

Chapter 7

Permit Administration

There are seven aspects of effective permit administration:

- ☐ Training.
- ☐ Orientation.
- ☐ Annual operating plan (AOP) review.
- ☐ Performance evaluations.
- ☐ Adverse actions.
- ☐ Claims against the holder.
- ☐ Health and safety inspections.

Training

FS concessions should be professionally managed and should meet the public's expectations. To achieve these goals, the FS requires competent and well-trained FS personnel administering special-use permits. At a minimum, permit administrators should have command of the laws, regulations, and agency policy governing special uses.

In addition, permit administrators should be competent in their verbal and written skills, and have the ability to negotiate and resolve conflict. The FS offers courses in both areas. Skills in accounting, business, and fee computation are also needed.

Orientation

The permit holder should also be familiar with laws, regulations, and agency policy governing special uses. Information can be provided through an orientation or informal contacts between the permit holder and the permit administrator. A joint walk-through of the concession sites is recommended, to familiarize the holder with the location and operation of facilities. The process should be

initiated early to ensure permit compliance and effective communication.

Permit and AOP Review

The permit and AOP establish the basis of performance evaluation. At the beginning of each operating season, these documents should be reviewed with the concessionaire; annual components, such as the G-T fee offset agreement, must be updated. Review reporting requirements. Timelines, such as due dates for submission of use data, should be specified in the AOP. A sample AOP will be developed and, when completed, will be included as an appendix to this chapter.

Performance Evaluations

The FS must monitor and evaluate the concessionaire's performance in accordance with requirements in the prospectus and permit, including any documents incorporated in the permit, such as the AOP and G-T fee offset agreement. Establish a formal evaluation process that measures achievement of public-service goals and compliance with the terms of the permit. In addition to formal evaluations, conduct ongoing monitoring and inspections, to the extent feasible. FSM 1950 contains additional guidance on permit administration.

An annual performance evaluation is essential because it will serve as the basis for extending the permit in accordance with the prospectus and permit, or allowing it to expire. In addition, an annual performance evaluation is important to

ensure compliance with the permit and documents attached to the permit.

National performance standards have been developed, and are incorporated in the Standard Performance Evaluation Form in Appendix 7A. These performance standards are based on Meaningful Measures. Additional standards may be added to the form, to address local needs or issues unique to a particular concession. Include these performance standards in the AOP. Evaluate the holder's performance under each standard, and the holder's overall performance, using three ratings: Good, Satisfactory, and Unsatisfactory.

In determining ratings, use the guidelines in the standard performance evaluation form. The overall rating should not give undue weight to matters of limited importance. If standards are assigned greater weight, that greater weight should be reflected in the overall rating.

The performance evaluation procedure must be provided to the concessionaire prior to an evaluation period, and the concessionaire should be notified prior to on-site evaluations. Generally, a mid-year and an annual performance evaluation should be performed. More frequent reviews may be necessary to achieve compliance with permit terms.

A mid-year evaluation should be conducted and written feedback provided on any deficiencies, so that the holder will have notice and an opportunity to correct them. The holder should be given a time frame for correcting deficiencies.

An annual performance evaluation should be conducted at the end of each operating season, and should address the status of deficiencies identified at mid-year. Written feedback should be provided on any deficiencies identified at mid-year and not remedied, and on any new deficiencies identified during the annual evaluation. If previously identified deficiencies have been corrected, so state. If deficiencies have been corrected, they may not serve as the basis for suspension or revocation of the permit.

Rate every holder at the end of the operating season. Give the holder a copy of the rating, and include notification of the holder's right to appeal.

Annual ratings of Unsatisfactory that are based in whole or in part on uncorrected deficiencies identified during the mid-year evaluation may serve as the basis for suspension or revocation of the permit.

Annual ratings are appealable under 36 CFR Part 251, Subpart C. If the permit will be revoked or suspended as a result of the annual rating, implement the revocation or suspension decision concurrently with the rating. Both the rating and the enforcement action based on it will then be appealable simultaneously.

Adverse Actions

Revocation and Suspension

Revocation is the cessation of a permit by action of an authorized officer before the end of the permit term, typically due to the holder's noncompliance with the terms of the permit. Suspension is a temporary revocation.

A permit may be revoked or suspended for noncompliance with applicable statutes, regulations, or terms of the permit. Noncompliance may be identified during performance evaluation or at any other time during the operating season. Regardless of when it is identified, noncompliance should be taken into account in the performance evaluation.

When noncompliance occurs, follow the direction at 36 CFR 251.60 and in FSM 2721.23. Refer to FSM 2716.3 for direction on revocation and suspension. As discussed in the preceding section, the holder must receive written notice of noncompliance and a reasonable opportunity to comply. Usually not more than 30 days is granted to correct noncompliance. Revocation and suspension require careful documentation and review by the local OGC. Revocation and suspension of a permit are subject to administrative appeal under 36 CFR Part 251, Subpart C. Appendix 7B contains a checklist for enforcement action. Appendix 7C contains a sample noncompliance letter.

Termination

Termination is cessation of a permit by its terms when a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. See FS-2700-4h, Clause VI.E. Examples include but are not limited to expiration of the permit by its terms on a specified date (FS-2700-4h, Clause I.C) and termination upon change of control of the business entity (FS-2700-4h, Clause I.H). Termination of a permit is not subject to appeal.

Claims against the Holder

Failure to pay permit fees is cause for revocation or suspension of the permit. Outstanding payments become claims by the United States against the holder. Interest, penalty, and administrative-cost provisions in FS-2700-4h, Clauses IV.F and IV.G, apply to all delinquent debts. Interest is assessed in accordance with the Debt Collection Act. Assess a minimum annual rate of interest on delinquent debts that is equal to the higher of the Treasury

current-value-of-funds rate or the prompt-payment interest rate in effect on the date the debt accrued.

The interest rate as initially assessed remains fixed for the duration of the period of debt. To determine the total due, add accrued interest and applicable penalties and administrative costs to the principal to be paid. Do not assess interest on interest, penalties, or administrative costs.

FSH 6509.11h, Chapter 20, and FS-2700-4h, Clauses IV.F and IV.G, contain additional guidance on late payments and administrative offset.

Health and Safety Inspections

Depending on the nature of the authorized activities and improvements under permit, there may be agencies other than the FS that will conduct safety inspections of various aspects of the concession, such as food service and boater safety. When such inspections are conducted, include the findings from them in the annual performance evaluation.