

Excerpt of FSH 2709.11, chapter 40 issued 09-17-2008

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 41.53r. Outfitting and guiding include but are not limited to packing, hunts, education, float trips, canoe or horse liveries, 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 lands.

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. Facilitate greater participation in the outfitting and guiding program by organizations and businesses that work with youth and educational groups.
3. 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 access routes, and shelters.

3. Do not authorize any development, improvements, or installations in wilderness areas for the purpose of convenience to the holder or the holder's clients. Do not authorize any caches in wilderness areas. Do not authorize permanent structures, improvements, or installations in wilderness areas unless they are 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, outfitting and guiding organizations, and other interested parties 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 Forest System lands.

7. Take into account applicable provisions of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3101-3126, in issuing and administering outfitting and guiding permits in the Alaska Region.

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.

Ancillary Service. A service that supports use authorized by an outfitting and guiding permits and that is provided by a party other than the holder or the holder's employees or agent.

Assigned Site. A location that is authorized for use and occupancy by an outfitting and guiding permit and for which a fee is paid.

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).

Concessionaire. An individual, organization, company, corporation, or cooperating State or local agency holding a valid special use permit authorizing the provision of commercial recreation services, facilities, or activities on National Forest System lands.

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.

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

Open Season. A period specified by the authorized officer during which eligible applicants may apply for service days from a temporary or priority use pool.

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.

Permitted Access Route. Any road or trail that a holder is authorized to use under an outfitting and guiding permit or operating plan for purposes of pedestrian, stock, or vehicular access.

Priority Use. Authorization of use for up to 10 years, based on the holder's past use and performance and applicable programmatic or project decisions 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. 41.531).

Priority Use Pool. A pool of service days or quotas in a use area that may be:

- (a) Distributed seasonally to priority use permit holders in that use area and returned to the pool for redistribution during the next open season; or
- (b) Distributed for the term of a permit to increase use allocated under priority use permits or to establish use for new priority use permits.

Quota. An allocation of use that is 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 applicable land management plan guidance, and that is 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 constituting a day or any part of a day on National Forest System lands for which an outfitter or guide provides services to a client. The total number of service days is calculated by multiplying each service day by the number of clients on the trip.

Temporary Use. Short-term, non-renewable outfitting and guiding use that is authorized in increments of 50 service days, up to a maximum of 200 service days in a 180-day period.

Temporary Use Pool. A pool of service days or quotas in a use area that are reserved for short-term, non-recurring, seasonal distribution during an open season to qualified applicants who do not hold a priority use permit in that use area, and thereafter may be distributed to all qualified applicants on a first-come, first-served basis.

Transitional Priority Use. Interim re-designation of temporary use as classified under the Forest Service's June 12, 1995, outfitting and guiding policy (60 FR 30830), for holders who meet all the requirements in section 41.53p.

Transportation Livestock. Pack and saddle animals authorized in connection with an outfitting and guiding permit and expressed in animal months and by class of animal (see FSM 2234.11).

Use Area. Any geographical configuration, such as a Ranger District, wilderness area, Wild and Scenic River, or National Forest, that allows for efficient management of temporary and priority use pools.

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, wild and scenic river plan, or plan for another type of congressionally designated area. Follow the direction in section 41.53e,

paragraphs 1, 2, and 3, 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 41.53m).

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.
 - 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 monitoring demonstrates that impacts associated with use may exceed desired conditions, 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 resource capacity analysis may be conducted at a programmatic level or at a project level to address specific activities or geographical 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 and visitor use trends (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. Distribute the allocation for temporary use pursuant to section 41.53k, paragraph 2d. 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.

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, Temporary Special Use Permit for Outfitting and Guiding 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 paragraphs 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).

Notwithstanding FSM 2712.2, paragraph 3, 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. Proposals and applications to use and occupy National Forest System lands for outfitting and guiding shall be evaluated pursuant to 36 CFR 251.54 and FSM 2712.
2. Encourage proponents and applicants to submit proposals and applications using form SF-299 for priority use permits or form, Temporary Special Use Permit for Outfitting and Guiding for temporary use permits (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. Require proponents and applicants to describe their technical and financial qualifications to provide the proposed services.
3. Conduct environmental analysis for outfitting and guiding applications in accordance with 36 CFR Part 220.

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 a wilderness area, a river, or an 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.
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, exhibit 02, for this purpose. Alternatively, require the holder's contractors to procure a separate insurance policy that covers their services and equipment and that names the United States as an additional insured.
 - 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.

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.

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.

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.

c. 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.

d. 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 41.53k, paragraph 2, or section 41.53m, paragraph 4.

41.53j - Issuance of Temporary Use Permits

1. Authorize all temporary use on form Temporary Special Use Permit for Outfitting and Guiding, for 1 season or less. Allocate use in increments of 50 service days, up to a maximum of 200 service days or the equivalent in quotas for temporary use permits.
2. Only 1 temporary use permit may be issued per 180 days, per holder, per use area.
3. Do not issue temporary use permits through a competitive process. Rather, issue temporary use permits to qualified applicants on a first-come, first-served basis, based on a seasonal deadline, or through a lottery.
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. Add national or regional clauses to a temporary use permit as necessary to address site-specific circumstances.
6. Require holders to address public health and safety, emergency procedures, and resource protection in their operating plan.
7. Do not conduct performance evaluations for holders of temporary use permits.
8. Violations of law, customer complaints, and adverse outfitting and guiding performance ratings will be considered in evaluating applicants' technical qualifications.
9. Notwithstanding paragraph 1, during fiscal year 2009, authorized officers may continue to authorize temporary use in amounts greater than 200 service days or the equivalent in quotas to provide for establishment of temporary use pools.

41.53k - Management of Temporary Use Pools

1. The authorized officer may establish and manage a temporary use pool, including development of application and operating procedures for the temporary use pool.

2. The authorized officer may establish 1 or more open seasons to facilitate administration and equitable distribution of service days from a temporary use pool, such as for distribution of service days through a lottery.
 - a. During an open season for a temporary use pool, qualified applicants, other than holders of a priority use permit in the use area, may apply for service days from the temporary use pool.
 - b. Once an open season for a temporary use pool ends, distribute any remaining service days on a first-come, first-served basis to all qualified applicants, including holders of a priority use permit in the use area, provided that if a priority use pool has been established for the same use area, applications for any remaining service days may be restricted to qualified applicants who do not hold a priority use permit.
 - c. Upon termination of a temporary use permit, return all service days or quotas allocated to the holder of that permit to the temporary use pool in that use area for redistribution during the next open season.
 - d. Allocate service days or quotas to a temporary use pool based on:
 - (1) A resource capacity analysis demonstrating that additional capacity exists;
 - (2) A determination that service days or quotas have been insufficiently used during the first 5 years of a priority use permit; or
 - (3) A determination that service days or quotas may be reallocated when a priority use permit is revoked or is not renewed.
 - e. The authorized officer may shift service days and quotas between temporary and priority use pools based on their utilization.

41.53/ - 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. Do not authorize temporary use under a priority use permit.

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 priority use outfitting and guiding with a term permit, the use may be authorized for the entire term of the permit, provided that the environmental analysis evaluated the use for that term and the decision based on that analysis approved that term. Do not authorize temporary use under a term permit.

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, extend the permit for up to 8 years. If the holder receives an unacceptable performance rating at the end of the 2-year period, allow the permit to expire.
4. When a priority use permit terminates, except as provided in 36 CFR 251.124(b) or section 41.53l, paragraph 3, 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 41.53m, 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.

41.53m - Allocation of Use for Priority Use Permits

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 5th 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. Provided however, to ensure that 5 years of use are available

for review as a basis for making the allocation adjustment, the authorized officer may consider extraordinary circumstances that prevent a season of operation and adjust the review period to include a previous or an additional year of use. For example, when an administrative closure order prevents public access for the majority of an operating season, the authorized officer may review 5 years of use that excludes use during the year of the extraordinary circumstance.

- a. For holders with 1,000 service days or less or the equivalent in quotas, add an additional 25 percent of that amount and for holders with more than 1,000 service days or the equivalent in quotas, add an additional 15 percent of that 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 25 or 15 percent of use not exceed the amount of use allocated when the permit was issued.
 - 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 section 41.53m, 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. For holders with 1,000 service days or less or the equivalent in quotas, add an additional 25 percent of that amount and for holders with more than 1,000 service days or the equivalent in quotas add an additional 15 percent of that 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 25 or 15 percent of use not exceed the amount of use allocated when the permit was issued.
4. When use remains after allocation pursuant to section 41.53m, paragraph 2 or 3:
 - a. Distribute the use to a temporary or priority use pool;
 - b. Allocate the use through a competitive process; or
 - c. Reserve the use pending completion of a resource capacity analysis.

41.53n - Management of Priority Use Pools

1. The authorized officer may establish and manage a priority use pool, including development of application and operating procedures for the pool, to allow priority use permit holders in a use area to apply for a short-term allocation of use to meet a seasonal need. Upon completion of each open season, all service days or quotas allocated seasonally to priority use permit holders must be returned to the priority use pool for redistribution during the next open season. Authorize short-term use for priority use permit holders using the form, Temporary Special Use Permit for Outfitting and Guiding.
2. After short-term allocation requests have been met from a priority use pool during an open season:
 - a. Priority use permit holders may apply for allocation of any remaining use from the priority use pool to increase their allocation for the remaining term of their permit; and
 - b. If supported by a needs assessment, resource capacity analysis, or other pertinent analysis, remaining use may be allocated from the priority use pool to new priority use permits. See section 41.53g for direction on issuance of new outfitting and guiding permits to qualified applicants.
3. Allocate service days to a priority use pool based on:
 - a. A resource capacity analysis demonstrating that additional capacity exists;
 - b. A determination that service days or quotas have not been used during the first 5 years of a priority use permit; or
 - c. A determination that service days or quotas may be reallocated when a priority use permit is revoked or is not renewed.
4. The authorized officer may shift service days and quotas between temporary and priority use pools based on their utilization.

41.53o - 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, and limit the solicitation to holders of a priority use permit in the use area.

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.

41.53p - Transitional Priority Use

1. Holders of temporary use as classified under the Forest Service's June 12, 1995, outfitting and guiding policy (60 FR 30830) are eligible for reclassification of their use as transitional priority use when:
 - a. Their use is active and recurring;
 - b. Their performance has been satisfactory;
 - c. They request reclassification of their use as transitional priority use by **[insert date 1 year from the date of publication of the final directives]**; and
 - d. They agree to meet the application requirements for reclassification of their use as priority use within 5 years of the date of that request.
2. Reclassification of temporary use as transitional priority use does not guarantee reclassification of transitional priority use as priority use.
3. Authorize transitional priority use for 1 year using form FS-2700-4i.
 - a. If, at the time of expiration of the permit, the transitional priority use is still consistent with applicable law and the applicable land management plan and if the holder's performance is satisfactory, extend the permit for 1 year, and, subject to the same conditions, extend the permit each year thereafter for 1 year until the holder's application for reclassification from transitional priority use to priority use is granted or denied.
 - b. If, at the time of expiration of the permit, the transitional priority use is no longer consistent with applicable law or the applicable land management plan or if the holder's performance is unsatisfactory, allow the permit to expire.
4. Conduct performance evaluations for holders of a transitional priority use permit.
5. Establish a transitional priority use allocation based on the highest amount of actual use in 1 calendar year during the last 5 years, plus 25 percent of that amount for holders with 1,000 service days or less or 15 percent of that amount for holders with more than 1,000 service days, not to exceed the highest amount of use allocated during that period.
6. When there is a change in the ownership of or a controlling interest in the business entity of the holder of a transitional priority use permit, treat the purchaser as a proponent, rather than an applicant, for a transitional priority use

permit. Issuance of a transitional priority use permit to the purchaser does not guarantee reclassification of the transitional priority use as priority use.

7. If supported by a needs assessment, resource capacity analysis, or other pertinent analysis, reclassify transitional priority use as priority use within 5 years of the date of the reclassification request.

8. If a needs assessment or capacity analysis needs to be conducted to determine whether reclassification of transitional priority use as priority use is appropriate, treat the costs to perform that analysis as programmatic, and do not subject them to processing fees.

9. For any work associated with reclassification from transitional priority use to priority use (including NEPA analysis), that is subject to cost recovery fees, utilize a master or major cost recovery agreement covering more than 1 year, and spread the fees over the term of the agreement. Holders in the same use area may be grouped under a master agreement to achieve cost efficiency.

10. When holders of temporary use as classified under the Forest Service's June 12, 1995, outfitting and guiding policy (60 FR 30830) are ineligible for reclassification to transitional priority use under section 41.53p, paragraph 1, or priority use under section 41.53p, paragraph 7:

- a. Reallocate any available use to a temporary or priority use pool at the end of the permit term.
- b. Reallocate the use through a competitive process; or
- c. Reserve the use pending completion of a resource capacity analysis.

41.53q - Administration of Outfitting and Guiding Permits

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

2. A temporary or priority use permit may be revoked or suspended:

- 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. Give the holder notice before revoking or suspending a permit pursuant to section 41.53q, paragraph 2. Give the holder a reasonable opportunity to correct noncompliance or to exercise the rights and privileges granted before revocation or suspension of a permit pursuant to section 41.53q, paragraphs 2a, 2b, or 2c (36 CFR 251.60(e)).
4. An immediate suspension of all or part of a permit may be imposed when deemed necessary to protect public health or safety or the environment in accordance with 36 CFR 251.60(f). Notice and an opportunity to correct deficiencies are not required 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. Use inspections and other documentation as a basis for annual performance ratings (sec. 41.53r, para. 4).

41.53r - 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. Do not authorize temporary use under a term permit.

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. In consultation with District Rangers and other federal land management agencies, Forest and Grassland Supervisors shall develop:

a. Specific, objective performance standards for inclusion in each outfitting and guiding permit or operating plan.

b. Specific standards for compliance with the terms of the permit, the operating plan, and the itinerary; public service; and protection of natural resources.

c. A scoring system or other means for correlating the standards to the performance ratings in section 41.53r, 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 expire.

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 expire.

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 41.53r, 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 41.53r, paragraph 5a, 5b, or 5d:

a. Notice.

(1) 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.

(2) 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.

(3) 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 section 41.53r, 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.