



Public Comments

USDA Forest Service

RIN 0596-AC50 Proposed Directive for Forest Service Outfitting and Guiding

I. American Mountain Guides Association

For over 25 years, The American Mountain Guides Association (AMGA) has been dedicated to supporting the climbing and alpine communities by training climbing instructors, skiing instructors and mountain guides. Using internationally accepted standards, the AMGA provides certification and accreditation to enhance the quality of services available to the public, while serving as a resource for accessing and protecting the natural environment. A national, nonprofit organization, the AMGA is our nation's sole representative to the twenty-one member International Federation of Mountain Guides Association (IFMGA), the international governing body responsible for guiding standards and education around the world.

Since its genesis in 1979, the AMGA has grown to represent over 1,300 members, 25 Accredited Programs, and over 50 Corporate Partners vital to the outdoor industry. Each year the training provided by the AMGA reaches over 400,000 people through person-to-person contact between certified guides, climbing instructors and their clients.

The AMGA provides education, training and certification in the disciplines of alpine climbing, rock climbing, and ski mountaineering. It also raises the standards of guide services and climbing schools with regard to safety, Leave No Trace practices, client care, education, and land stewardship. We do this through our certification and accreditation programs and professional development clinics.

II. AMGA Support

AMGA strongly supports or endorses the following elements of the draft Directives:

A. Accountable Group Use

The AMGA supports the proper and effective management of Forest Service lands and waters. To manage use and mitigate the impacts from group or commercial use, the agency must have the authorities and tools to administer the amount, type and location of those entities and organizations using the forests. To effectively mitigate the impacts from recreational access, the Forest Service must have the ability to partner with all groups using the forests on risk management; education; Leave No Trace practices; and resource protection or enhancement projects.

B. Streamlined Access

The AMGA strongly supports additional commercial access and the creation of a new category for temporary or intermittent use on the forests. The mountain guiding industry is comprised primarily of independent guides and small companies. Historically, many of these independent guides and companies have been unable to secure reliable access to Forest Service lands through the Priority Use system and obtain the portfolio of permits necessary to sustain a viable business.

Historically, the difficulty in securing SUPs, combined with the costs and complexities of maintaining these Priority Use permits, have left many mountain guides and companies with insufficient or no access to our national forests.

Access needs for mountain guides and our customers are, by nature, different from many forms of commercial use. For many members of the guided public, a trip with an outfitter or educator may be a “once in a lifetime” experience. A horsepacking trip, river trip or wilderness education trip may never be repeated. Climbing, by comparison, is a frequently a lifetime sport or endeavor, typically practiced and perfected close to home. Beginning climbers and those choosing to retain a guide frequently climb repeatedly with the same guide and would like to be able to experience multiple and varied climbs with that guide. Historically, the SUP process has not catered to this need for reliable, repetitive access and numerous points of access.

Under these draft Directives, the AMGA supports:

- Additional commercial access
- Potential access for additional/new commercial entities
- Streamlined access to new forests and districts
- Streamlined administrative procedures and fees.

III. AMGA Recommendations

The AMGA offers the following recommendations and insights on the draft Directives:

A. Protecting the Public and Forest Service Resources

Recommendations: Any final Directives should require consistency in the protection and promotion of public health and safety; and promote public confidence in guide and outfitter services.

- 1) **To minimize administrative burdens and costs for the agency, the Forest Service should utilize group accreditation and establish common qualification standards for the training and certification of commercial guides and outfitters.**
- 2) **Accreditation, certification and training standards should be applied uniformly across permits categories.**

Forming the foundation of Forest Service oversight and regulation of outfitters and guide services – and central to the interests of commercial guides – are two core principles:

- 1) The protection of public health and safety.
- 2) The protection of public lands, waters and resources.

The AMGA both supports and actively promotes the education, training and credentialing of commercial guides and guide services as the means to achieving these two core principles. The critical issue here is the protection of public health and safety. Agency oversight of outfitters and guides should address the following:

- 1) The identification, selection and retention of qualified service providers.
- 2) The elevation of the guided public's knowledge of and confidence in the providers of guided services on Forest Service lands and waters.

Yet, these draft Directives establish what is essentially a double standard. Priority Use applicants and holders are subject to review and approval upon application and an annual performance evaluation. In a competitive application process, guides must demonstrate, "...experience, knowledge of the area to be authorized, financial capability, performance record as an outfitter or guide, and other pertinent factors." [page 10, draft Directives]

The draft Directives require no such review or approval of applicants for Temporary permits. Again, such a lack of review 1) weakens the agency's ability to protect the public and the resource and 2) allows for inconsistency and potential confusion for the guided public on the qualification and credentials of service providers on the forests.

The development and implementation of an application and review process for Temporary permits need not be overly cumbersome for the agency or expensive for commercial guides. The AMGA supports performance- and credential-related criterion in both the awarding of permits and the evaluation of commercial activities on Forest Service lands and waters. Performance history can be readily available on agency and inter-agency data bases. Recognition of professional or industry standards through training, certification and accreditation can readily be recognized through certification-based access. The need to protect public health and safety can be recognized through review of first-aid and medical training. The need to protect the resource and educate users can be recognized through promotion of Leave No Trace training.

B. Accreditation and Certification Limit Risk

Recommendation: Permitting policy should focus on development and retention of quality guides and outfitters to protect the public and limit exposure to risk. Developing quality outfitted services

through professional education and training on the front end will benefit the guided public and the agency far more than revamped insurance policy.

Recommendation: Agency policy should establish minimum levels of liability coverage only. Arbitrary definition by the agency and assignment by the field of levels of risk to outdoor activities misinforms the public and exposes the guiding industry to unnecessary liability and litigation.

C. Performance Evaluation

Recommendation: Any final Directives should require language on performance expectations as an element of all permitting processes. All permittees should be informed of the potential for inspection and performance review.

The AMGA supports performance-related criterion in both the awarding of permits and the evaluation of commercial activities on Forest Service lands and waters.

These draft directives require no performance evaluation for holders of Temporary permits. AMGA understands that the permits are for one year and nonrenewable. AMGA also understands and supports the efforts made by the Forest Service to streamline permitting procedures and minimize administrative costs under the Temporary category. Finally, the AMGA recognizes that policies are in place to punish negative, negligent or illegal activities on Forest Service lands, ranging from citations to revocations to non-renewal.

However, the AMGA encourages the Forest Service to promote performance reviews as an element of all permitting processes – even if informal or intermittent in nature. Knowing they are potentially subject to inspection/evaluation and that they may have an evaluation added to their FOREST SERVICE permit file will encourage Temporary permittees to perform well, protect the resource and partner with the agency. Knowing a negative report can be added to the file – and may be considered in future permit applications – may deter negative or negligent behaviors.

D. Existing Temporary Permits

Recommendation: Any final Directives should clearly establish Forest Service policy on existing Temporary permits and the transition of such days to Priority use.

Following the release of these draft Directives, the guiding and outfitting industries identified the inherent conflict and confusion between the existing and proposed Temporary permit. Agency personnel have repeatedly stated that the agency's goal is to convert all existing Temporary permit holders to Priority permits.

AMGA supports this goal. AMGA recognizes the potential costs and administrative burdens and is concerned about the viability of this goal – thus the need to clearly establish and clarify agency policy around Temporary permits in any final directives.

Of concern are areas with strict limitations on access, group size, trailhead quotas, etc. In these areas will the forest staff acquiesce to potentially significant growth in Priority permits?

E. Delegation to the Field

Recommendation: Any final Directives must be revised to provide clear and consistent direction to the field on the development and deployment of the new Temporary permit.

Recommendation: Any final Directives must include policy on preferred methodologies for populating the Temporary use pool.

On numerous issues critical to the operations of commercial guides and outfitters, these draft Directives are silent or vague in providing clear direction on the administrative policies, procedures and frameworks that, by default, would be developed and implemented at the field level:

- 1) ***Use of Temporary permits/pool.*** Each forest has discretion on whether Temporary permits will be utilized on that unit. Forests or districts with capacity concerns or personnel shortages may decline to implement core elements of these directives.
- 2) ***Awarding of Temporary permits.*** These Directives merely suggest methodologies to the field on how Temporary permits will be awarded. First-come, first- served and lottery systems are suggested options, but – again – authority is delegated to the field. On such critical elements, clear direction should be included in national policy.
- 3) ***Population of Temporary pool.*** Authority is delegated to the field on how user days will be identified or created to populate this new pool of user days for Temporary permits. How forests choose to populate these pools could significantly impact the number of days available; how rapidly days become available; and how conflicts are handled with existing Priority holders.

Any final Directives should include guidance for the field on preferred methodologies for populating the Temporary use pool:

- **Available capacity.** Based on existing levels of use, capacity analyses and needs assessments, are new days available for commercial use?
- **Existing non-commercial group or “Institutional” use.** What has historically been the level of use and what is currently the use on the forest by non-permitted groups or the Institutional category? Significant portions of this allocation could be designated for use in Temporary and Priority pools as current Institutional users redefine their permit status.
- **Underutilized allocations.** Are days available under existing Commercial, Institutional or Public allocations that are currently underutilized?
- **Defunct Commercial use.** Have guides or outfitters failed or declined to renew existing Priority use?
- **Non-use.** As outlined in the directives, non-use by existing permit holders should be considered for the pool. However, the transfer these days may have ramifications for the forest and guides/outfitters:
 - Future growth and flexibility within the Priority Use category may be more difficult.

- Existing guides and outfitters may be forced to diversify use or look elsewhere for additional use, resulting in additional applications, administration and overhead for districts and forests.
- NEPA concerns may arise if, in the future, additional commercial days are needed.
- The Forest Service should consider – and detail in any final Directives – establishing a pool of Priority use days on each forest to allow for flexibility, growth and NEPA concerns.

F. Consistency in Policy and Permitting

Recommendation: Any final Directives should establish consistency in permitting policies and protocols for both the new Temporary and existing Priority permits.

AMGA, our members, and other members of the guiding and outfitting communities have consistently addressed the need for more streamlined and consistent policies related to FOREST SERVICE permits. As stated, mountain guides prefer to access and utilize varied climbing locations. **Inconsistencies in the who, what, when, where and how each forest or district chooses to issue Temporary permits will greatly increase administrative burdens, personnel, and overhead costs not only for guides in the private sector, but for the district and forest as well.**

G. Insurance

1) Recommendation: Temporary permit holders should be required to provide basic proof of insurance and indemnification of the federal government.

These Directives are unclear on insurance requirements for Temporary permit holders. Section 2713.1 (2)(a) When to Require Liability Insurance states: "...require concessionaires to carry liability insurance. Require other holders to carry liability insurance if appropriate based on the likelihood of severity of injury."

However, "concessionaire" is not included in the definitions section or clearly defined in the document.

AMGA members are well versed in the need for insurance; the requirement to indemnify the federal governments from claims resulting from recreational activities; and the benefits to the individual or customer, climbing guides, and the recreation industry from adequately and professionally protecting the public health and safety.

Additionally, AMGA is concerned that, should applicants for Temporary use not be required to provide proof of adequate insurance or indemnify the federal government, Forest Service personnel may – when awarding Temporary permits – be inclined to arbitrarily assign levels of risk and/or discriminate against recreational activities with perceived higher levels of risk. In any final directives issued by the agency the agency should correct this oversight by including insurance requirements for Temporary permits.

2) Recommendation: Prior to drafting final Directives consult with guiding/outfitting and insurance industry on language requiring an endorsement covering contracted services and equipment.

Insurance language initiated in 41.53i (5) requiring coverage of contracted services and equipment are extremely important and problematic to the guiding industry and ultimately to protecting the guided public.

- Contractual liability coverage is difficult and may be impossible to obtain.

- Adding the contractor as an additional insured may be required – and expensive and time consuming process – if such coverage is available at all.
- Language in this draft will not allow insurers to simply add an endorsement to their policy.
- Insurers must have new forms and endorsements approved at the state level in all states, an expensive and slow process that could take years to complete.

3) Recommendation: Consider accepting a Certificate of Insurance from contractors, establishing that the contractor has sufficient liability insurance and indemnifies the federal government rather than requiring the contractor be named in permittee’s policy.

4) Recommendation: Any final directives must delete Forest Service descriptions under “Minimum Amount of Coverage Generally” requiring field staff to arbitrarily assign levels of risk to outdoor activities in establishing liability levels [2713.1 (2)(d)].

The definitions of a Low, Medium and High Level of Risk are arbitrary, confusing and, most importantly, untenable.

Individual Forest Service field personnel are not experts many outdoor activities. Requiring field personnel to assign levels of risk to guided outdoor activities will result in arbitrary designations that may unfairly punish quality operators.

To state that injuries resulting from outdoor activities with a Medium or High Level of Risk are “likely to result in death or permanent disability” is incomprehensible and counter to any industry safety history and records. While certain activities may have higher numbers of injuries, to infer that a high percentage of those injuries result in disability or death is blatantly false; misleading to the guided public; and can only cause the guiding industry untold misery in any potential litigation.

5) Recommendation: Establish and include Forest Service polity on “claims made” versus “occurrence form” insurance coverage.

While more expensive, “occurrence form” coverage provides better protections for the agency, the guide service and the guided public. Occurrence form covers all claims that occur while that insurance is in force, regardless of whether the claim is reported during that period. Additionally, occurrence form covers defense and investigation costs under the policy, protecting claimants’ settlements.

6) Recommendation: Required levels of liability insurance should be the same for Priority and Temporary permit holders.

On-forest activities may vary little between Priority and Temporary holders. Supervision or guiding training, skills and experience may vary little or be lower for Temporary holders as this pool will tend to newer users with less experience on the resource. Therefore, liability levels should be the same.

H. Itineraries

Recommendation: Any final Directives must clarify the spectrum of activities and itineraries available to Temporary permit holders.

The AMGA would cite two critical concerns in the ability of mountain guides to secure realistic itineraries that suit their business needs under Temporary permits.

1) Fundamental to the successful use of the new Temporary category is the ability of mountain guides and companies to secure permits that allow for forest access on numerous dates throughout the year or season. While recognizing that allocation, access and itinerary decisions will be made locally – at the forest or district level – mountain guides typically operate numerous, small-party trips to operate profitably.

Currently, the AMGA sees no proscriptive language in the draft Directives limiting a forest's ability to approve numerous trips or itineraries once an allocation of days has been awarded to a guide through a Temporary permit application.

2) Mountain guides must have access to backcountry or non-developed climbing sites. These Directives are unclear on whether days allocated under Temporary use will allow for backcountry or non-system use. [See following section on NEPA.]

I. NEPA

Recommendation: Any final directive must clarify the status of days within the Temporary pool vis-à-vis NEPA; the costs of NEPA compliance; and the ability of permit holders to access a full spectrum of forest resources.

While the draft directives are silent on the issue, a primary concern for AMGA is the status of days available for allocation through a Temporary use pool vis-à-vis NEPA. NEPA review is required for new uses and significant increases in use on a forest. New or additional NEPA review is required for activities that may have new or additional impacts on forest resources – typically backcountry or “off-system” activities as opposed to those in the frontcountry or developed sites. This requirement could adversely affect or eliminate “off-system” or backcountry activities – including climbing – for groups securing Temporary permits.

In addressing this concern on NEPA review for Temporary days, the AMGA would raise two primary concerns:

- 1) **Inconsistency:** These draft Directives are silent on the NEPA issue. Across the national forest system, the status of needs assessments, capacity analyses and commercial allocations vary widely. The Directives are vague and leave a great deal of discretion to the field on how Temporary use will be administered and allocated. The combination of these factors may limit or eliminate the ability of AMGA members to utilize Temporary permits for off-system climbing and use.
- 2) **NEPA Compliance:** NEPA compliance can be time consuming and expensive – the reasons NEPA review of many recreation-related activities remains incomplete. In areas where NEPA review must be completed for off-system use, the costs may be prohibitive and timeframes untenable for AMGA members.

J. Allocation and Non-Use

Recommendation: Any final Directives on non-use should be amended to allow for a 15 percent allowance for non-use over the first or last five years of a Priority use permit.

The AMGA supports the efforts of the Forest Service to maximize the availability and utilization of the overall “pool” of available Priority and Temporary use days. Historical assignments and allocations of days do not reflect the current level and diversity of demands for forest access.

However, the agency and the guiding community recognize the unpredictability of outdoor recreation and nature- or weather-related activities. Even over a five-year period, variation in temperature, rainfall, snowpack and ice formation have and will continue to impact the spectrum of mountaineering, skiing and climbing opportunities; market demands; and the ability of guides to operate profitably.

These draft Directives offer a 10 percent allowance for non-use after a five-year operating window [page 20]. Any final Directives should be amended to allow for a 15 percent allowance.

K. Increasing Allocations

Recommendations: Any final Directives must recognize and support, and provide clear direction to the field on the need for existing guides and outfitters to increase existing Priority use allocations. Included in such policy should be language:

- 1) Allowing the 15 percent allowance to exceed the original allocation and thereby increase the original allocation as a means to increase the number of allocated days if desired.
- 2) Establishing or reiterating the need to increase permanent allocations.
- 3) Establishing or reiterating the need to increase temporary or seasonal allocations.

These draft directives are vague on the ability of guides and outfitters to apply for and secure additional use. Whether on a seasonal basis or as a new allocation, mountain guides must have a reasonable ability to grow and evolve a business.

Any final Directives should contain clear regulatory language and direction to the field on the ability of existing guides and outfitters to apply for additional use. To facilitate this process, the FOREST SERVICE should consider the establishment, at the forest or district level, of a pool of Priority Use days designated or assigned from a percentage of non-use among Priority permit holders.

L. Priority Use Pool

Recommendation: The Forest Service should establish – and detail in any final Directives – a pool of Priority use days on each forest to allow for flexibility, growth and NEPA concerns within this segment

- 1) A portion of Priority use days should be held in reserve, rather than all being assigned to the Temporary pool. Non-use days or days from outfitters who have failed or left the forest would be assigned to the pool.
- 2) In the Bob Marshall complex, the forests have established a voluntary pool where Priority days that are not being utilized that year or season may be assigned to a pool for other

outfitters to claim for that year or season only. This example should be studied and duplicated on other forests for use with all permits systems.

IV. Conclusion

In closing, the AMGA appreciates the opportunity to comment on these draft Directives. As new draft or final Directives are developed in the coming months, our organization is willing consult with the agency on any elements of these comments or potential revisions.

Sincerely,

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