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**FOREST SERVICE HANDBOOK  
NATIONAL HEADQUARTERS (WO)  
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**FSH 2709.11 - SPECIAL USES HANDBOOK**

**CHAPTER 30 - FEE DETERMINATION**

**Amendment No.:** 2709.11-2003-1

**Effective Date:** January 9, 2003

**Duration:** This amendment is effective until superseded or removed.

**Approved:** KENNETH R. JOHNSON  
Acting Deputy Chief  
for National Forest System

**Date Approved:** 12/20/2002

**Posting Instructions:** Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 2709.11-2002-1 to 2709.11,10.

<b>New Document</b>	2709.11_30	64 Pages
<b>Superseded Document(s) by Issuance Number and Effective Date</b>	2709.11,30 (Amendment 2709.11-2000-2, 7/28/2000)	62 Pages

**Digest:**

31.5 - 31.52 - Establishes new codes and sets forth direction for field units to establish or supplement fees for special uses.

36.7 - Revises the caption to “Commercial Filming and Still Photography Fees” (formerly, “Still Photography, Motion Picture, and Television Production Fee Schedule”) to reflect terminology used in the filming and photographic industries and language in the Act of May 26, 2000 (Pub. L. 106-206) addressing commercial filming and still photography activities on Federal lands.

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This chapter provides direction for establishing, collecting, and administering special-use fees.

### **30.1 - Authority**

Title 36, Code of Federal Regulations, section 251.57(a) (36 CFR 251.57(a)), directs the authorized officer to determine and collect in advance an annual rental fee for special-use authorizations, except as provided for by statute or regulation or when specifically authorized by the Secretary of Agriculture. Section 251.57(a) further provides that the fee is to be based on the value of the authorized use by appraisal or other sound business management principles to reflect fair market value for that use. See FSM 2701 for other statutory authorities, regulations, and provisions which govern the establishment and collection of fees.

### **30.5 - Definitions**

For definitions which pertain to special-use administration on National Forest System lands, see FSM 2705.

## **31 - ESTABLISHING FEES**

### **31.03 - Policy**

Review fees periodically and adjust them when appropriate, in accordance with the terms and conditions of the authorization or as established in the fee schedule or system.

### **31.1 - Methods for Determining Fair Market Value**

1. Appraisal. Appraisal is a common method to determine fair market value for use fees. Follow the appraisal process in FSH 5409.12, chapter 5 to prepare appraisals and chapter 7 to review for technical adequacy.

- a. Rental Comparison. Use comparable rentals from the private marketplace to determine special-use fees where there is a clearly established rental market for similar uses (FSH 5409.12).
- b. Direct Sales Comparison. Use the comparable sales approach to determine fees if market rental data is unavailable, insufficient, or inadequate. In the direct sales approach, the appraiser investigates and analyzes applicable land sales data for uses similar to the authorized use. Fees based on this method are determined by using a percentage of the appraised value. This percentage rate shall be not less than 5 percent unless a different rate is clearly supported by current market data. This method results in a fixed fee which remains in effect until reevaluated as provided for in the terms of the authorization.

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2. Fees Based on Income From the Authorized Use. Determine fees by applying a selected rate from an established percentage or schedule of graduated rates to the holder's gross sales (FSM 2715.11).

3. Fee System and Schedule. (Sec. 36). Use the appropriate fee schedule or fee system to establish fees for the following uses of National Forest System lands. In some situations, appraisal, competitive bid, or negotiated fee may more accurately reflect fair market value than established fee schedules and should be used to establish fees. Refer to each specific schedule or system for further direction as follows:

- a. Recreation Residence - section 33.
- b. Concessionaire/Ski Areas (GRFS) - FSM 2715.11.
- c. Government-Owned Facilities (Granger-Thye) - FSM 2715.13.
- d. Linear Rights-of-Way - section 36.4.
- e. Seismic Exploration - section 36.6 and FSM 2725.
- f. Outfitter and Guide - section 37.
- g. Communications Site Fee Schedule - section 36.2.

4. Competitive Bid. If competition exists, establish a use fee through bid procedures. Detailed procedures for preparing and offering a bid prospectus are in FSM 2712.2.

5. Negotiated Fees. Fees based on negotiation may be appropriate when other methods do not result in a use fee reflecting fair market value.

### **31.12 - Fee Reviews**

Update fees and fee schedules at 5-year intervals to reflect fair market value, unless fees are indexed or adjusted under provisions of a schedule or system, or are a one time lump-sum payment. It is the responsibility of the authorized Forest Service officer to provide timely notice of fee reviews to the holder.

### **31.2 - Fee Waivers and Exemptions**

Pursuant to 36 CFR 251.57(b), the holder or applicant may submit a written request (including supporting documentation) to the authorized officer for either an exemption or waiver of fees. The authorized officer shall determine eligibility of the applicant or holder for a waiver or exemption. The authorized officer shall review fee waiver and exemptions every five years and at renewal of the authorization.

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### **31.21 - Exemptions**

Fee exemptions are granted by statute and are not subject to discretion by the authorized officer. The following are exempt from use fees:

1. Activities of Federal Agencies. Under 36 CFR 251.57(b)(1), Federal agencies are exempt from paying fees for use or occupancy of National Forest System lands. However, Federal agencies are not exempt from paying fair market rental fees to third parties, such as renting space in a facility manager's communications building located on National Forest System lands.
2. Rural Electrification Administration Financed Facilities. (43 U.S.C. 1764(g)). A holder or use financed in whole or part by either a direct loan from the Rural Electrification Administration (REA), or a loan from a private source for which repayment is guaranteed by the REA. Telephone facilities qualify when a loan is obtained from the REA.
3. Agriculture Irrigation and Livestock Watering System Easements. Water conveyance systems that qualify under provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761), as amended by Public Law 99-545, October 27, 1986.

### **31.22 - Fee Waiver**

Waivers are discounts or reductions from payment of the use fee as provided for in Title 36, Code of Federal Regulations, section 251.57 (36 CFR 251.57). It is the responsibility of the authorized Forest Service officer to determine and document the applicant's or holder's eligibility for a fee waiver. The authorized officer may allow fee waivers only in limited situations after careful scrutiny and shall define the public benefit or the benefit to programs of the Secretary of Agriculture provided for each waiver granted.

If not otherwise specifically designated, determine the holder's or applicant's eligibility for a waiver according to criteria in the following sections 31.22a and 31.22b. Section 31.22a contains criteria for the initial screening process. Proceed to the criteria in section 31.22b only if the holder has not been disqualified in section 31.22a.

The authorized Forest Service officer shall require annual verification from holders of their nonprofit status as defined in the Internal Revenue Code (sec. 501(c)(3)).

#### **31.22a - No Waiver**

Do not grant a waiver if any of the following conditions apply:

1. The holder is a profit-making entity and the principal purpose of the authorization is to generate income.

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2. The holder is a municipal utility or cooperative whose principal source of revenue from the authorized use is customer charges (36 CFR 251.57(b)(1)).
3. The holder, except public telecommunication systems operators, is a nonprofit entity but is using funds derived from the use to increase the value of authorized improvements or to support other activities of the holder.
4. The holder is a nonprofit entity and, as a building owner or facility manager, derives revenue from tenants in a communications facility.
5. Authorizations are issued under a term permit, including term permits issued under the Public Works Act of September 3, 1954 (43 U.S.C. 931c-931d).
6. An easement has been granted.

### **31.22b - Full Waiver**

A full waiver is the reduction of the entire fee for the authorized use. If the holder or applicant is not disqualified according to the criteria in section 31.22a, grant a full waiver if one of the following conditions is met:

1. The holder or applicant is a Corporation for Public Broadcasting affiliate, such as a Public Broadcasting Service (PBS) television station or a National Public Radio (NPR) station. Sectarian radio and television stations or broadcasters do not qualify for a fee waiver under this criterion. Note: Do not grant a fee waiver if an easement is issued (sec. 31.22a, para. 6).
2. The specific use is in partnership with the Forest Service through contract, grant, or cooperative agreement to accomplish a public service project for National Forest System lands or Forest Service programs.
3. The holder or applicant is a State or local government entity.
4. The holder or applicant is a nonprofit entity as defined in section 501(c)(3) of the Internal Revenue Code and the use authorized is an activity to further the safety, health, or welfare to a broad segment of the public or programs of the Secretary of Agriculture (36 CFR 251.57). A fee should not be waived for a nonprofit organization that exists for the principal benefit of its members, such as rod and gun clubs, hiking clubs, and horseback riding clubs; or for sectarian television and radio stations or broadcasters whose programming promotes a particular belief, ideology, or cause.
5. The holder or applicant is a profit-making entity, and the sole purpose of the authorized use is to provide for the safety, health, and welfare of a broad segment of the public with no customer charges.

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6. The use fee is included in fees for an authorized use for which the United States is already receiving compensation.
7. The use involves a cost share road.
8. Reciprocal agreements of equal value are conveyed.
9. The rights reserved are on acquired land where the deed specifies fees must not be charged for a specific use of National Forest System lands.

### **31.22c - Partial Waiver**

A partial waiver is a reduction of the use fee for the authorized use, and shall be granted only when reciprocal agreements are of unequal value.

### **31.23 - Temporary Fee Adjustments**

1. Non-Use. The authorized Forest Service officer may place a use authorization in a non-use status when such action is necessary for the protection of the interest of the United States, or when circumstances beyond the holder's control deny the holder the use of the authorization. Placing an authorization in non-use status fully waives fees for that period. The holder may not use the area for the use authorized during the non-use period; however, the holder must maintain the premises and improvements in a satisfactory condition.

2. Construction Fee. Require construction fees during the construction period for uses whose fee is determined by the graduated rate fee system (GRFS; FSM 2715.11). Base construction fees on land value or other method appropriate to the situation (sec. 31.1). Construction fees shall remain in effect until they reach the fee level established in the special-use authorization, at which point the fees in the special use authorization would apply.

### **31.3 - Administrative Fees**

#### **31.31 - Transfer Fee**

Charge a transfer fee when there is a change of ownership of improvements and a new authorization is issued. Assess the charge to the new holder and bill prior to processing the new application.

#### **31.32 - Cost Recovery [Reserved]**

#### **31.4 - Documentation**

Written statements are required to document fee determinations and reviews. Document the method of fee determination and waiver or exemption, if applicable, in the case folder for each use authorization. As a minimum, fee determination statements must include:

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1. The calculations and basis for the fee, with references to supporting documents such as appraisals, audits, investment records, bid prospectus, and so forth.
2. Any pertinent supporting facts considered.
3. The name of the person who determined the fee.
4. If a full or partial fee waiver has been granted, the application for waiver and the authorized Forest Service officer's reason for the granting the waiver.

### **31.5 - Fees Established by Field Units**

1. Requirements for Use of National Fee Rates, Systems, and Schedules. Field units are required to use the agency's national rates, systems, or schedules when determining fees for special uses. However, field units may establish or supplement fee rates, schedules, or systems as provided in the following paragraph 2.

2. Limited Authorization for Establishment of Fees by Field Units. Regions, Forests, and Grasslands are authorized to establish unit fee rates, schedules, or systems in the following circumstances:

- a. Forest Service directives or regulations require field units to establish or supplement fee rates, schedules, or systems, such as a Regional minimum fee.
- b. A national rental fee schedule or system does not provide a fee for a particular type of use, such as certain communications uses not covered on the national communications site rental schedule.
- c. A national rate, system, or schedule has not been established for a particular special use, such as, apiaries, worm harvesting, mariculture, and so forth.

When available, use existing or reserved codes and captions in this chapter to issue field unit supplements that establish a unit fee rate, schedule, or system or that supplement a national fee rate, schedule, or system. For example, a Region, Forest, or Grassland may issue rental fee direction for a linear right-of-way use in a supplement to section 36.4 or for a filming use in a supplement to section 36.7.

When appropriate codes have not been established in the Service-wide Directive System, coordinate with the field unit Directive Manager to request the Service-wide Directive Manager to establish the necessary codes and captions.

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## **31.51 - Fees Established by Regions**

### **31.51a - Regional Minimum Fees**

It is the responsibility of the Regional Forester to establish and maintain a Regional minimum fee for special uses (FSM 2715.04b).

## **31.52 - Fees Established by Forests and Grasslands**

Fees established by a Forest or Grassland must be approved by the Regional Forester.

## **32 - FEE ADMINISTRATION**

### **32.1 - Fees for Multiple Authorizations**

Write provisions regarding fees and adjustments into the term permit when the holder has both (1) a term permit and (2) a permit covering portions of the same enterprise. The permit must cross-reference the term permit and indicate that collection of the use fee for the entire operation is in accord with conditions of the term permit.

### **32.2 - Payment of Fees**

Use authorizations shall specify the method and due dates for receipt of payments. The authorized officer may allow semiannual, quarterly, or monthly payments to avoid personal hardship to holders with documented justification. A contract number is necessary if multiple payments are involved, or if payments exceed \$300 in any one year. Assign the holder number established in the Forest Land Use Report (FLUR; FSH 2709.11, ch. 60) as the contract identification.

#### **32.21 - Lump-sum Payments**

Advance payments for multiple years may be collected under the following situations:

1. The authorized officer may require a single payment, up to 5 years, if the annual rental fee is less than \$100 (36 CFR 251.57).
2. The holder requests a lump-sum payment regardless of the annual use fee.

#### **32.22 - Initial Payment**

If part of the billing cycle or use season has already elapsed, prorate billings for the remainder of the billing cycle or use season. Prorate fees for less than a full season's use against the recognized season of use. Do not prorate payments to a level below the minimum fee.

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### **32.23 - Payment for Trespass**

Trespass occurs if the holder uses the land without authorization. The issuance of an authorization does not authorize use prior to the authorization date and thus does not cancel or settle prior occupancy in trespass. Bill the holder fair market value for the period of trespass (FSM 5390, 6570; FSH 6509.11h, ch. 20). Bill the holder under the use authorization only for the period covered by the authorization.

### **32.3 - Billing Procedure**

Authorized officers must take aggressive action to collect fees due the United States for the use and occupancy of its lands (4 CFR 102.1; FSM 6570; FSH 6509.11h, ch. 20). The fee for new use authorizations must be paid before the authorized officer signs the authorization. Holders must be billed at least 30 days before payment is due (FSM 6530; FSH 6509.11h, ch. 20), unless permit terms direct otherwise.

#### **32.31 - Bill for Collection**

For related direction, see FSH 6509.11h, chapter 20.

#### **32.32 - Due Dates**

Due dates shall normally be January 1, unless otherwise specified in the authorization. For fees based on revenues, the due date shall coincide with the holder's fiscal year. Whenever possible show due dates as the first day of the month. Authorizations to the same holder should specify the same due date to facilitate consolidated billing when practical. Holders are responsible for timely payment of fees.

#### **32.33 - Late Payments**

For related direction, see FSH 6509.11h, chapter 20.

### **32.4 - Termination or Revocation for Nonpayment**

Provisions of the authorization determine whether a use authorization is terminated or is revoked for nonpayment.

#### **32.41 - Termination**

Use authorizations may be terminated for nonpayment when terms and conditions in the authorization specify that nonpayment of fees terminates the authorization.

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### **32.42 - Revocation**

When there is no specific reference to termination for nonpayment in the authorization, the holder is in noncompliance with the terms and conditions of the authorization for nonpayment of fees. In this situation the authorization may be revoked for nonpayment of fees. The authorized officer, recognizing that an appeal action may result, shall document revocations for nonpayment.

### **32.43 - Termination or Revocation Action**

If payment has not been received within 90 days of the original due date and the notification procedures outlined in FSH 6509.11h, chapter 20, have been followed, send the holder a bill for collection and a certified letter stating:

1. Attempts to collect the use fee and associated charges have been unsuccessful and the special-use authorization is thereby terminated or revoked (sec. 32.4), depending on the provisions of the authorization.
2. Improvements must be removed by a specified date. (In determining the time to allow for removal of improvements, consider the structure(s) to be removed and time of year.)
3. Administrative charges, interest, and penalty charges are still due and payable. Do not bill for the use fee.
4. If the authorization is revoked, inform the holder of the appeal rights.

### **32.5 - Appeals**

#### **32.51 - Appeal of Fee Determinations and Audits**

The following are not appealable:

1. Initial fee determinations for new authorizations.
2. Fee adjustments calculated within the guidelines of an established fee system or schedule, and within the provisions of the authorization.

Disputed fees must be paid in full regardless of appeal status. If appropriate, fee adjustments will be made after the appeal decision.

Fee redeterminations requiring an amendment to the authorization are appealable under Title 36, Code of Federal Regulations, sections 251.80 through 251.102.

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### **32.52 - Appeal of Termination for Nonpayment of Fees**

Termination of a use authorization for nonpayment is not appealable if the authorization specifies that nonpayment of fees terminates the authorization (sec. 32.4).

### **32.53 - Appeal of Revocation Action for Nonpayment of Fees**

Revocation of a use authorization for nonpayment of fees may be appealable (sec. 32.4).

## **33 - RECREATION RESIDENCE FEES**

### **33.1 - Base Fees and Indexing**

Follow these procedures in determining the base (beginning) fee and subsequent fees under a 20-year cycle.

1. As the initial base, use the fees established in one of the years between 1978 and 1982. The first year of the fee cycle is the first year of the established fee (disregarding any phase-in that may have been provided). Adjust the full base fee forward by applying the appropriate cumulative Implicit Price Deflator-Gross National Product (IPD-GNP) adjustment factor shown in exhibit 01. New fees for 1989, established in this manner, will be phased-in over a 4-year period (1989-1992) at the rate of one-fourth of the increase each year, except that fees will not be phased-in for those permits that limit fee adjustments to 5-year intervals.

In those cases where there may not be a fee established for the 1978-1982 period, Regional Foresters are authorized, subject to concurrence of the Chief, to utilize a different starting date and to adjust the length of the fee cycle so that all permits will have a new base fee determined during the 1998-2002 period.

2. For 1990 through the last year of the fee cycle, adjust the fees on an annual basis by calculating the percentage change of the IPD-GNP index (as reported by the Bureau of Economic Analysis, Department of Commerce, in July of each year) from the second quarter of the previous year to the second quarter of the current year and applying this percentage adjustment factor to the current year's fees.

For term permits that restrict adjustments to 5-year intervals, apply the IPD index adjustments cumulatively at 5-year intervals. At the end of the current 20-year term, or earlier if agreed to by the holder, revise permits to provide for annual indexing.

3. Limit the annual fee adjustment for 1990 and thereafter to 10 percent per year when the change in the IPD-GNP index exceeds 10 percent in any one year. The index amount in excess of 10 percent will be carried over and applied to the fee for the next succeeding year in which the index factor is less than 10 percent.

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4. If a new permit is to be issued (FSM 2721.23a), re-appraise the lot toward the end of the 20-year cycle. Beginning in the twenty-first year (the first year of the next fee cycle; 1998 in the case of 1978 fees), put into effect the base fee for the next 20-year cycle by applying 5 percent to the newly determined appraised market value of the lot for recreation residence purposes.

5. In those few cases where one or more additional sleeping structures (guest cabins, and so forth) have been added to a single lot, add to the current adjusted base fee an additional charge equal to 25 percent of the fee established for a single residence use of the lot or \$100, whichever is greater, per structure.

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**33.1 - Exhibit 01**

**IPD-GNP Adjustment Factor by Year**

Base Fee Year	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	Cum. Adj.
1978	1.101	1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.771
1979		1.092	1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.609
1980			1.095	1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.473
1981				1.067	1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.346
1982					1.050	1.032	1.038	1.033	1.026	1.028	1.029	1.261

(NOTE: Cum. Adj. = Cumulative Adjustment.)

The above factors for fee years 1979-1986 were taken from Table 5, Price Indexes and the Gross National Product Implicit Price Deflator, as published in the Survey of Current Business by the Department of Commerce, Bureau of Economic Analysis, February 1986. These factors represent an annual rate, based on the percent change from the first quarter to the second quarter of the indicated year.

The 1987 factor of 1.026 is the percentage change in the IPD-GNP index from the second quarter of 1985 to the second quarter of 1986 as reported in the July 1986 issue of "United States Department of Commerce News," a publication by the Bureau of Economic Analysis. The IPD-GNP index for the second quarter of 1985 is 111.1. The 1988 and 1989 factors, were determined following the same procedures, using the appropriate year's publication. The factors for 1979-1989 in exhibit 01 are shown only to illustrate how the cumulative adjustment factor used to establish the 1989 fee is determined. The factor was determined by chain multiplying the factor for the years within the base fee year period (for 1982 this would be 1.050 x 1.032 x 1.038 x 1.033 x 1.026 x 1.028 x 1.029 = 1.261.) See exhibit 02 for examples of applications.

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**33.1 - Exhibit 02**

**Examples of Use of IPD-GNP Table**

The following two examples illustrate use of the IPD-GNP adjustment factors in exhibit 01 in determining the 1989 fee:

1. Example 1. A fee of \$412 that became established in 1982 (first year in the fee cycle) would be adjusted to \$520 in 1989 ( $\$412 \times 1.261$ ). This would be the fee amount owed by a holder who does not accept the new term permit and would remain constant until the end of the five year adjustment period. If a new term permit is accepted, the fee would be phased-in, and the holder would be charged \$439 for 1989, instead of the full amount.

2. Example 2. A 1980 base year fee of \$315 would be adjusted to \$464 ( $\$315 \times 1.473$ ) with the actual 1989 charge limited to \$352 for a new term permit. A holder who keeps the old permit would pay the full fee of \$464 in 1989.

Under both examples, factors for the years 1990 and thereafter will be determined in the same manner as the 1989 factor. Using the 1989 factor as an example, the index for the second quarter of 1987 as reported in the July 1987 Bureau publication is 117.2; the index for February 1988 in the July 1988 Bureau publication is 120.6. The percentage change in the index to be used to determine 1989 fees is 120.6 minus 117.2 divided by 117.2. Thus, 1989 fees will be 2.9 percent higher than 1988 fees for those permits that are indexed.

Using the above two examples, calculation of the 1990 fees for those accepting new term permits would be as follows (A 1990 IPD-GNP adjustment factor of 1.028 is assumed):

1. Example 1. The full 1989 fee of \$520 times the IPD-GNP index factor for 1990 of 1.028 equals \$535, the full fee for 1990. The increase in the fee is \$15. The amount of the 1989 fee increase to be phased-in in 1990 is \$54 ( $\$520 - \$412 = \$108/2 = \$54$ ). Thus, the 1990 fee to be charged is the base 1982 fee of  $\$412 + \$54 + \$15 = \$484$ .

2. Example 2. The full 1990 fee equals \$477, a fee increase of \$13. The amount of the 1989 fee increase to be phased-in in 1990 is \$75 ( $\$464 - \$315 = \$149/2 = \$75$ ). Thus, the 1990 fee to be charged is the base 1980 fee of  $\$315 + \$75 + \$13 = \$403$ .

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**33.11 - Fee Credits**

In billing holders for fees, reduce the fee by the amount of any unused or remaining credits due holders under provisions of the Appropriations Acts for fiscal years 1983 through 1986.

**33.2 - Fees on Nonrenewal**

When permits are placed on tenure (that is, a new special use permit will not be issued following expiration), the annual fee for the tenth year prior to the expiration date of the current permit becomes the base fee. The fee for each year during the last ten years is one-tenth of the base fee multiplied by the number of years then remaining on the permit. For example, charge a holder with nine years remaining 90 percent of the base fee; with eight years, 80 percent; and so forth.

Use the following schedule to calculate the holder's fee during the 10-year period:

<u>Years Remaining On Current Permit</u>	<u>Percent of Base Fee To Charge</u>
10	100
9	90
8	80
7	70
6	60
5	50
4	40
3	30
2	20
1	10

When a review of the decision to convert the lot to an alternative public use shows that changed conditions warrant continuation of the recreation residence, use the following fee determination procedures:

1. If a new 20-year term permit is issued, the Forest Service shall recover the amount of fees foregone while the previous permit was under notice that the lot would be converted to an alternative public use. Collect this amount evenly over a 10-year period in addition to the annual fee due under the new permit. The obligation runs with the lot and shall be charged to a subsequent purchaser. The annual fee under the newly issued 20-year permit shall be the annual index adjusted fee computed as though no limit on tenure existed, plus the amount specified above until paid in full.

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2. If a 20-year term permit is not issued, and the occupancy of the subject lot is to be allowed to continue for less than 10 years (that is, authorized by a new permit for a specified term), do not recover past fees. Determine the fee for a new permit of less than 10 years by computing the fee as if notice that a new permit would not be issued had not been given, reduced by the appropriate percentage for the number of years of the extension (that is, a 6-year tenure period results in a fee equal to 60 percent of the base fee).

3. If a 20-year term permit is not issued, and the occupancy of the subject lot is to be allowed to continue for more than 10 years (authorized by a new permit for a term of less than 20 years), the Forest Service shall recover fees as outlined in preceding paragraph 1, computed for the most recent 10-year period in which the term of the permit was limited.

### **33.3 - Appraisals**

Use the following process to determine the fair market value of recreation residence lots.

1. Use appraisals made by professional appraisers for determining the market value of the fee simple estate of the National Forest land underlying the lot subject to a special use permit, but without consideration as to how the authorization would or could affect the fee title of the lot. See FSH 5409.12, Chapter 6, for the standard contract for use in establishing fair market value of recreation residence lots.

2. In consultation with affected holders, select and appraise typical lots (rather than all individual lots) within groups that have essentially the same or similar value characteristics. Within such groupings, adjust for measurable differences between the lots. (Once properly established, typical site classifications should rarely change.)

3. Ensure appraised values are based on comparable market sales of sufficient quality and quantity that will result in the least amount of dollar adjustment to make them reflective of the subject lots' characteristics. Such characteristics include:

- a. Physical differences between subject lot and the comparable sales.
- b. Legal constraints imposed upon the market by governmental agencies.
- c. Economic considerations evident in the local market.
- d. Locational considerations of subject lot in relation to the market (sales) comparable.
- e. Functional usability and utility of the lot.
- f. Amenities occurring to the lot as compared with selected sales comparables.

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- g. Availability of improvements (such as roads, water systems, and power lines) provided by nonholder entities, including the United States. Do not adjust for improvements furnished by holders.
- h. Other market forces and factors identified as having a quantifiable effect upon value.

### **33.31 - Appraisers**

1. Select fee appraisers who hold a current certification of competence from a nationally recognized professional appraisal organization. In the case of Forest Service appraisers, use those individuals who have received adequate training through professional appraisal organizations and who have satisfactorily completed the basic courses necessary to demonstrate competence.

2. Require appraisers to sign a standard agreement that states:

- a. The approved appraisal format to be used.
- b. The approved standard forms to be used.
- c. A full, complete, and accurate definition of the appraisal problem.
- d. The standards of professional competence, ethics, and practice to which the appraiser shall adhere.
- e. Those requirements of the appraisal assignment that may be imposed under statutes, Federal regulations, Forest Service policies and procedures, and situations unique to the given appraisal assignment.

3. Require appraisers to notify affected holders by mail and offer to meet with them to discuss the assignment, answer questions specific to the assignment, and seek advice, information, and cooperation from the holders and their local organizations. The appraiser must notify holders of such a meeting at least 30 days in advance of the meeting. Send notices to the address used for bills for collection. Use the notice to give the holders advance information on the appraisal assignment. At such meetings, require that the appraiser have available copies of the appraisal instructions, directions, and requirements for review by the holders. An appraisal cannot be made prior to the meeting with the holders.

### **33.32 - Establishing Recreation Residence Lot Value**

1. Upon receipt of the appraisal report, conduct a review of the appraisal in conformance with the standards of the National Association of Review Appraisers.

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2. Following review and acceptance of the appraisal, notify affected holders of Forest Service acceptance of the report. In the notification, inform holders that they and other interested parties have 45 days in which to review the appraisal. Upon request, provide copies of the report(s) and supporting documentation pursuant to the Freedom of Information Act.

3. Upon request, provide an opportunity for affected holders to obtain, at their expense, an appraisal report from an appraiser holding at least the same or similar qualifications as the one selected by the Forest Service. The Forest Service shall:

- a. Provide holders with a copy of the standards used by the appraiser selected by the Forest Service and holders shall provide the standards to the holder-employed appraiser. The holder must require the observance of these standards, including a signed certification that ensures an understanding of the appraisal instructions and standards. Reject any appraisals that do not meet these standards.
- b. Subject the holder-furnished appraisal to the same review requirements as the appraisal obtained by the Forest Service.

4. Give full and complete consideration to both appraisals. If the two appraisals disagree in value by more than 10 percent, ask the two appraisers to try and reconcile or reduce their differences. If the appraisers cannot agree, the Forest Supervisor will utilize either or both appraisals to determine the fee, unless a third appraisal is requested and accepted by the Supervisor.

5. When requested, seek a third appraisal.

- a. The cost shall be shared equally by the holder and the Forest Service.
- b. This appraisal must meet the same standards of the first and second appraisals. The Forest Supervisor has discretion to accept or reject the third appraisal.

## **34 - FACILITIES FINANCED BY RURAL ELECTRIFICATION ADMINISTRATION**

### **34.1 - Determination of Exemption**

The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1764(g)), Section 504, as amended by Public Law 98-300, exempts facilities authorized under FLPMA and financed pursuant to the Rural Electrification Act from land use rental fees for rights-of-way on Federal lands. It also provides fee relief for extensions of facilities financed through the Rural Electrification Administration (REA) (sec. 34.12).

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### **34.11 - Eligibility for Rent-Free Rights-of-Way**

1. Do not charge a land use fee for any REA-financed facility, including electronic sites and access roads paid for in whole or in part with funds from one or more of the following sources:

- a. A direct loan from the REA;
- b. A loan from a private source for which repayment is guaranteed by the REA; or
- c. A loan for telephone facilities from the Rural Telephone Bank, a quasi-Federal government agency.

2. Determine fee exemption eligibility by the presence of REA financing of the facility. Require applicants and holders who claim eligibility to show evidence of REA financing of the facility. Such evidence includes approved loan, work order, work plan, or system maps. If information for the facility is unavailable, as may be the case for older REA loans, use system-wide information from the following sources:

- a. The REA published annual reports, "Statistical Report, Rural Electric Borrowers" and "Statistical Report, Rural Telephone Borrowers";
- b. A system map provided by the affected individual borrower which shows facilities covered by REA's mortgage; or
- c. A statement from the borrower certifying that the facilities in question meet the exemption status of Public Law 98-300.

If necessary, confirm the information provided with the REA by obtaining the name and address of that agency's General Field Representative from the applicant or holder and contacting the REA representative to confirm the REA financing.

### **34.12 - Facility Extensions**

Use information provided by the holder to determine the fee exemption eligibility under Public Law 98-300, for any extension from such a facility. The facility must be an extension of a REA-financed facility.

The fee exemption provisions also apply to extensions of electrical and telephone lines when:

1. The facility is constructed by the ultimate consumer or user, not an REA borrower.
2. The electrical current or telephone service is provided by an eligible REA-financed facility.

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### **34.13 - Former Borrowers**

Those REA borrowers who have repaid their loans in full and those REA-financed facilities that have been acquired by non-REA financed private companies or municipals are eligible for a fee-exempted right-of-way under Public Law 98-300 based either on the original REA financing or on extensions of the REA-financed facility.

### **34.14 - Joint Ventures**

In case of joint venture sponsoring, where one or more of the sponsors have eligible REA financing, the REA financing must be more than nominal or token to qualify the right-of-way grant for the fee exemption provision of Public Law 98-300 as an extension. Apply the fee exemption provisions only to those specific portions of the project that are REA financed.

### **34.15 - Exclusions**

A holder who purchases power delivered through an REA-financed transmission line for further transmission, distribution, or sale is not eligible for the fee exempted benefits of Public Law 98-300 as an extension. Similarly, merely wheeling power through an REA-financed transmission line does not qualify an otherwise unqualified holder to receive a fee-exempted right-of-way.

### **34.16 - Authorizations Not Under Federal Land Policy and Management Act**

Although Public Law 98-300 applies only to authorizations made pursuant to the Federal Land Policy and Management Act, do not charge a fee for rights-of-way made under other authorities (now repealed) if the facilities otherwise meet the test for exemption fees.

### **34.17 - Fee Clause**

Delete the standard permit fee clause and insert Clause A17, Fees - Rural Electrification Administration Facilities (FSH 2709.11, sec. 53), when amending or issuing permits to REA-financed facilities. Do not collect administrative costs for REA permits exempted from a land use rental fee.

## **36 - FEE SYSTEMS AND SCHEDULES**

### **36.1 - Fee Based on Sales (Graduated Rate Fee System)**

See FSM 2715.11 for direction on the graduated rate fee system (GRFS), which is used to determine fees for concessions, such as ski areas.

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## **36.2 - Communications Site Fee Schedule**

This section provides direction for use of the fee schedule for communications uses on National Forest System lands.

### **36.21 - Determination of Fees**

The authorized officer shall request that the holder provide a certified statement by October 15 of each year containing a list of tenants, by category of use, in the facility on September 30 of that year.

Calculate the annual fee using the fee schedule (ex. 01) and the population strata based on the Ranally Metro Area (RMA) population and city listing (ex. 02). The fee schedule provides rental fees by category of use and population. See section 36.21a for exceptions to using the fee schedule.

1. Consider the following when determining fees:
  - a. If the communications site serves an RMA (ex. 02), determine the fee by the category of use and the corresponding population range on the fee schedule (ex. 01).
  - b. If the communications site does not serve a listed RMA community (ex. 02), determine the fee based on the population for the largest community (according to the most current "Rand McNally Road Atlas") served by the site.
  - c. If the communications site does not serve a community, determine the fee based on the lowest scheduled fee (ex. 01) for the category of use, except in situations described in section 36.21a.
  - d. Consider co-owned AM and FM stations located in the same facility as two radio stations in determining fees.
  - e. Do not apply the 25 percent schedule rate for customers (sec. 48.1, para. 5), including internal and private users, renting space in a communications facility.
2. Apply the fee schedule to communications uses providing the following services:
  - a. Television Broadcast. (Sec. 48.11a of this Handbook).
  - b. AM and FM Radio Broadcast. (Sec. 48.11b).
  - c. Cable Television. (Sec. 48.11c).

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- d. Broadcast Translator, Low Power Television, and Low Power FM Radio. (Sec. 48.11d).
  - e. Commercial Mobile Radio Service (CMRS) and Facility Manager. (Sec. 48.12a).
  - f. Cellular Telephone. (Sec. 48.12b).
  - g. Private Mobile Radio Service. Stand alone operations only. (Sec. 48.12c).
  - h. Microwave. Common carrier microwave relay and industrial microwave. (Sec. 48.12d).
  - i. Other Communications Uses. Stand alone operations only. This category includes the following uses: amateur radio; personal/private receive only; and natural resource and environmental monitoring. (Sec. 48.13).
3. Except for fees that apply to a facility manager (para. 4), assess fees for all the preceding uses in paragraphs 2a to 2i providing rental space to tenants as follows:
- a. Determine a base fee from the schedule rate fee for the building owner or the use generating the highest schedule fee in the facility. If the highest schedule fee is a "tenant" fee, the "tenant" fee becomes the base fee and the building owner's schedule rate fee is used as a tenant fee for calculating additional fees (following para. b).
  - b. Add 25 percent of the schedule fee for each "tenant" (ex. 01). Include 25 percent of the building owner's scheduled fee if it is not the highest fee and, therefore, not used as the base fee.

Sample fee calculations are provided as follows:

Example 1: A communications facility serving an RMA population area of 200,000, with a CMRS provider (building owner), one TV broadcaster, two FM broadcasters, one cellular telephone, and two private mobile radio users.

Base fee = \$6,000 (TV broadcast is the highest value use in the facility) + \$750 (25% CMRS provider (building owner) + \$2,000 (25% of two FM broadcasters) + \$1,000 (25% cellular telephone) + \$0.00 (no charge for PMRS) = Total fee for the facility: \$9,750.

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Example 2: A communications facility serving an RMA population area of 800,000, with a TV station (building owner), one FM broadcaster, and three private mobile radio users.

Base fee = \$14,000 (TV broadcast is the highest value use in the facility) + \$2,500 (25% FM broadcaster) + \$0.00 (no charge for PMRS) = Total fee for the facility: \$16,500.

4. Fees for facility managers are calculated differently from other uses. Facility managers provide rental space for other communications uses; they do not directly provide communications services to others. Determine the base fee as described in the preceding paragraph. However, if the highest valued scheduled fee for the facility is not the facility manager's, do not "substitute" the 25 percent facility manager rental fee for the tenant fee used for the base fee.

Sample fee calculations for facility manager uses are provided as follows:

Example 1: A facility manager serving an RMA population area of 200,000, with three microwave providers and two amateur radio operators.

Base fee = \$3,000 (the facility manager schedule rate is the highest valued use in the facility) + \$1,500 (25% three microwave users) + \$0.00 (no charge for amateur radio) = Total fee for the facility: \$4,500.

Example 2: A facility manager serving an RMA population area of 800,000, with a TV station, three FM broadcasters, and three private mobile radio users.

Base fee = \$14,000 (TV broadcast is the highest value use in the facility) + \$7,500 (25% FM broadcaster) + \$0.00 (no charge for PMRS) = Total fee for the facility: \$21,500.

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**36.21 - Exhibit 01**

**Fee Schedule for Communications Uses**

**EXHIBIT 01 IS ISSUED SEPARATELY AS AN INTERIM DIRECTIVE.**

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**36.21 - Exhibit 02**

**Listing of Cities by Population Strata**

**EXHIBIT 02 IS ISSUED SEPARATELY AS AN INTERIM DIRECTIVE.**

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### **36.21a - Exceptions to Fee Schedule**

Fees not established by use of the fee schedule shall be based on comparative market surveys, appraisals, or other reasonable methods. All such fee determinations shall be documented, supported, and approved by the authorized officer. The following are exceptions to the fee schedule:

1. The fee or use is not covered by the fee schedule.
2. The fee has been or will be established through competitive bid and will be updated in accordance with the terms and conditions of the authorization.
3. The Regional Forester concurs with the authorized officer that the communications site serves a population of one million or more and the expected fee for the communications use is more than \$10,000 above the established fee schedule.
4. The expected fee exceeds the schedule rate fee by 5 times or more.

### **36.22 - Phase-in of Fees**

Fees for new uses (new construction) do not qualify for a phase-in. For existing uses, phase in first year increases in fees of more than \$1,000 over a 5-year period. For example, if the current total fee is \$700, and the new total fee is \$2,700, calculate the 5-year phase-in as follows:

1. Year 1996. \$700 (current total fee in 1995) + \$1,000 (limit of first year increase) = \$1,700 (first year's fee in 1996);
2. Year 1997. \$1,700 (first year's fee in 1996) + \$250 (1/4 of remaining increase (\$1,000) greater than \$1,000) X 1.02\* = \$1,989 (second year's fee in 1997);
3. Year 1998. \$1,989 (second year's fee in 1997) + \$250 (1/4 of remaining increase (\$1,000) greater than \$1,000) X 1.02\* = \$2,284 (third year's fee in 1998);
4. Year 1999. \$2,284 (third year's fee in 1998) + \$250 (1/4 of remaining increase (\$1,000) greater than \$1,000) X 1.02\* = \$2,584 (fourth year's fee in 1999);
5. Year 2000. \$2,584 (fourth year's fee in 1999) + \$250 (1/4 of remaining increase (\$1,000) greater than \$1,000) X 1.02\* = \$2,891 (fifth year's fee in 2000);
6. Year 2001. Phase-in of the fee schedule has been completed. In succeeding years, apply only the CPI-U to the previous year's fee. \$2,891 (fifth year's fee in 2000) X 1.02\* = \$2,949 (fee in 2001).

\* Assumed 2 percent increase each year in the United States Department of Labor Consumer Price Index for All Urban Consumers - U.S. City Average (CPI-U).

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### **36.23 - Updating Fee Schedule**

The Director of Lands, Washington Office, shall update the fee schedule (sec. 36.21, ex. 01) annually, based on the CPI-U published in July of each year. Annual adjustments based on the CPI-U shall be limited to 5 percent. The Director of Lands shall review the fee schedule no later than 10 years after the date of implementation of the schedule, and at least every 10 years thereafter, to ensure that fees reflect fair market value.

The Director of Lands shall review and update the RMA city and population table (sec. 36.21, ex. 02) annually.

### **36.24 - Fee Waivers and Exemptions**

For direction on fee waivers and exemptions, see sections 31.2 through 31.4.

### **36.25 - Fee Adjustment for Required Free Use**

In no circumstance require a private holder to provide free rental space to Federal agencies or any other entity. In order to rectify past situations in which the Forest Service required the holder to provide free rental space, discount the annual fee by the same percentage that the entity receiving free use occupies (in square feet) in that building. For example, if the Forest Service previously required a building owner to provide free use for 20 percent of the building, discount the annual fee by 20 percent. Such a discount is valid for the period of time specified in an existing agreement between the parties.

### **36.3 - Government Owned Facilities Fee (Granger-Thye)**

(See FSM 2715.13).

### **36.4 - Linear Right-of-Way Fee Schedule**

This section provides direction for use of the fee schedule in special use authorizations for linear rights-of-ways. This schedule is established pursuant to the linear right-of-way fee policy adopted December 5, 1986 (48 FR 44014).

#### **36.41 - Determination of Fee**

Calculate the annual fee by using the fee schedule in exhibit 02 (which is issued separately as an interim directive) that provides rental rates by State, county, and type of linear right-of-way use. The annual fee is the rental rate times the number of acres. Round the acres to the nearest hundredth and round the total fee to the nearest dollar. For example, the 1991 fee for a municipal water canal located on 21.392 acres of National Forest System lands in Hood River County, Oregon, is calculated as follows:

$$\text{\$23.55 per acre per year} \times 21.39 \text{ acres} = \text{\$558.84 (rounded to \$559)}.$$

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1. Annual Adjustments. The per-acre rental fees in the fee schedule are adjusted annually by multiplying the current year per-acre rental fee by the annual change (second quarter to second quarter) in the implicit price deflator-gross national product (IPD-GNP) index, exhibit 01 (which is issued separately as an interim directive), as published in the Survey of Current Business of the U.S. Department of Commerce, Bureau of Economic Analysis. The Washington Office Director of Lands is responsible for making annual updates to the IPD-GNP index and fee schedule.

2. Minimum Fee. Charge the Regional or Forest minimum fee when the calculated annual fee from the fee schedule is less than the minimum fee established by the Regional Forester or Forest Supervisor. For example, when the Regional Forester sets \$50 as the Regional minimum fee for a special-use permit, charge the minimum \$50 rather than the \$20 fee calculated from the linear right-of-way fee schedule.

3. Lump-sum Fee. Calculate the annual fee amount from the fee schedule and multiply the product by the number of years for which fees are collected (sec. 32.21). For example, the 1991 annual fee amount for a water line is \$60 and the special use permit provides for fee payments for 5-year periods. The fee amount would be \$300 ( $\$60 \times 5 \text{ years} = \$300$ ). The fee would be collected again in 1996 and would be calculated by using the adjusted values in 1996 for the next 5-year period.

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**36.41 - Exhibit 01**

**Cumulative Implicit Price Deflator-Gross National Product (IPD-GNP)  
for the  
Linear Right-of-Way Fee Schedule**

**EXHIBIT 01 IS ISSUED SEPARATELY AS AN INTERIM DIRECTIVE.**

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**36.41 - Exhibit 02**

**Linear Right-of-Way Fee Schedule**

**EXHIBIT 02 IS ISSUED SEPARATELY AS AN INTERIM DIRECTIVE.**

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### **36.42 - Exceptions to Fee Schedule**

Do not charge the rates in the fee schedule when:

1. The right-of-way use is minor and is not the primary use authorized. For example, the well is the primary use for a special use permit that authorizes a water well, pump, 500 feet of electrical lines to the pump and storage tank, a 5,000-gallon water storage tank, and 300 feet of 1-1/2-inch buried water line. Do not use the fee schedule for the water line or the electrical line.
2. The rights-of-way are constructed and maintained for a primary use that is under a different fee system, such as the graduated rate fee system or a per unit fee system.
3. The fee being calculated is for dams and reservoirs.
4. The rights-of-way are water transmission facilities for hydroelectric projects.
5. The fee determined by an appraisal is 10 or more times the fee from the schedule. For example, the fee schedule would not be used when the fee determined by appraisal is \$1,000 and the fee from the schedule is \$100. When the appraisal is based on land value of the area occupied by the right-of-way for the authorized use, apply the differential adjustment for the category of right-of-way and amortization rate (sec. 36.45) to the appraised value to arrive at the current calendar year fee per acre.

Example: The indicated 1991 rental fee per acre from the schedule (sec. 36.45) for a private land access road in Glacier County, Montana, is \$5.88 per acre. The road crosses highly valued recreation land. An appraisal values the land at \$1,500 per acre. The calculated rental fee would be as follows:

$$\text{Rental fee per acre} = \$1,500 \times 80\% \times 6.41\% = \$76.92 \text{ per acre.}$$

6. The calculated annual fee is less than the minimum established by the Regional Forester or Forest Supervisor.

### **36.43 - Amending Existing Special-Use Authorizations**

1. Fees. Special-use permits issued on Forms FS-2700-4 and FS-2700-11 contain a provision in the fee clause that states, "Provided, however, charges for this use may be made or readjusted whenever necessary to place the charges on a basis commensurate with the value of use authorized by this permit." Amend permits containing this provision by deleting the fee clause and adding clause A-14 or A-15, as appropriate, from section 53.1 of this Handbook. At the same time, include the current clause regarding interest, penalty, and administrative charges, if needed.

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Term permits provide for fee adjustment at 5-year intervals and cannot be amended without the holder's approval. Amend these authorizations when there is an opportunity to provide for annual adjustment of fees and other needed changes.

2. Relocation. Retain clause X-33 in all authorizations where it is required (sec. 52).
3. Assignability. Special-use permits are not assignable. Do not amend special-use permits to provide for assignability.

### **36.44 - Preparing New Authorizations**

Choose the appropriate fee clause in Form FS-2700-4 to provide for annual adjustment or lump sum payment (sec. 54.5). Modify the fee clause included in other printed forms or formats to provide for annual adjustment or lump sum, as appropriate, using clause A-14 or A-15 (sec. 53.1).

### **36.45 - Fee Schedule**

1. Fee Formula. The annual rental fee per acre (rental fee/acre) is calculated by taking the right-of-way zone value (ZV) times the differential adjustment (DA) times the amortization rate (AR):

$$\text{Rental fee/acre} = ZV \times DA \times AR.$$

2. Right-of-Way Zone Value. The right-of-way zones are based on typical rawland values for the types of land on which, in the past, the Forest Service and Bureau of Land Management have authorized linear rights-of-way. The zones established in the schedule in section 36.41, exhibit 02 (issued separately as an interim directive), are by State and county jurisdiction. The values for right-of-way zones are not based on the values for urban or suburban residential areas, industrial parks, farms or orchards, recreational properties, or other such types of land. Specific sites within a zone may have actual values higher or lower than the value assigned to the zone.

3. Differential Adjustment. The differential adjustment is a component of the rental formula which adjusts the zone value downward to reflect the differences between rights-of-way authorizations granted by private landowners and those authorized by the Government. Two categories of uses have different adjustment factors:

- a. Adjust land values for energy pipelines, ditches, canals, and road rights-of-way at 80 percent of the zone right-of-way value, and
- b. Adjust land values for electrical transmission, electrical distribution, telephone, and other linear rights-of-way not identified above at 70 percent.

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4. Amortization Rate. The rental rate is 6.41 percent, based on the one-year Treasury securities "constant maturity" rate as of June 30, 1986. This rate shall remain fixed until adjusted as outlined in paragraph 5 on updating the fee formula.

5. Updating the Fee Formula. When one of the following conditions occurs the Washington Office Director of Lands is responsible for undertaking a review of all the elements of the formula.

a. A cumulative change in the IPD-GNP index of plus or minus 30 percent occurs. The 1986 second quarter index used was 96.5. The trigger points for the IDP-GNP index are 67.55 on the minus side and 125.45 on the plus side.

b. The 3-year average of the one-year fixed Treasury security rate, as measured for the second quarter of each year, exceeds a cumulative change of plus or minus 50 percent of the June 30, 1986, rate of 6.41 percent. The triggers are 3.20 percent and 9.61 percent.

If the review indicates a change or adjustment to the formula is needed, the Forest Service shall request public input by notice in the Federal Register and follow the public involvement procedures in Title 36, Code of Federal Regulations, Part 216.

6. Cumulative IPD-GNP Adjustments for the Fee Schedule. The cumulative IPD-GNP adjustments for the linear right-of-way fee schedule, second quarter to second quarter, are in section 36.41, exhibit 01 (issued separately as an interim directive).

7. Rental Fee/Acre. The current fee schedule to be used is set out in section 36.41, exhibit 02 (issued separately as an interim directive).

### **36.5 - Organization Camp [Reserved]**

### **36.6 - Geological and Geophysical Exploration Fee**

The fee for seismic exploration is \$200.00 per mile or fraction of a mile. Charge this fee for any permit issued to authorize seismic exploration for oil and gas on National Forest System lands. This fee is in addition to any costs associated with reclamation, restoration, or compliance with applicable laws for which the holder may be responsible as a condition of the permit.

Do not charge a fee to a leaseholder for seismic exploration of an area within a valid leasehold (FSM 2860).

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## **36.7 - Commercial Filming and Still Photography Fees [Reserved]**

## **37 - OUTFITTER AND GUIDE FEES**

For related direction on special uses administration, see section 41.53.

### **37.01 - Authority**

For related direction, see section 30.1 and FSM 2701.1.

### **37.03 - Policy**

For related direction, see section 31 and FSM 2715.03.

#### **37.03a - Fees for Activities Associated with Commercial Public Service Site**

Use the Graduated Rate Fee System (GRFS) (FSM 2715.11) to determine fees for outfitter and guide activities (such as cross-country skiing or horseback riding) established by the Forest Service in connection with an authorized commercial public service site on National Forest System lands (such as a resort or lodge). Where applicable, require holders under GRFS to pay additional fees for assignment of sites (sec. 37.21h) and livestock grazing use (sec. 37.21i).

#### **37.03b - Fees for Activities Not Associated with Commercial Public Service Site**

Require payment of fees according to the direction in sections 37.21 to 37.24 for outfitter and guide activities authorized as a distinct activity not associated with a public service site.

### **37.04 - Responsibility**

(See FSM 2704.13). The Washington Office Director of Recreation, Heritage, and Wilderness Resources is responsible for adjusting the minimum fee and the assigned site fee every three years with 1993 as the base year, based on the Gross Domestic Product-Implicit Price Deflator Index.

### **37.05 - Definitions**

See section 41.53c for additional definitions for "guiding," "holder," "incidental use," "outfitting," "priority use," "renewal," "temporary use," and "transportation livestock."

Adjusted Gross Revenue. Gross revenue and revenue additions less applicable exclusions.

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Adjustment for Use Off National Forest System Lands. The reduction in the fee for commercial use to account for the portion of the outfitted or guided trip that occurs off National Forest System lands (sec. 37.21e).

Assigned Site. A site that is designated and authorized for occupancy and use by a holder who is providing a recreation service to the public during the authorized period of occupancy. Examples include but are not limited to base and drop camps, picnic sites, loading facilities, boat launches, and helispots.

Average Client-Day Charge. Adjusted gross revenue divided by the total number of client days for the duration of the outfitted or guided trip.

Client Charge. The outfitter's or guide's charge per client for an outfitted or guided trip.

Client Days.

1. National Forest System Client Days. The number of service days (that is, days on National Forest System lands) for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

2. Total Client Days. Where there is use both on and off National Forest System lands, the total number of days for the duration of the outfitted or guided trip multiplied by the number of clients on the trip. See section 37.21c for related direction.

Duration of Outfitted or Guided Trip. The period that begins when the client first comes under the care and supervision of the outfitter or guide, including arrival at the holder's headquarters or local community, and ends when the client is released from the outfitter's or guide's care and supervision. Duration of the outfitted or guided trip is used to calculate client days, which in turn are used to determine the average client-day charge and the adjustment for use off the National Forest System lands. See section 37.21c for related direction.

Gross Revenue. The total amount of receipts from the sale of goods or services provided by the holder in connection with the outfitted or guided trip. These receipts include:

1. Revenue received by the holder from clients for goods or services provided during the outfitted or guided trip (the client charge per trip multiplied by the total number of clients on each trip);
2. Revenue received by the holder or the holder's employees or agents for scheduling or booking the outfitted or guided trip; and
3. Revenue from goods or services provided off National Forest System lands, such as lodging and meals, unless specifically excluded.

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Non-use. Authorized use the holder did not use (see also "Unapproved non-use").

Revenue Additions. The market value of the following items which are added to gross revenue:

1. The value of goods and services that are donated or the value of goods and services that are bartered in exchange for goods and services received that are directly related to the outfitted or guided trip; and
2. The value of gratuities, which are goods, services, or privileges that are not available to the general public and that are donated or provided without charge to organizations; individuals; the holder's employees, owners, or officers; or immediate family members of the holder's employees, owners, or officers.

Revenue Exclusions. The following items which are excluded from gross revenue:

1. Revenue derived from goods or services sold on private land that are not related to outfitting and guiding operations conducted on National Forest System lands, such as souvenirs, telephone toll charges, and accident insurance sales;
2. Amounts paid or payable to a State government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets; and
3. Revenue from the sale of operating equipment, rental equipment, capitalized assets, or other assets used in outfitting and guiding operations. Examples are horses, tack, watercraft, and rental skis and boots, which are sold periodically and replaced.

Service Day. A day or any part of a day on National Forest System lands for which an outfitter or guide provides goods or services, including transportation, to a client.

Short-Stop Fee. Fees for trips that use National Forest System lands incidental to the purpose of the trip, such as a bus tour that takes clients on a sightseeing trip. The rate is established by the Regional Forester for trips with two service days per client or less spent on National Forest System lands.

Unapproved Non-Use. Authorized use days the holder has not used and for which the holder has not properly requested and received a waiver (see also "Non-use").

### **37.1 - Commercial Services Associated with Commercial Public Service Site**

Use the Graduated Rate Fee system to determine outfitter and guide fees associated with such sites (sec. 37.03a and FSM 2715.11).

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## **37.2 - Commercial Services Not Associated with Public Service Site**

### **37.21 - Fees**

Fees are assessed against adjusted gross revenue. Fees are also assessed against all unapproved non-use.

#### **37.21a - Minimum Fee**

The minimum fee for outfitting and guiding on National Forest System lands is \$70 annually per permit for 1993-1995. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources shall adjust the minimum fee every three years based on the Gross Domestic Product-Implicit Price Deflator Index.

#### **37.21b - Fee for Temporary Use Permits for Incidental Use**

When commercial outfitting and guiding is authorized by a temporary permit, use Form FS-2700-25, Temporary Special-Use Permit, to collect the minimum fee (sec. 37.21a). The authorized officer may waive the minimum fee only if the use meets the criteria listed in 36 CFR 251.57 and section 31.21k.

#### **37.21c - Fee for Commercial Use**

Calculate and collect a fee for commercial outfitting and guiding occurring on National Forest System lands. Charge for any commercial use of National Forest System lands for outfitting or guiding, even if unauthorized.

Upon the authorized officer's approval of the prospective holder's application for a special use permit, advise the applicant to select option A or B (para. 1 and 2) to be used in calculating the fee. Include the selected method as a condition of the permit issued to the holder, and use that method to calculate the fee for the period authorized.

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1. Option A. The fee is based on an average client-day charge using the following schedule of rates:

Schedule of Rates

<u>Average Client-Day Charge</u> <u>(for Client Days on and off</u> <u>NFS Lands)</u>	<u>Client-Day Fee</u>
Less than \$ 8.00	\$ .25
8.01 - 20.00	.40
20.01 - 35.00	.80
35.01 - 50.00	1.30
50.01 - 75.00	1.90
75.01 - 100.00	2.60
100.01 - 125.00	3.40
125.01 - 150.00	4.10
150.01 - 175.00	4.90
175.01 - 200.00	5.60
200.01 - 250.00	6.75
250.01 - 300.00	8.25
300.01 - 400.00	10.00
Over 400.00	3 percent of the average client-day charge

Calculate the fee as follows:

- a. Client Days (National Forest System and Total). To determine the number of National Forest System client days, multiply the number of service days for the duration of the outfitted or guided trip by the number of clients on each trip. To determine the number of total client days, multiply the total number of days for the duration of the outfitted or guided trip by the number of clients on each trip. See example A-2 in this section for additional direction on determining total client days.
- b. Adjusted Gross Revenue. Multiply the client charge per trip by the total number of clients on each trip, add any other gross revenue and applicable revenue additions, and subtract any applicable revenue exclusions (sec. 37.05). This figure represents adjusted gross revenue for the duration of the outfitted or guided trip.
- c. Average Client-Day Charge. Divide the adjusted gross revenue by the number of client days (National Forest System or total) for the duration of the outfitted or guided trip. This figure is the average client-day charge.

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d. Client-Day Fee. Refer to the preceding Schedule of Rates, and use the average client-day charge to determine the client-day fee.

e. Interim Calculation for Fee for Commercial Use. Where use is strictly on National Forest System lands, multiply the number of National Forest System client days by the client-day fee to determine the fee for commercial use. Where use is both on and off National Forest System lands, multiply the number of total client days by the client-day fee to determine the interim calculation for commercial use, and adjust for use off National Forest System lands under the following paragraph f.

f. Adjustment for Use off National Forest System Lands. Adjust for use off National Forest System lands, if applicable, by dividing the number of National Forest Client days (or hours, miles, and so forth) by the number of total client days (or hours, miles, and so forth) to determine the amount of time spent on National Forest System lands. Refer to the schedule in section 37.21e to determine the appropriate percentage of fee reduction. See section 37.21e for the use of other equitable units of measure to determine adjustment for use off National Forest System lands.

Example A-1: In one operating season, the holder is authorized to provide two trips, both of which are solely on NFS lands:

July 27-29 for 3 clients @ \$450/client  
August 18-21 for 7 clients @ \$500/client

a. Client Days (all NFS):

3 service days x 3 clients = 9 NFS client days  
4 service days x 7 clients = 28 NFS client days  
37 NFS client days

b. Adjusted Gross Revenue:

\$450 x 3 clients = \$1,350  
\$500 x 7 clients = \$3,500  
\$4,850 gross revenue,  
plus \$0 revenue additions and  
minus \$0 revenue exclusions

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c. Average Client-Day Charge (all NFS client days in this example):

\$4,850 adjusted gross revenue = \$131  
37 NFS client days

d. Client-day Fee (all NFS client days in this example):

\$131 average client-day charge from step c corresponds to a \$4.10 client-day fee.

e. Fee for Commercial Use:

37 NFS client days x \$4.10 client-day fee = \$151.70 fee.

Example A-2: In one operating season, the holder is authorized to provide two trips.  
Both trips include time on and off NFS lands.

July 4-13 for 8 clients @ \$2,000/client  
August 10-23 for 7 clients @ \$3,000/client

During each trip, 3 of the 10 days are on NFS lands.

a. Client Days (Total):

10 total days x 8 clients = 80 total client days  
10 total days x 7 clients = 70 total client days  
150 total client days

b. Adjusted Gross Revenue:

\$2,000 x 8 clients = \$16,000  
\$3,000 x 7 clients = \$21,000  
\$37,000 gross revenue,  
plus \$0 revenue additions and  
minus \$0 revenue exclusions

c. Average Client-Day Charge:

\$37,000 adjusted gross revenue = \$246.67  
150 total client days

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d. Client-Day Fee:

\$246.67 average client-day charge corresponds to a \$6.75 client-day fee.

e. Interim Calculation for Fee for Commercial Use:

150 total client days x \$6.75 client-day fee = \$1,012.

f. Adjustment for use off NFS lands:

NFS client days:

3 service days x 8 clients = 24 NFS client days

3 service days x 7 clients = 21 NFS client days  
45 NFS client days

45 NFS client days = 30%  
150 total client days

which corresponds to a 40% fee reduction (sec. 37.21e):

$\$1,012 \times 40\% = \$404.80$

$\$1,012 - 404.80 = \$607.20$  fee for commercial use, which can be rounded to \$607.

2. Option B. The fee is 3 percent of the annual adjusted gross revenue, minus any applicable adjustment for use off National Forest System lands. Determine the gross revenue, add any applicable revenue additions, and subtract any applicable revenue exclusions to determine the adjusted gross revenue. Multiply the adjusted gross revenue by 3 percent; then adjust, if applicable, for use off National Forest System lands to determine the fee for commercial use (sec. 37.05; 37.21c, para. 1.b, and 37.21e).

Example B-1: For one year, the holder had an annual adjusted gross revenue of \$4,850 and used all 100 authorized use days.

$\$4850 \times 0.03 = \$145.50$  fee for actual commercial use.

Example B-2: For one year, the holder had an annual adjusted gross revenue of \$4,650 and used 90 days of 100 authorized use days. Unapproved non-use accounted for 10 days.

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$\$4,650 \times 0.03 = \$139.50$  fee for 90 days of commercial use.

$\underline{\$139.50} = \$1.55$  per day  
90 days

$\$1.55$  per day  $\times 10$  days =  $\$15.50$  fee for 10 days of unapproved non-use.

$\$139.50 + \$15.50 = \$155$  fee for commercial use.

Example B-3: An off-road tour outfitter has an adjusted gross revenue of \$250,000. The travel routes used are across NFS lands and private lands. The time spent on NFS lands is 50 percent of the duration of the outfitted or guided trips.

$\$250,000 \times 0.03 = \$7,500$

50 percent duration on NFS lands corresponds to a 40 percent fee reduction (sec. 37.21e):

$\$7,500 \times 40\% = \$3,000$

$\$7,500 - \$3,000 = \$4,500$  fee for commercial use.

3. Short-Stop Fee. (Sec. 37.05). Fees are calculated from rates established by the Regional Forester for situations in which commercial tours and trips involve only very short stops or visits on National Forest System lands of two service days or less.

Example 1: A float plane company markets fishing trips to the National Forest, flies anglers to high mountain lakes, drops them off, and picks them up. The company has 175 passenger trips. In this example, the Regional Forester has established a short-stop rate of \$2.00 per client for this service.

$175$  passenger trips  $\times \$2.00 = \$350$  fee for commercial use.

Example 2: A bus company markets fall foliage tours and sends out 50 buses trips per season with 35 paying passengers. They stop at a National Forest Visitor Center for an average of 40 minutes. The Regional Forester has established a short-stop rate of \$2.00 per client.

$35$  people  $\times 50$  buses  $\times \$2.00 = \$3,500$  fee for commercial use.

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### **37.21d - Determining Service Days**

Count any full or fractional part of a day the client receives goods or services as a full service day.

1. When livery, rental, supply, or drop-off service to customers is provided, count only the day on which the outfitter or guide provides services or goods.
2. When the outfitter or guide provides drop-off and pick-up service on two separate days, count one service day for drop-off and one service day for pick-up.
3. When the outfitter or guide provides drop-off and pick-up service and the clients occupy an outfitter's assigned site and/or the outfitter or guide furnishes equipment and supplies, count one service day for drop-off, one service day for pick-up, and one service day for each day in between.

### **37.21e - Adjustment for Use off National Forest System Lands**

Reduce the fee or estimated fee if the outfitter or guide's clients occupy National Forest System lands for 60 percent or less of the duration of the outfitted or guided trip according to the schedule in paragraph 1. When days are the unit of measure, at least one entire day must be off National Forest System lands to qualify for the adjustment. Other units of measure besides days may be used where equitable to calculate the percentage on and off National Forest System lands. For example, trail distance may be used at Nordic centers.

1. Apply the following schedule in calculating adjustments for use off National Forest System lands:

Schedule of Fee Reduction for Use Off NFS Lands

<u>Percentage on NFS Lands</u>	<u>Fee Reduction</u>
Less than 5 percent	80 percent
5 to 60 percent	40 percent
Over 60 percent	None

Request the holder to provide documentation of the duration of trips, such as the itineraries for outfitted or guided trips, to support a request for a fee reduction based on use off National Forest System lands.

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2. When use off National Forest System lands occurs on lands administered by another Federal agency and the holder is authorized by that agency, coordinate the fee calculations so that overcharges do not occur.

Example: An outfitter conducts a 10-day trip with 8 clients; 5 days are spent on NFS lands and 5 on Bureau of Land Management (BLM) lands. Assume the fee for the trip would be \$100 if all 10 days were on either NFS or BLM lands. Coordinate with the BLM to charge the outfitter \$100, and split the fee equitably between the two agencies. Do not adjust for use off NFS lands which would result in a higher fee of \$120 (\$60 for the Forest Service and \$60 for the BLM).

### **37.21f - Fee for Additional Use**

If the holder requests advance approval of additional use and if capacity is available, the authorized officer may approve the request and collect any additional estimated fees. When option A (sec. 37.21c, para. 1) is used to calculate the fee for commercial use, use the schedule of rates to calculate the additional fee. When option B (sec. 37.21c, para. 2) is used to calculate the fee for commercial use, estimate the additional adjusted gross revenue associated with the approved additional use, and include it in the calculation of the estimated and final fees (sec. 37.22 and 37.23). See sections 41.53g and 41.53h for additional direction.

### **37.21g - Payment for Unapproved Non-Use**

Charge the holder for unapproved non-use when the holder does not properly request and receive a waiver for authorized use (see sec. 41.53h, para. 4). Add the amount calculated for unapproved non-use to the final fee total. This provision applies to calculation of the fee under option A or B.

### **37.21h - Fee for Assigned Sites**

1. The minimum annual fee for each assigned site is \$140.
2. Using 1993 as a base year, the Washington Office Director of Recreation, Heritage, and Wilderness Resources adjusts the minimum annual fee (in para. 1) that applies to each assigned site every three years based on the Gross Domestic Product-Implicit Price Deflator Index (sec. 37.04). The assigned site fee is in addition to the minimum permit fee and other mandatory fees for commercial outfitting and guiding (sec. 37.21c).
3. The Regional Forester may establish higher fees if necessary to obtain fair market value.
4. Authorized officers may not prorate assigned site fees. Apply the full annual fee for each assigned site.
5. Authorized officers may not authorize refunds or credits for assigned site fees.

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### **37.21i - Fee for Grazing Livestock**

Assess livestock grazing fees when the Forest Service authorizes the holder to graze animals used for transport on National Forest System lands. Do not assess a grazing fee when the animals travel on National Forest System lands but the holder is not authorized to graze them. Charge grazing fees in accordance with direction in FSM 2238. Do not authorize refunds or credits for authorized but unused grazing use.

### **37.21j - Fee for Nonprofit Organizations**

The fee for nonprofit organizations is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2). Include the amount of donations and grants as gross revenue if the holder requires the customer or client to make a donation or grant as a condition of receiving the service. Do not consider donations or grants made voluntarily by customers to support the programs or activities of the holder.

### **37.21k - Fee for Educational Institutions**

The fee is three percent of annual adjusted gross revenue (option B, sec. 37.21c, para. 2).

1. Credited Programs. Exclude tuition and other payments made by students which are unrelated to the use of National Forest System lands authorized for outfitting and guiding purposes if the program provided under the permit is recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

2. Non-Credited Programs. Include all payments made by students for authorized outfitting and guiding services if the program provided under the permit is not recognized for credit toward graduation or a degree in a recognized school system or accredited educational institution.

### **37.22 - Estimated Fee**

1. Consult with the applicant or holder to estimate the anticipated number of service days and adjusted gross revenue. Use financial and related documents furnished by the applicant or holder, including records of the previous year's business activity, planned customer rate schedules, and itineraries. Retain documents used for fee calculations in the case folder.

2. Based on authorized use, calculate the total estimated annual fee, including the fee for commercial use, assigned site fee, and livestock grazing fee, on a fee determination statement (sec. 31.4) prior to the operating season.

3. Establish payment due dates prior to the start of the operating season for all payments.

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4. Calculate the total estimated fee as a single amount, and collect the fee from the holder as follows:

- a. Collect the total annual estimated fee in advance when it is less than \$500.
- b. Collect half of the total annual estimated fee in advance and the remainder by mid-season when the total is equal to or greater than \$500, but less than \$2,500.
- c. Collect one-third of the total annual estimated fee in advance and the remainder in two equal payments by mid-season when the total is \$2,500 or more.
- d. Deposit fees collected to the Land and Water Conservation Fund (FSM 6530).

### **37.23 - Fee for Commercial Use**

Record in the holder's operating plan the date established by the authorized officer and the holder by which the holder must submit financial records and records of use required to calculate the fee for commercial use.

In calculating the fee for commercial use, follow the procedure described in section 37.22, paragraph 1. Use financial records and records of use appropriate for the fee option selected (sec. 37.21c).

### **37.24 - Billing and Refunds**

Calculate the fee for commercial use and adjust for use off National Forest System lands, if applicable. Charge the holder for any unapproved non-use. Charge the holder for any unauthorized use.

1. When the final fee exceeds the paid estimated fee, bill the holder for the balance due.
2. When the final fee is less than the paid estimated fee and more than the minimum fee, refund the difference to the holder. If the holder is authorized to operate with a priority use assignment, at the holder's request credit the overpayment toward the next year's fee. If the holder is authorized to operate with a priority use assignment and the authorization is due to expire that year, refund the difference to the holder.

Follow billing and refund procedures found in FSH 6509.11k. Under the authority of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601-6a(c) and (i)(1)), deposit fees into the Land and Water Conservation Fund (FSM 6530).

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## **38 - SKI AREA PERMIT FEES**

This section provides direction to be followed primarily in determining fees as required by the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 497c) for ski areas on National Forest System lands authorized under the National Forest Ski Area Permit Act of 1986 and for ski areas authorized under the Organic Act and the Term Permit Act that elect the fee system established by 16 U.S.C. 497c. See FSM 2711.15 for direction on determining fees under the graduated rate fee system (GRFS) for ski areas authorized under the Organic Act and the Term Permit Act that do not elect the fee system established by 16 U.S.C. 497c. (For related direction on special uses administration for ski areas, see FSM 2721.6 and FSH 2709.11, ch. 40 and 50.)

### **38.01 - Authority**

For related direction, see FSM 2701.1.

### **38.02 - Objectives**

The objectives of the permit fee system for ski areas operating on National Forest System lands are:

1. To ensure that the permit fee remains equitable to both the United States and ski area permit holders.
2. To ensure that the permit fee system is economical and simple to administer for both the permit holders and the Forest Service.

### **38.03 - Policy**

#### **38.03a - Ski Area Permits Subject to Fee System Established by 16 U.S.C. 497c**

Use the fee system established by 16 U.S.C. 497c to calculate permit fees for ski areas authorized by the National Forest Ski Area Permit Act of 1986 (Ski Area Permit Act) and for those ski areas authorized by the Organic Act of 1897 and the Term Permit Act of 1915 that have elected the permit fee system established by 16 U.S.C. 497c. For ski areas authorized by the Ski Area Permit Act, follow the direction in section 38.43a and section 38.43b to convert permits to the permit fee system in 16 U.S.C. 497c. For ski areas authorized by other authorities, follow the direction in section 38.43c to convert permits to the permit fee system established by 16 U.S.C. 497c.

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### **38.03b - Ski Area Permits Subject to Graduated Rate Fee System or Alternate Fee System**

Until a new permit is issued under the Ski Area Permit Act, continue to administer under their current fee system those ski areas whose permits were issued under authorities other than the Ski Area Permit Act and which have not elected the permit fee system established by 16 U.S.C. 497c (FSM 2715.1).

### **38.04 - Responsibility**

#### **38.04a - Director of Recreation, Heritage, and Wilderness Resources, Washington Office**

It is the responsibility of the Director of Recreation, Heritage, and Wilderness Resources, Washington Office to adjust annually the gross revenue figures for each revenue bracket by the Consumer Price Index for the preceding calendar year (sec. 38.12) and to analyze every five years, beginning in 1999, whether permit fees paid under 16 U.S.C. 497c are returning fair market value for the use of National Forest System lands under ski area permits.

#### **38.04b - Director of Financial Management, Washington Office**

It is the responsibility of the Director of Financial Management to compile national permit fee information annually and to provide overall management and oversight on audits of the fee system (FSH 1409.15, Auditing Concessions Handbook) to be used in administration of the permit fee system established by 16 U.S.C. 497c.

#### **38.04c - Directors of Financial Management, Regional Offices**

It is the responsibility of the Regional Directors of Financial Management or equivalent officials to submit regionally compiled permit fee information to the Washington Office on an annual basis.

#### **38.04d - Authorized Officer**

It is the responsibility of the authorized officer (36 CFR 251.51) to:

1. Notify the permit holder of the ski area permit fee system and related requirements established by 16 U.S.C. 497c and, as applicable, of the holder's option to elect the permit fee system established by 16 U.S.C. 497c.
2. Modify special use permits issued under the Ski Area Permit Act to incorporate provisions of the ski area permit fee system established by 16 U.S.C. 497c, and provide permit fee information on Form FS-2700-19a, USDA Forest Service Fee Calculation for Ski Area Permits, to the permit holder.

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3. Notify holders of annual adjustments to the gross revenue figures for each revenue bracket by the Consumer Price Index for the preceding calendar year (sec. 38.12).
4. Require the holder, through provisions in the permit, to calculate and make estimated fee payments, and ensure that the holder calculates and pays permit fees in accordance with the terms of the permit.
5. Ensure that the holder submits financial documents, including annually completed permit fee information on Form FS-2700-19a, that support fee calculations in accordance with the terms of the permit.
6. Submit permit fee information to the regional director responsible for financial management on an annual basis.

### **38.05 - Definitions**

The following terms and acronyms are used in the fee calculations set out in section 38.12.

Adjusted Gross Revenue - AGR. Revenue used in the permit fee calculation, which includes revenue from sales of year-round alpine and nordic ski area passes and tickets and revenue from alpine and nordic ski school operations associated with the use of National Forest System lands; gross year-round revenue from ancillary facilities located on National Forest System lands; the value of bartered goods; and the value of complimentary lift tickets.

Bartered Goods and Complimentary Lift Tickets. Goods, services, or privileges that are not available to the general public (except for employee gratuities, employee lift tickets, and discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) and that are donated or provided without charge in exchange for something of value to organizations or individuals (for example, ski area product discounts, service discounts, or lift tickets that are provided free of charge in exchange for advertising).

Discriminatory Pricing. Rates based solely on race, color, religion, sex, national origin, age, disability, or place of residence.

Gross Revenue from Ancillary Facilities - GRAF. Gross revenue from year-round sales derived from temporary and permanent ancillary facilities located on National Forest System lands, including all holder and subholder lodging, food service, rental shops, and other ancillary operations.

Lift Tickets and Passes - LT. Revenue from sales of alpine and nordic lift tickets and passes purchased for the purpose of using a ski area during any time of the year.

Market Price. The price generally available to an informed public, excluding special promotions.

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Ski Area Permit Fee - SAPF. Ski area permit fee for use of National Forest System lands.

Ski School Operations - SS. Revenue from lessons provided to teach alpine or nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing.

Slope Transport Feet Percentage - STFP. The method used to prorate revenue from the sale of alpine ski area passes and lift tickets and revenue from alpine ski school operations between National Forest System lands and private land in the ski area.

**38.1 - Permits Subject to Ski Area Permit Fee System**

Under the ski area permit fee system established by 16 U.S.C. 497c, calculate the permit fee based on adjusted gross revenue associated with the ski area under permit.

**38.11 - Fee Proration for Mixed Land Ownership**

Under no circumstances shall holder or subholder revenue (except those revenues from sales of lift tickets and passes and from ski school operations) obtained from operations located on private land be included in the permit fee calculation.

1. Prorate revenue derived from the ski area according to the percentage of use between National Forest System lands and private land in the ski area (for example, use the STFP for alpine revenue or the nordic trail length percentage for nordic revenue; sec. 38.12, para. 5).
2. Prorate revenue from ancillary facilities before it is included in the permit fee calculation, since GRAF is gross revenue from ancillary facilities located on National Forest System lands.
3. Include in the fee calculation and prorate accordingly all revenue from the sale of alpine and nordic ski area tickets and passes and all revenue from alpine and nordic ski school operations, even such revenue that is generated on private land (such as from tickets sold on private land).

**38.12 - Fee Calculation**

See section 38.05 for definitions of acronyms and terms used in this section. Use the following formula to calculate the ski area permit fee in accordance with 16 U.S.C. 497c:

SAPF	=	(.015 x AGR in bracket 1) + (.025 x AGR in bracket 2) +
		(.0275 x AGR in bracket 3) + (.04 x AGR in bracket 4)
Where:		
AGR	=	(LT + SS) x (proration %) + GRAF

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1. SAPF is the ski area permit fee established by 16 U.S.C. 497c for use of National Forest System lands.
  - a. Calculate SAPF by summing the results of multiplying the indicated percentage rates by the amount of the holder's adjusted gross revenue (AGR), which falls into each of the four brackets.
  - b. Follow direction in the following paragraph 2 to determine AGR.
  - c. Calculate the permit fee based on the holder's fiscal year, unless otherwise mutually agreed by the holder and the authorized officer.
  - d. Use the revenue brackets as indexed for the previous calendar year. The Director of Recreation, Heritage, and Wilderness Resources, Washington Office, annually adjusts the four revenue brackets by the Consumer Price Index (CPI). (The Director of Lands, Washington Office, issues the updated CPI annually in sec. 36.21). Regardless of when the holder's fiscal year begins or ends, do not split the holder's AGR for any fiscal year into more than one set of indexed brackets. For example, apply the brackets as adjusted by the calendar year 1996 CPI to the holder's fiscal year 1997 permit fee calculation. Only the levels of AGR defined in each bracket are updated annually. The percentage rates do not change.
  - e. To calculate permit fees for fiscal years 1996 through 1999, and for 2000 and beyond, use the revenue brackets and percentages displayed in exhibit 01 as shown in the preceding formulas in this section.
2. AGR is the adjusted gross revenue used in the permit fee calculation.
  - a. Include as revenue: income from sales of alpine and nordic tickets and ski area passes; alpine and nordic ski school operations; gross revenue from ancillary facilities; the value of bartered goods and complimentary lift tickets (such as lift tickets provided free of charge to the holder's friends or relatives); and special event revenue. Discriminatory pricing is not allowed, but if it occurs, include the amount that would have been received had the discriminatory pricing transaction been made at the market price.
  - b. Exclude from revenue: income from sales of operating equipment; refunds; rent paid to the holder by subholders; sponsor contributions to special events; any amount attributable to employee gratuities or employee lift tickets; discounts; ski area tickets or passes provided for a public safety or public service purpose (such as for National Ski Patrol or for volunteers to assist on the slope in the Special Olympics); and other goods or services (except for bartered goods and complimentary lift tickets) for which the holder does not receive money.

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- c. Calculate AGR by summing the revenue from lift tickets and ski school operations prorated for use of National Forest System lands and from ancillary facility operations conducted on National Forest System lands.
- d. Include the following in AGR:
  - (1) Revenue from sales of year-round alpine and nordic ski area passes and tickets and revenue from alpine and nordic ski school operations prorated according to the percentage of use between National Forest System lands and private land in the ski area;
  - (2) Gross year-round revenue from ancillary facilities located on National Forest System lands;
  - (3) The value of bartered goods and complimentary lift tickets. Include the market price value of bartered goods and complimentary lift tickets (except for employee gratuities, employee lift tickets, and discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) in the AGR formula as revenue under LT, SS, or GRAF, depending on the type of goods, services, or privileges donated or bartered; and
  - (4) Special event revenue from events such as food festivals, foot races, and concerts. Include special event revenue in the AGR formula as revenue under LT, SS, or GRAF, as applicable. Prorate revenue according to the percentage of use between National Forest System lands and private land as described in section 38.11 and as indicated in the following paragraphs 5 and 6.
3. LT is the revenue from sales of alpine and nordic lift tickets and passes purchased for the purpose of using a ski area during any time of the year.
4. SS is the revenue from lessons provided to teach alpine or nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing.
5. Proration % is the method used to prorate revenue from the sale of ski area passes and lift tickets and revenue from ski school operations between National Forest System lands and private land in the ski area. Separately prorate alpine and nordic revenue with an appropriate proration factor. Add prorated revenues together; then sum them with GRAF to arrive at AGR. Use one or both of the following methods, as appropriate:
  - a. STFP is the method used to prorate alpine revenue. Follow the direction for STFP contained in FSM 2715.11c. Include in the calculation only uphill devices (lifts, tows, and tramways) that are fundamental to the winter sports operation (usually those located on both Federal and private land). Do not include people movers whose primary purpose is to shuttle people between parking areas or between parking areas and lodges and offices.

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- b. Nordic trail length is the method used to prorate nordic revenue. Use the percentage of trail length on National Forest System lands to total trail length. To calculate the percentage, divide the length of nordic trails on National Forest System lands by the total length of ski area nordic trails.
6. GRAF is the revenue from ancillary facilities, including all of the holder's or subholder's lodging, food service, rental shops, parking, and other ancillary operations located on National Forest System lands. For facilities that are partially located on National Forest System lands, calculate the ratio of the facility square footage located on National Forest System lands to the total facility square footage. Prorate special event revenue allocatable to GRAF pursuant to paragraphs 2d (2) through 2d (4) of this section by the ratio of the use on National Forest System lands to the total use.

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**38.12 - Exhibit 01**

**Adjusted Gross Revenue (AGR) Brackets and Associated Percentage Rates  
 for Use in Determining Ski Area Permit Fee (SAPF)**

Revenue Brackets (updated annually by CPI*) and Percentage Rates				
Holder FY	Bracket 1 (1.5%)	Bracket 2 (2.5%)	Bracket 3 (2.75%)	Bracket 4 (4%)
FY 1996 CPI: N/A	All revenue below \$3,000,000	\$3,000,000 to <\$15,000,000	\$15,000,000 to \$50,000,000	All revenue over \$50,000,000
FY 1997 CPI: 1.030	All revenue below \$3,090,000	\$3,090,000 to <\$15,450,000	\$15,450,000 to \$51,500,000	All revenue over \$51,500,000
FY 1998 CPI: 1.022	All revenue below \$3,158,000	\$3,158,000 to <\$15,790,000	\$15,790,000 to \$52,633,000	All revenue over \$52,633,000
FY 1999 CPI: 1.017	All revenue below \$3,212,000	\$3,212,000 to \$16,058,000	\$16,058,000 to \$53,528,000	All revenue over \$53,528,000
FY 2000 And beyond	BRACKETS WILL BE UPDATED ANNUALLY BY CPI*			

\*The Director of Recreation, Heritage, and Wilderness Resources, Washington Office, updates the revenue brackets annually, based on the Consumer Price Index (CPI) which is revised and issued annually in section 36.21.

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### **38.13 - Permit Fee If There Is No Adjusted Gross Revenue**

In cases when a ski area permit holder has no adjusted gross revenue (AGR) for a given fiscal year, charge the holder a permit fee of \$2 per acre for National Forest System lands under permit or a percentage of the appraised value of National Forest System lands under permit (sec. 31.1), at the discretion of the authorized officer.

When there is minimal use of National Forest System lands under permit, especially when prorated revenues from alpine and nordic uses are zero, authorized officers should consider whether to issue such ski area permits under an authority other than the Ski Area Permit Act.

### **38.2 - Payments**

1. In accordance with the terms of the permit, holders are required to:
  - a. Calculate and submit advance, interim, and final payments;
  - b. Submit financial documents that support fee calculations; and
  - c. Submit permit fee information on Form FS-2700-19a annually to the authorized officer.
2. When the permit fee is expected to exceed \$10,000 per year, the permit shall require monthly payments. If the permit fee is expected to be \$10,000 or less, quarterly payments are required during months of operation.
3. Holders submit payments without billing by the Forest Service. Holders that fail to make payments in accordance with the terms of the permit are in violation of the permit and the authorized officer shall so notify them. Assess late payment charges, including interest, penalties, and administrative costs, in accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701-3719) when the required payment is not made on time (FSH 6509.11h, Service-Wide Claim Management Handbook, ch. 20).

### **38.21 - Advance Payments**

Holders are required to make advance payments due by the beginning of the holder's fiscal year or by another payment cycle in accordance with the permit. Credit the advance payment toward the total ski area permit fee due at the end of the payment cycle, in accordance with the permit.

1. Base the advance payment on 20 percent of the holder's average fee for 3 previous operating years when applicable.
2. Base the advance payment for new holders of an existing ski area permit on 20 percent of the prior holder's average fee.

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3. For new areas:

- a. Establish the advance payment for new areas as 20 percent of the permit fee, based on projected AGR, or
- b. For ski areas not expected to generate AGR for a given fiscal year, require advance payment of the permit fee as calculated according to the procedures in section 38.13 (\$2 per acre or a percentage of the appraised value of the National Forest System land under permit). If the ski area reports AGR for that fiscal year, credit the permit fee paid under provisions of section 38.13 toward the permit fee calculated according to the ski area permit fee formula in section 38.12.

### **38.22 - Interim Payments**

To keep permit fees current with use, require interim payments. Credit interim payments toward the total ski area permit fee due at the end of the payment cycle, in accordance with the permit. Base interim payments on a tentative percentage rate and monthly or quarterly sales. Interim payments are due 30 days after the end of each month, if payments are made monthly; or 30 days after the end of each holder's fiscal year quarter, if payments are made quarterly.

### **38.23 - Final Payments**

Reconcile payments made in the current payment cycle against the total ski area permit fee due at the end of the payment cycle, in accordance with the permit. The final payment is due 90 days after the close of the holder's fiscal year, or under another payment cycle in accordance with the permit. The holder is required to submit final payments with supporting financial documents, including permit fee information on Form FS-2700-19a, as provided in the permit.

### **38.3 - Permits Subject to Fee Systems Other Than System Established by 16 U.S.C. 497c**

For ski areas authorized by the Organic Act of 1897 and Term Permit Act of 1915 that do not elect the ski area permit fee system established by 16 U.S.C. 497c, continue to assess fees in the manner prescribed in the existing permit. When a new permit is issued under the Ski Area Permit Act or if the holder elects the permit fee established by 16 U.S.C. 497c, calculate the permit fee as set forth in section 38.12 or 38.13.

### **38.4 - Transition From Prior Permit Fee Systems**

The ski area permit fee system established by 16 U.S.C. 497c is effective as of June 1, 1996, and covers receipts retroactively to June 1, 1995. The authorized officer shall determine revenues attributable to the graduated rate fee system (GRFS) for the holder's fiscal year 1996 that began prior to June 1, 1995. Any permit fees prepaid under GRFS for any holder's fiscal year in which

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the ski area permit fee system established by 16 U.S.C. 497c is in effect shall be reconciled by the authorized officer against the permit fee calculated under the latter system. For the purpose of implementing 16 U.S.C. 497c, do not require a change in the holder's fiscal year or payment schedule.

### **38.41 - Permit Fee Floor**

The purpose of the permit fee floor is to ensure increasing permit fees to the United States during the transition from the graduated rate fee system to the ski area permit fee system established by 16 U.S.C. 497c.

1. The permit fees due for the holder's fiscal years 1996, 1997, and 1998 are, respectively:
  - a. Either the permit fee paid in the base year (fiscal year 1995) or the permit fee calculated under sections 38.12 or 38.13, and 38.42, whichever is higher for the holder's fiscal year 1996;
  - b. Either the permit fee paid for the base year (fiscal year 1995) or the permit fee calculated under sections 38.12 or 38.13, and 38.42, whichever is higher for the holder's fiscal year 1997; or
  - c. Either the permit fee paid for the base year (fiscal year 1995) or the permit fee calculated under sections 38.12 or 38.13, and 38.42, whichever is higher for the holder's fiscal year 1998;
2. Except that if a holder's AGR for fiscal years 1996, 1997, or 1998 falls more than 10 percent below the AGR for the base year (fiscal year 1995), the permit fee paid shall be the permit fee calculated under section 38.12 or 38.13. Compare the holder's AGR for the base year, as computed under section 38.12 or 38.13, against the holder's AGR for the transition years.

### **38.42 - Permit Fee Phase-In**

The fee system established by 16 U.S.C. 497c provides for a phase-in of fees during the first five years the system is in effect when the permit fee calculated according to direction in section 38.12 or 38.13 for the holder's fiscal year 1996 results in an increase in the permit fee greater than 0.5 of one percent of the holder's AGR. In such cases, the increase in fees above the base year is phased in over a 5-year period. By the holder's fiscal year 2001, calculate all permit fees under section 38.12 or 38.13. For fiscal years 1996 through 2000, phase in that portion of the permit fee that exceeds the base fee (the fee paid in fiscal year 1995), beginning with the holder's fiscal year 1996. If the phase-in applies, calculate the permit fee according to the fee schedule in exhibit 01.

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1. The FY 1995 fee is the permit fee paid in the holder's fiscal year 1995 (usually under GRFS).
2. The FY 1996 fee is the permit fee calculated under section 38.12 or 38.13 that would be due if phase-in were not applicable, and so on for the FY 1997-2000 fees.
3. During fiscal years 1997 and 1998, if there is no increase in the permit fee calculated under the fee formula in section 38.12 or 38.13 over the base fee (fiscal year 1995), establish the permit fee paid as the permit fee paid for fiscal year 1995. However, if a holder's AGR for fiscal years 1997 or 1998 falls more than 10 percent below the AGR for the base year (fiscal year 1995), the permit fee paid shall be the permit fee calculated under section 38.12 or 38.13. Compare the holder's AGR for the base year, as computed under section 38.12 or 38.13, against the holder's AGR for the transition years.
4. During fiscal years 1999 and 2000, if there is no increase in the permit fee calculated under the fee formula in section 38.12 or 38.13 over the base fee (fiscal year 1995), establish the permit fee paid as the fee calculated under section 38.12 or 38.13.

**38.42 - Exhibit 01**

**5-Year Phase-In of Ski Area Permit Fee Under 16 U.S.C. 497c**

1. 1996 Permit Fee = FY 1995 fee + .2 x (FY 1996 fee - FY 1995 fee)
2. 1997 Permit Fee = FY 1995 fee + .4 x (FY 1997 fee - FY 1995 fee)
3. 1998 Permit Fee = FY 1995 fee + .6 x (FY 1998 fee - FY 1995 fee)
4. 1999 Permit Fee = FY 1995 fee + .8 x (FY 1999 fee - FY 1995 fee)
5. 2000 Permit Fee = FY 1995 fee + 1.0 x (FY 2000 fee - FY 1995 fee)

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**38.43 - Applicability of Ski Area Permit Fee System Provisions Established by 16 U.S.C. 497c During Transition From Previous Permit Fee Systems to Permit Fee System Established by 16 U.S.C. 497c**

Follow direction set out in sections 38.43a through 38.43c when applying transition provisions (sec. 38.4 through 38.42) of the ski area permit fee system established by 16 U.S.C. 497c.

**38.43a - Permits Issued Under National Forest Ski Area Permit Act of 1986 On or Before June 1, 1996**

Ski areas authorized under the Ski Area Permit Act of 1986 on or before June 1, 1996 are subject to the fee system established by 16 U.S.C. 497c. Amend the holder's permit by replacing the fee provisions in clause VI of the permit with the clause that implements the fee system in section 38.12. See chapter 50 for the appropriate clause. Apply transition provisions (sec. 38.4 through 38.42) of 16 U.S.C. 497c.

**38.43b - Permits Issued Under National Forest Ski Area Permit Act of 1986 After June 1, 1996**

Ski areas authorized under the Ski Area Permit Act of 1986 after June 1, 1996 are subject to the fee system established by 16 U.S.C. 497c. Amend the holder's permit by replacing the fee provisions in clause VI of the permit with the clause that implements the fee system in section 38.12. See chapter 50 for the appropriate clause.

1. When a permit is issued to the existing holder upon expiration of the current permit, or to the existing holder of a permit converted from a permit issued under the Organic Act of 1897 or the Term Permit Act of 1915, the following direction applies:

- a. Holders of permits may elect the transition provisions on or before May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2). The permit fee system established by 16 U.S.C. 497c would apply retroactively to these permits. Apply transition provisions (sec. 38.4 through 38.42).
- b. For holders that do not elect the transition provisions on or before May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2), the permit fee system established by 16 U.S.C. 497c would apply from the date the permit is issued. The phase-in or other transition provisions are not available to these holders. The permit fee system (sec. 38.12) is effective on the date of permit issuance. Do not apply transition provisions (sec. 38.4 through 38.42.)

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- c. Permits that are issued after May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2) are not subject to the transition provisions for the permit fee system. The phase-in or other transition provisions are not available to these holders. The permit fee system (sec. 38.12) is effective on the date of permit issuance. Do not apply transition provisions (sec. 38.4 through 38.42.)
2. When a permit is issued to a new owner of improvements at an existing ski area or to an owner of improvements at a new ski area, the phase-in or other transition provisions are not available to these holders. The permit fee system (sec. 38.12) is effective on the date of permit issuance. Do not apply transition provisions (sec. 38.4 through 38.42.)

**38.43c - Permits Issued Under Organic Act of 1987 and Term Permit Act of 1915**

Ski areas authorized under the Organic Act of 1897 or the Term Permit Act of 1915 may elect the permit fee system established by 16 U.S.C. 497c. Amend such permits by replacing the fee provisions in clause VI of the permit with the clause that implements the fee system in section 38.12. See chapter 50 for the appropriate clause.

1. Holders of permits that elect the permit fee system established by 16 U.S.C. 497c on or before May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2), are subject to the transition provisions for the permit fee system (sec. 38.4 through 38.42).
2. Holders that elect the permit fee system established by 16 U.S.C. 497c after May 27, 1999 (90 days following the effective date of the ski area permit fee system directive issued in Amendment 2709.11-99-2), are subject to the permit fee system established by 16 U.S.C. 497c in the holder's fiscal year following amendment of the permit to reflect coverage under this permit fee system (sec. 38.12). The phase-in or other transition provisions are not available to these holders.