that amount. This calculation is a reconciliation between the previously paid fee and a final amount due based on actual use and revenue.

If actual use records and fees are not submitted on time, the permittee will pay 3% of the estimated gross at the start of the use season the following year.

3. Billing and Refunds: If the amount which was paid as the estimated fee differs from the final fee, credit excess amounts to future fees or bill the holder for underpayment as appropriate. Refunds may be made to holders who have operated under a temporary use permit and are not expected to apply for or receive a permit in the subsequent year or season.

- c) End-Of-Year Reports

For summer and year round use, reports are due November 30, for winter use, reports are due April 30. If reports are not returned by the due dates the permittee would receive an unsatisfactory rating that could jeopardize permit renewal.

- d) Fee Waivers

All or part of the fee may be waived by the Forest Supervisor when equitable and in the public interest, for the use and occupancy of National Forest System land. At the discretion of the Forest Supervisor, any permit holder who provides without charge to the government, or at a reduced charge to the government, a valuable benefit to the public or to the programs of the Secretary may also be eligible for a fee waiver (CFR 251.57).

Full or partial fee waivers for service related trips are acceptable. Fees can also be waived for other than service related trips if the work to be done is part of the Districts/Forest's Plan Of Work to be accomplished for that year. Usually fee waivers would not be considered unless the fee is in excess of \$500.

VIII. LAW ENFORCEMENT:

- a) Information:
All Forest Service field personnel will have information cards/handouts for the public on the Outfitter/Guide Policy.

b) Actions

Receptionists/cooperators will hand out Outfitter/Guide information and collect names for follow-up by the Forest Service. When a party that should have an Outfitter/Guide Permit informs the cooperator/receptionist that they don't have one, the receptionist or cooperator will advise them to hire a permitted Outfitter/Guide or go in the Superior National Forest unguided.

When encountering guided groups without an Outfitter/Guide Permit Forest Service Crews will gather information and determine if an Outfitter/Guide Permit is required. If the Forest Service Crews determine that a law enforcement action is needed, they will use officer discretion on the action to take, this could be a; verbal warning, violation notice, mandatory appearance or making the violators leave the Superior National Forest. If a determination cannot be made in the field they will gather as much information as possible and forward it to the special uses personnel on the district. Special uses personnel will determine whether there is a need for a permit and work with law enforcement personnel on appropriate action to take. Names will be entered into the Outfitter/Guide Data Base.

c) Follow-Up

Potential Permittees (names gathered from Forest Service field crews etc.) will be followed up on in the Supervisors Office (S.O.). The initial contact will be a certified letter explaining the Outfitter/Guide policy with an application and fact sheet attached.

The name will be entered into the Outfitter/Guide Data Base under "initial contact". If there is a response the application will be forwarded to the appropriate district for determination on the need for a permit.

If no response after initial contact, a second certified letter will be sent with a stronger message attached including the penalties for operating on the Forest without a permit. If there is still no response the name will be coded in the data base appropriately and names will be given to Forest Service Crews, receptionists, and law enforcement personnel.

IX. OPERATING PLANS:

Anyone applying for an Outfitter/Guide permit must have an annual operating plan (excluded are permittees who only provide a livery service). Special Uses personnel may meet with the permittee before the season begins to review the operating plan. Operating plans will be submitted with the application and every year thereafter before the use season. See Appendix "A" for an example of an operations plan.

X. PERFORMANCE EVALUATIONS:

The goal is to visit one party from each permit holder while on National Forest land once per year. The Forest Service will contact permit holders to schedule an inspection. A copy of the inspection will be sent to the permittee in a timely manner.

All complaints on permit holders will be investigated by the permit administrator, law enforcement personnel and District Ranger.

Outfitter/Guide's performance will be rated each year by the Forest Service administrator and reviewed by the District Ranger. If the permittee receives an unsatisfactory rating they will be placed on probation for the following year. If the permittee receives an unsatisfactory rating while on probation the permit will be terminated or not reissued. See Appendix "B" for a copy of the Performance Review.

XI. MONITORING AND EVALUATION

A. Annual report

Commencing in January of 1996 the Forest Service will publish an annual report each January for three years on outfitter/guide activity. This report will summarize data and not identify specific information on any Outfitter/Guide. The purposes of the report are:

- 1) to let the industry, public and Forest Service know the extent of activity
- 2) to document how effectively the policy is being implemented.
- 3) to identify any changes needed in outfitter guide administration or policy
- 4) cost effectiveness of administering permits.

The report will be sent to current permittees and those who have requested it in the past. Notice of its availability will be published in the Superior Quarterly.

B. Monitoring

The Forest Service will monitor:

- How many contacts/inquiries are made
- How many are determined not to need a permit
- How many permits are waived for incidental use
- How many permits are issued
- Type of outfitter/ guide activity
- Number of inspections done

For the above items, along with a number, where the party is from (city, state) will be recorded.

C. Evaluation

Annually the Forest Service will send a form to permittees that will evaluate permit administration and policy implementation. Completing the evaluation form is optional.

Annually, the special use administrators on the Forest will meet to review the evaluations of Forest Service and permittees and discuss any needed changes in administration or policy. The outcome of this discussion will be included in the annual report.

53.1 - APPENDIX "A"

OPERATIONS PLAN TICKLER LIST

The operating plan is the instrument which is worked on together with the permit holder and the Forest Service officer and upon signature is understood and agreed to.

The permit administrator must have a general understanding of the operation or the activity authorized by the permit. In addition, those items required in the main text of the permit but not defined, are also addressed here (ie...service day requirements, client charge, safety etc).

The following tickler list can be used to obtain the minimum information required for the operations plan.

I. PERMIT HOLDER SECTION

1. Name of permit holder or authorized agent:
2. Address:
3. Phone: () -
4. Hours of Operation:
5. Season of Operation: (W) - Winter (Ice on)
(S) - Summer (Ice off)
(O) - Other 131313
6. Please attach a brochure or documentation explaining your business or organization.
7. What type of guide service is provided?
 - a) Guide (C-canoe guide, F-Fishing Guide, H-Hunting Guide, M-Musher)
 - b) Naturalist
 - c) Instructor/Teacher
 - d) Livery
 - e) Other (explain)1313131313131313
8. Please list the names of those individuals providing the above guide service for you. (If you operate year around, please designate with a (W) for winter, (S) for summer next to the guides name.

- c) What safety equipment is provided? (ie.. coast guard approved personal floatation device)

- d) What are your emergency procedures in the event of accident or injury to client or guide

- e) What are your accident reporting procedures?

- f) When are equipment inspections conducted?

16. Insurance Requirement

- a) Do you have the necessary insurance coverage?
- b) Is the insurance appropriate and adequate?
- c) What agency is your insurance coverage with?
- d) What is the name of your insurance agent and the agent's phone number?

II. FOREST SERVICE SECTION:

- 1. Headquarters location:
- 2. Address:

- 3. Telephone: () -
- 4. Hours open for public contact:
- 5. Operating Season: (W) - WINTER - Ice on lakes
(S) - SUMMER - Ice free season
(O) - OTHER - (explain)13131313

6. List the person(s) responsible for administering the special use permit. (List at least two.)

a)

b)

7. Forest Service contacts for after hours and weekends. (Provide at least two names and phone numbers that the permit holder would be able to use for emergency purposes.)

a)

() -

b)

() -

53.1 - APPENDIX B
OUTFITTER/GUIDE PERFORMANCE EVALUATION

Performance Rating

A rating scale ranging in values from 0 to 6, will be used by the evaluator to rate each performance element. A rating value of zero (0) represents a poor score and six (6) represents an excellent score

<u>Rating Criteria</u>	<u>Rating Scale</u>		<u>Rating Value</u>
	Poor	Excellent	
1. Compliance with permit terms	<u>Considerations</u>		
	a. Fees are paid by the due date		_____
	b. Use records are accurate and complete		_____
	c. Operating Plan is complete		_____
	d. Advertising identifies Superior National Forest or BWCAW		_____
	e. Compliance with the Secretary of Agriculture's Regulations		_____
	1) any violations of the Secretary's Regulations issued to the permit holder or employees?		Yes / No
If yes, attach incident report. Any violations by the permit holder or agents will be cause for an automatic score of Zero (0) in 1(e), and the permit holder will be on probation the following year.			
	TOTAL		_____
2. Equipment (used by permit holder or their agents while on National Forest System land)	a. Watercraft comply with state and coast guard regulations and specifications if reflected by jurisdiction		_____
	b. Flootation devices and other mandated safety equipment must comply with State and Federal regulations		_____
	c. Boat trailers and towing vehicles meet State specifications		_____
	TOTAL		_____
Not all of these may apply to the permitted activity.			
3. Permit Holder/Agents Qualifications	a. Knowledgeable in responsibilities pertaining to their position		_____
	b. Knowledgeable of permit requirements		_____
	c. Familiar with and observe Title VI (Nondiscrimination)		_____
	d. Courteous, informative and shows responsibility to the well being of customers		_____
	TOTAL		_____
	CUMULATIVE RATING TOTAL		_____

(Add Section Totals from 1, 2, & 3)

<u>Rating</u>	<u>Numerical Range</u>	<u>Overall Rating</u>
Acceptable	49-72	_____ Acceptable
Probationary	25-48	_____ Probationary
Unacceptable	0-24	_____ Unacceptable

Unacceptable performance will result in probation, suspension, or revocation of the permit as appropriate to the circumstances.

Probationary performance ratings for consecutive years will result in termination of the permit.

Evaluator: _____

Date: _____

District Ranger: _____

Date: _____

Permit Holder: _____

Date: _____

PROVIDE FOLLOW/UPS AND COMMENTS ON BACK.