Position of the Parties

Amtrak filed comments stating that it did not object to the removal of the part 1157 regulations. Amtrak submits that the subpart A regulations did affect it when Conrail was operating commuter services because many of these services occurred over rail lines owned by Amtrak, but that, because Conrail has not provided the continued commuter services since 1983, the subpart A regulations no longer control the compensation Amtrak receives for services provided by others over lines Amtrak owns.

Amtrak also submits that the subpart A regulations were to have been used to determine the subsidies for Amtrak Commuter when it took over the continued commuter services from Conrail on January 1, 1983. It notes, however, that Amtrak Commuter has never conducted any operations because all the commuter authorities chose to operate the continued commuter services themselves or to contract with an entity other than Amtrak Commuter to do so. For the same reason, Amtrak also maintains that it is unnecessary to retain the subpart B regulations.[8]

The American Public Transit Association (APTA) supports the removal of the part 1157 regulations. APTA states that it is a private, nonprofit trade association representing the North American transit industry. Included in its membership are about 400 American public and private mass transit systems that, according to APTA, carry over 95 percent of those using public transit in this country.

The Brotherhood of Locomotive Engineers (BLE) argues that the regulations should not be modified or removed unless there is a need shown for the change, and that such a need was not shown in the June NPR. BLE states that it has not participated in subsidy matters, but indicates that it could become involved in the future. It asserts that ''it is important that [subpart] B of the regulations, governing notice to the public, be maintained.''

Discussion and Conclusions

We will remove the regulations in part 1157, in light of the statutory changes made by the ICCTA, because the regulations have no applicability to current commuter transportation.

We have noted the changes in the ICCTA affecting the part 1157 regulations. The RSPO statutes, 49 U.S.C. 10361–64, were repealed. The ICCTA, moreover, eliminated from section 744(e) references to subsidy standards set by RSPO. Finally, under 49 U.S.C. 10501(c)(2), the ICCTA broadened the exemption from jurisdiction of mass transportation provided by a local governmental authority.

The ICCTA, however, did not remove all statutory references to the RSPO. 49 U.S.C. 24505(b)(2) and 24505(e)(2) still allow RSPO to update the subsidy regulations and require it to prescribe the notice of discontinuance regulations, respectively. We do not know whether the retention of these references to an eliminated office was intentional or not. Therefore, in our June NPR, we asked whether the regulations had validity independent of the existence of RSPO and the jurisdiction of the Board. In response, Amtrak and APTA, commenters with a direct interest in the regulations, do not object to their removal. Amtrak states that Amtrak Commuter has never conducted operations. Thus, currently, and indeed since January 1, 1983, there have been no operations to be subsidized or to discontinue. Accordingly, a need for the rules would only arise if Amtrak Commuter were to begin operations, which it gives no indication of doing. Indeed, in its comments, Amtrak refers to the possible repeal of the Amtrak Commuter provisions of the Rail Passenger Service Act.

In such a situation, we believe that removing the regulations is appropriate. We do not believe that Congress intended that we should retain regulations whose statutory basis has in large measure been eliminated,[9] and whose operational basis is currently nonexistent. Maintaining more than 20 pages of unneeded regulations incurs administrative expense and causes public confusion.

BLE has not given us a positive reason to maintain these regulations. It argues that the rules should not be eliminated ''unless there is a demonstrated need for removal.'' As we have indicated, the elimination of the statutes and the lack of operations by Amtrak Commuter are sufficient reason. Concerning the subpart B rules, BLE states, without further elaboration, that they ''govern[] notice to the public.'' This is true, but there are no operations to give discontinuance notice of, and nobody claiming to be a passenger or representing one has objected.

The Board concludes that the removal of part 1157 would not have a significant effect on a substantial number of small entities. Currently, there are no commuter operations to which the part 1157 rules apply. APTA was the only party commenting on this issue in response to the June NPR.[10] It ''concurs in the Board's judgment that the removal of the regulations will not have any adverse consequences on small entities and will lessen burdens on passenger rail carriers.''

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1157

Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: August 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

PART 1157—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing part 1157.

[FR Doc. 97–22810 Filed 8–26–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

50 CFR Part 36

RIN 1018–AD93

Regulations for the Administration of Special Use Permits on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule clarifies, updates, and adds to existing regulations for the administration of all special use permits (permits) on national wildlife refuges (refuges) in Alaska. These regulations provide the U.S. Fish and Wildlife Service (Service) with the necessary regulatory authority to administer the recent changes in the refuges' commercial visitor service programs and

[8] Amtrak also states that the Senate Committee on Commerce, Science, and Transportation recently approved the Amtrak Reform and Accountability Act of 1997, which would repeal all the provisions of the Rail Passenger Service Act concerning Amtrak Commuter.

[9] ''When a statute has been repealed, the regulations based on that statute automatically lose their vitality. Regulations do not maintain an independent life, defeating the statutory change.'' *Aerolineas Argentinas* v. *U.S.*, 77 F.3d 1564, 1575 (Fed. Cir. 1996).

[10] APTA states that it has over 1000 members, including local mass transit systems, suppliers and manufacturers, and transit industry consultants.

to ensure proper and uniform management of all permits on refuges in Alaska.

EFFECTIVE DATE: This rule is effective September 26, 1997.

ADDRESSES: U.S. Fish and Wildlife Service, Attention: Daryle R. Lons, 1011 E. Tudor Rd., Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Daryle R. Lons at the above address, telephone (907) 786–3354.

SUPPLEMENTARY INFORMATION:

Background

In the November 1, 1996, issue of the **Federal Register** (61 FR 56502–56508) the Service published the proposed rulemaking and invited public comment.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA, Pub. L. 96–487; 94 Stat. 2371) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) authorize the Secretary of Interior to prescribe regulations as necessary to administer permits for compatible activities on refuges in Alaska. The original regulations governing issuance of permits on units of the National Wildlife Refuge System in Alaska, codified at 50 CFR 36.41, were published in the **Federal Register** in 1981 (46 FR 31827, June 17, 1981, as corrected at 46 FR 40194, August 7, 1981) and were amended in 1986 (51 FR 44793, December 12, 1986). Since then, the permit administration program on refuges in Alaska continued to evolve and grow in both size and complexity. Although the Service issues special use permits for a variety of economic and other privileged specialized uses, most permits issued on Alaska Refuges are for commercial visitor service activities involving guide-outfitters and transporters.

The primary purpose of these regulations is to provide better guidance to Service employees and permittees concerning the administration of commercial visitor service permits on refuges in Alaska. Regulations implementing Section 1307 of ANILCA (see 62 FR 1838, January 14, 1997) were promulgated separately from this rulemaking. The 1307 regulations established procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators who provide visitor services other than hunting and fishing guiding on refuges in Alaska. The 1307 regulations supplement these regulations.

Since the Service promulgated the original regulations, the program has evolved due to significant changes in State of Alaska guiding regulations and programs, increases in commercial visitor services on refuges, and changes in the economic environment of the guiding industry. The most visible and significant change in the Service's administration of refuge permits in Alaska was caused by the decision of the Alaska Supreme Court in *Owsichek* v. *State Guide Licensing and Control Board*, 763 P. 2 d 488 (Alaska 1988). That ruling overturned as unconstitutional the State of Alaska's (State) system of assigning exclusive big game guide areas. Until that ruling, the Service depended upon the State's system for selecting big game guides for use areas within refuge lands in Alaska. To allow the State an opportunity to develop a constitutionally acceptable system that would meet Service needs, the Service imposed a moratorium on issuance of permits to new big game guide applicants. After a period of operating under this moratorium, it became apparent that the State would not be able to adopt and implement a program for selection of big game guide-outfitters which also would satisfy Service requirements and mandates. Therefore, the Service developed its own interim program in order to provide an equal opportunity for all registered big game guide-outfitters to compete for permits to operate on refuges in Alaska. After soliciting public comment on a draft system, and making revisions based on those comments, the Service implemented an interim program in June 1992. Following this process, requests for proposals were solicited and the Service notified applicants of selections in January 1993. The Service awarded successful applicants 5-year permits effective July 1, 1993. These regulations will provide the proper authority to allow the Service's big game guide permitting program to continue.

Another factor in the evolution of the permit program has been the significant increase in the number of permits being issued by the refuges. Increase in demand for activities such as sport fish guiding and river floating reached the maximum capacity on several refuges during the late 1980's and early 1990's. Where the Service has had to limit the numbers of permittees for certain activities, this was done by awarding permits through competitive selection processes or by annually renewing permits for existing permittees until implementation of a competitive selection process.

The existing system also needed modification to respond to the changing economic conditions affecting commercial visitor services. Guides started voicing their concerns in the late 1980's that changing economic factors and business requirements made it more and more difficult for commercial visitor service businesses to operate in a professional and safe manner with the limited financial security offered by annual permits. Guides have offered strong arguments that they needed the financial security associated with longer term permits and the right to transfer their permits when they retired. They also sought survivor rights for family members and business partners. The Service addressed their concerns in part by initiating programs to issue competitively awarded, 5-year permits for sport fish guides on Togiak National Wildlife Refuge in 1991 and for big game guide-outfitters on all Alaska refuges in 1992. Also, the Service revised the policy to establish a right of survivorship.

As a result of the changes associated with awarding permits competitively, there has been an apparent overall improvement in permittee compliance with terms of permits, a reduction in negative impacts to refuge resources and other users, and an increase in the quality of visitor services provided to the public.

Early in 1995, Congress directed the Service to reinstate a short-lived and effectively unimplemented 1992 policy directive that required competitively issued hunting and fishing guide permits to have 5-year terms with 5-year renewal rights, allowed the privileges of the permits to be transferable under certain conditions, and required the reissuance of existing competitively awarded permits consistent with the policy. Congress supported a return to the earlier policy by including language in a conference report (H.R. Conference Report No. 402, 104th Congress, 1st Session 1995) regarding the Department's Fiscal Year 1996 appropriations, which directed the Service to reinstate the 1992 policy. The Service is complying with the directive by publishing these regulations. To meet the intent of the directive, these regulations also provide a phase-in period of the competitive system to those permittees who have been conducting a commercial activity in a refuge where the Service has historically limited the numbers of permits issued. Although the Service has only been issuing annual permits to these permittees, the Service, until recently, has given them a reasonable expectation that they would continue to receive permits each year as long as they provided good service and met the terms of their permits. Many of these permittees have invested a significant

amount of time and money and built their lives around a business which is dependent upon receiving a permit.

These regulations make the 1992 policy applicable to all competitively awarded commercial visitor service permits, not just sport fishing and big game hunting guide permits, and will provide the Service with the proper regulatory authority to administer its permit program. The original regulations did not address the competitive award of all big game guide-outfitter permits nor any of the other refuge-specific, competitively awarded permits. In a recent lawsuit concerning implementation of the big game guide-outfitter program, the Service's commitment to developing regulations addressing administration of the program influenced the U.S. District Court in 1994 to find in favor of the Service.

In summary, the goals of this rulemaking are to provide the public, commercial service industry, and Service employees with better guidance for the administration of special use permits on refuges in Alaska; to enhance the conservation of wildlife resources by establishing a system in which operators have a more direct, continuing and long-term interest in conserving and protecting these valuable resources; and to obtain the most capable operators available to provide safe, high quality services to the public.

Analysis of Public Comments and Changes Made to the Proposed Rule

The Fish and Wildlife Service conducted public meetings in Anchorage and Fairbanks, Alaska to provide information about the proposed rule and to receive public testimony. Members of the public made only 3 official oral comments at these meetings. However, the Service received 41 letters providing written comments on the proposed rule. Of these, 33 were from individuals/commercial visitor service businesses, 4 from special interest groups, 2 from the State of Alaska, and 2 from members of the Alaska Congressional delegation.

The following is a section-by-section analysis of all substantive changes that the Service made in the final rule in response to public comment.

Section 36.41(b) Definitions

In response to seven comments, the definition of ''entire business'' was modified slightly to better define what assets to include in the term. A definition for the term ''immediate family'' also was added.

Section 36.41(e)(1) Refers to: Competitively Awarded Permits—(Exception for Environmental Education Related Activities)

This paragraph provides the Refuge Manager with discretionary authority to issue noncompetitive permits on a one-time, short-term basis for environmental education-related activities that also are recreational in nature in use areas where permits of that type of guided recreational activity are otherwise limited to competitive award. In response to two public comments, the amended language clarifies the intent of the proposed language and provides the flexibility needed for organizations such as scouting groups to be eligible to receive such a permit.

Section 36.41(e)(2) Refers to: Exception for Historically Limited Numbers of Current Permittees

In response to one comment, the language, ''consistent with the terms set forth in paragraph (e)(16)'' was added to this provision to clarify the intent of the proposed language. The added language makes it clear that the terms of the affected permittees' permits are consistent with competitively issued permits awarded by the prospectus with invitation to bid method.

Section 36.41(e)(10) Refers to: Terms of Permits

In response to 22 comments, the Service changed the term ''may'' to ''must'' with respect to permits being noncompetitively renewed for an additional 5 years upon a showing that the permittee complied with all applicable permit terms and conditions and had a satisfactory record of performance. The commenters expressed concerns that the proposed language would allow Refuge Managers to arbitrarily decide not to renew the permits even if the permittee met the specified conditions. The intent of the Service, pursuant to the 1992 policy, is to automatically renew such permits provided all of the specified conditions are met. The inclusion of ''must'' in the final rule clarifies the intent of the Service's implementation of this provision. To clarify the administrative requirements for renewing permits, the revised language also includes the requirement that permittees complete an application to receive the 5 year renewal.

Section 36.41(e)(11) Refers to: Transfer of Permits

The Service made several changes in response to seven comments concerning various elements of the transfer provisions. The comments primarily expressed two themes: the 15-year requirement for permittees to hold a permit before being eligible to transfer the privilege is too long, and opposition to the requirement that a permittee must sell their entire business in order to be eligible to transfer their permit privileges. There were also two comments that recommended the Service to add language that would provide the Service with more latitude in allowing transfers based upon the specific facts of each potential case that could arise.

The Service added language, in response to the comments, that provides it with the latitude to approve transfers that will benefit the government in addition to the previously allowed transfers delineated in the proposed regulations. The Service also added language that clarifies that it has complete discretion in determining if transfers will be allowed.

The proposed rule would have required a permittee to hold a permit for 15 years before being eligible to transfer the permit's privilege. This requirement is reduced to 12 years in the final rule. Although the final rule generally requires that a permittee's entire business be sold as a requirement for transfer eligibility, the Service revised the definition of ''entire business,'' as noted previously, to more clearly define included assets. After reevaluating the language of this section, the Service also amended the language to better define what types of violations, convictions and/or penalties would be applicable for evaluating the history of compliance for potential transferees. The Service also may now base denial of transfers upon a sentence of probation.

Section 36.41(e)(14) Refers to: Transfer of Permits to Former Spouses

After reevaluating the language of this and the following section, 36.41(e)(15), the Service revised the language in these sections to make the refuge manager the approving authority for transfers instead of the regional director. This revision makes the approving authority consistent with that of Section 35.41(e)(11).

Section 36.41(e)(15) Refers to: Right of Survivorship

In response to one comment, the Service revised language in the final rule to broaden the eligibility of spouses to retain the permit privilege in the event of death or disability of the permittee. The Service recognizes although it is the responsibility of the permittee to conduct or oversee the actual guiding or other commercial activity on the refuge, it is common

practice for the spouse of the permittee to actually have much of the responsibility for many of the administrative parts of the business. The revised language requires an actively involved spouse in the business who may not have all the required certifications (e.g., big game guiding license) to demonstrate only that they are capable of continuing to provide the authorized services instead of having independently been qualified in order to be eligible to retain the permit privilege. This distinction allows eligible spouses to continue to manage the business and hire an employee, who independently is qualified with all the proper licenses, to conduct the authorized activities for the remaining term of the permit. The revised language retains the requirement that business partners and other immediate family members have to qualify independently to hold the permit in order for the privilege to pass to them.

Section 36.41(h) Refers to: Restriction, suspension and revocation of permits

The Service received four comments concerning this paragraph. The comments generally questioned the validity of the reasons for permit suspension, restriction or revocation, and expressed concerns that the proposed language would allow Refuge Managers to make arbitrary decisions without ''due process.'' As stated in Section 36.41(i), any person who is adversely affected by a Refuge Manager's decision relating to that person's permit has appeal rights to the Regional Director. In response to the commenters' ''due process'' concerns, the Service added language that references the permittee's right to appeal in section 36.41(i).

After reevaluating the language of this section in response to public comments, the Service also amended the language to better define what types of violations/convictions would be applicable.

The following is a section-by-section summary of other substantive comments that the Service received but that did not result in changes being made in the final rule.

Section 36.41(e)(1) Refers to: Lotteries

The Service received eight comments that opposed the use of lotteries as a selection method. All of the commenters felt this selection mechanism is unfair. As stated in the proposed regulations, the prospectus with invitation to bid system will be the primary method used to select commercial visitor services. The Service will use lotteries or other selection methods only where justified and under very limited circumstances such as providing guiding opportunities in areas that would otherwise go unused. The Service believes having the discretion to use alternative selection methods in isolated cases is in the best interest of the public and therefore retained the proposed language in the final rule.

Section 36.41(e)(2) Refers to: Exception for historically limited numbers of current permittees

Two commenters supported and two commenters opposed the inclusion of this paragraph that allows Refuge Managers to issue permits noncompetitively on a one-time basis where the numbers of permits have been limited for an activity prior to the promulgation of these regulations and a prospectus system is not yet developed.

The Service retained this paragraph to comply with the intent of Congressional directive in H.R. Conference Report No. 402, 104th Congress, 1st Session (1995), and to support the interests of existing permittees who in the past typically made significant investments based on their prior understanding that they would continue to receive annually issued permits as long as they met the terms of their permits and provided a good service. This provision will provide these permittees with adequate time to prepare for having to compete as well as giving many of them the opportunity to recoup some of their investments by selling their businesses and transferring their permit privileges.

Section 36.41(e)(4) Refers to: Selection Criteria

The Service received four comments concerning selection criteria. Two of the comments supported adding the language ''experience and performance in providing the same or similar services shall account for no less than 20 percent of the maximum points available under any prospectus.'' One commenter opposed considering the knowledge of the specific area when evaluating proposals and one commenter recommended clarifying what the term ''specific area'' meant.

Although experience accounts for more than 20 percent in current policy for selecting sport fish and big game hunting guides, the Service does not believe it is appropriate or necessary to include a specific figure since the regulations cover all types of competitive activities and a fixed percentage may not be appropriate in all cases. The Service believes that it is appropriate to consider knowledge of the specific area when evaluating proposals. The Service also feels that the proposed language, ''knowledge of the specific area covered by the prospectus'', is sufficiently clear and did not need revising.

Section 36.41(e)(7) Refers to: Minimum Scores

One commenter opposed the Service having the discretion to establish minimum scores for certain competitively-awarded permits. The Service retained this provision because it believes it is in the best interest of refuge resources and guided refuge visitors to be able to establish defined levels of competency above minimum qualification levels for certain types of guided activities in some locations.

Section 36.41(e)(11)(ii) Refers to: Renewal of Existing Permits

Although most commenters supported the renewal of existing permits without competition, three commenters opposed this. The Service retained this provision in response to the Congressional directive received in H.R. Conference Report No. 402, 104th Congress, 1st Session (1995) and the overall support demonstrated by the public comments that the Service received.

Section 36.41(i) Refers to Appeals

One commenter recommended that appeals concerning competitive selection should be handled by the evaluation panel and not the Regional Director. Another commenter recommended keeping the 180-day appeal period instead of the proposed 45-day appeal period.

The Service believes it is in the best interest of appellants to retain the provision that the Regional Director has the responsibility to hear and decide on all appeals. The proposed change in length of the appeal period from 180 to 45 days was one of the specific items that the Service requested comments on in the advance notice to the proposed regulations. The majority of comments supported the change because the 180-day appeal period places selected applicants of competitive awards in a position of not being able to make necessary preparations and commitments for an unnecessarily long period of time. The Service believes it is in the best interest of most permit applicants and guided refuge visitors to reduce the appeal period from 180 to 45 days.

Other Comments

The Service received a number of other comments. Some were very general, such as two commenters opposing the entire rule from being promulgated and another commenter recommending that the Service should

consider cumulative impacts of all special use permits on Alaska refuges. Many of the other comments were more relevant to upcoming policy issues rather than the rule itself. Examples include: several comments recommending revision of existing selection criteria, several comments recommending that the Service provide additional regulatory or policy provisions which would essentially create a ''Bill of Rights'' for permittees, and several comments recommending that performance incentives be established for existing permittees. The Service will give due consideration to these comments during future policy revisions.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the information collections contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 1018–0014, with an expiration date of August 31, 2000.

This collection of information will be achieved through the use of USFWS application form 3–2001, in conjunction with the provisions of this rule. The information collection requirements needed for the proper use and management of Alaska National Wildlife Refuges is contained in 50 CFR 36.3. The information is being collected to assist the Service in administering economic and other privileged use programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits.

This collection of information will establish whether the applicant is eligible and/or is the most qualified applicant to receive the benefits of a refuge permit. The information, such as name, address, phone number, depth of experience, qualifications, time in residence, knowledge of function, and affiliations requested in the application form, is required to obtain a benefit.

The most common respondents to this collection of information will be commercial visitor service operators who wish to be considered to receive a refuge permit. This information will be needed by the USFWS to determine whether a given individual or corporation qualifies. The public reporting burden for this collection of information is estimated to average 1.5 hours each for 150 non-competitively awarded permits and 31.66 hours each for 60 competively awarded permits including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The estimated annual number of respondents is 210, yielding a total annual reporting and record keeping burden of 2125 hours.

Comments and suggestions on the burden estimate or any other aspect of the form should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224-ARLSQ; 1849 C Street, NW., Washington, DC 20240.

Environmental Considerations

In accordance with 516 DM 2, Appendix 2, the Service has determined that this action is categorically excluded from the NEPA process as it contains ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature'' that will have no potential for causing substantial environmental impact.

Economic Effects/Regulatory Flexibility Act Compliance

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. The Service issues approximately 200 permits. The rule will maintain an overall economic status quo without changes in either the number or type of permits being issued.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*), that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Primary Author: Daryle R. Lons, Refuge Program Specialist, Fish and Wildlife Service, Alaska Region.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, the Service amends Part 36 of Chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*, and 44 U.S.C. 3501 *et seq.*

2. Revise § 36.3 Information Collection to read as follows:

§ 36.3 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned clearance number 1018–0014. The collected information will assist the Service in administering these programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits. The information requested in the application form is required to obtain a benefit. The public reporting burden for this collection of information is estimated to average 1.5 hours each for 150 non-competitively awarded permits and 31.66 hours each for 60 competitively awarded permits including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The estimated annual number of respondents is 210, yielding a total annual reporting and record keeping burden of 2125 hours. Comments and suggestions on the burden estimate or any other aspect of the form should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, DC 20240.

3. Section 36.41 is revised to read as follows:

§ 36.41 Permits.

(a) *Applicability.* The regulations contained in this section apply to the issuance and administration of competitively and noncompetitively issued permits for economic and/or other privileged uses on all national wildlife refuges in Alaska. Nothing in

this section requires the refuge manager to issue a special use permit if not otherwise mandated by statute to do so. Supplemental procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators to hold permits to provide visitor services, other than hunting and fishing guiding on refuges in Alaska, are addressed in § 36.37, Revenue producing visitor services.

(b) *Definitions.* As used in this section, the term or terms:

Commercial visitor service means any service or activity made available for a fee, commission, brokerage or other compensation to persons who visit a refuge, including such services as providing food, accommodations, transportation, tours, and guides. Included is any activity where one participant/member or group of participants pays more in fees than the other participants (non-member fees, etc.), or fees are paid to the organization which are in excess of the bona fide expenses of the trip;

Entire business means all assets including, but not limited to, equipment, facilities, and other holdings directly associated with the permittee's type of commercial visitor service authorized by permit. This term also includes assets held under the name of separate business entities, which provide the same specific type of commercial visitor services authorized by permit, that the permittee has a financial interest in. The term does not include related enterprises owned by the permittee such as taxidermy and travel services;

Immediate family means the spouse and children, either by birth or adoption, of the permittee.

Operations plan means a narrative description of the commercial operations which contains all required information identified in the prospectus;

Permit means a special use permit issued by the refuge manager which authorizes a commercial visitor service or other activity restricted by law or regulation on a national wildlife refuge;

Prospectus means the document that the Service uses in soliciting competition to award commercial visitor services on a refuge;

Subcontracting means any activity in which the permittee provides financial or other remuneration to anyone other than employees to conduct the specific commercial services authorized by the Service. The permittee's primary authorized activities must be conducted in a genuine employer/employee relationship where the source of all remuneration for services provided to clients is from the permittee. Subcontracting does not apply to booking services or authorized secondary services provided to clients in support of the permittee's primary authorized activities (e.g., a guide paying a marine or air taxi operator to transport clients);

Subletting means any activity in which the permittee receives financial or other remuneration in return for allowing another commercial operator to conduct any of the permittee's authorized activities in the permittee's use area; and

Use area means the designated area where commercial services may be conducted by the permittee.

(c) *General provisions.* In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued. Refuge managers will provide written notice to the permittee in all cases where documentation of noncompliance is prepared for use in any administrative proceeding involving the permittee.

(d) *Application.* (1) This section and other regulations in this part 36, generally applicable to the National Wildlife Refuge System, require that permits be obtained from the refuge manager. For activities on the following refuges, request permits from the respective refuge manager in the following locations:

Refuge	Office location
Alaska Peninsula National Wildlife Refuge.	King Salmon.
Alaska Maritime National Wildlife Refuge.	Homer.
Aleutian Islands Unit, Alaska Maritime NWR.	Homer.
Arctic National Wildlife Refuge.	Fairbanks.
Becharof National Wildlife Refuge.	King Salmon.
Innoko National Wildlife Refuge.	McGrath.
Izembek National Wildlife Refuge.	Cold Bay.
Kanuti National Wildlife Refuge.	Fairbanks.
Kenai National Wildlife Refuge.	Soldotna.
Kodiak National Wildlife Refuge.	Kodiak.
Koyukuk National Wildlife Refuge.	Galena.
Nowitna National Wildlife Refuge.	Galena.
Selawik National Wildlife Refuge.	Kotzebue.
Tetlin National Wildlife Refuge.	Tok.
Togiak National Wildlife Refuge.	Dillingham.
Yukon Delta National Wildlife Refuge.	Bethel.
Yukon Flats National Wildlife Refuge.	Fairbanks.

(2) For noncompetitively issued permits, the applicant may present the application verbally if he/she is unable to prepare a written application. The refuge manager will keep a written record of such verbal application. For competitively issued permits, the applicant must submit a written application in the format delineated in the prospectus or other designated format of the Service.

(3) The refuge manager will grant or deny applications for noncompetitively issued permits in writing within 45 days, except for good cause. For competitively issued permits, the refuge manager will grant or deny applications in accordance with the time frame established in the prospectus, except for good cause.

(4) Refuge managers may establish application period deadlines for individual refuges for both competitively and noncompetitively issued permits. The refuge manager will send notification of availability for commercial opportunities and application deadlines to existing and/or the previous year's permittees. He/she will publish the notice in at least one newspaper of general circulation in the State and in at least one local newspaper if available, and will make available for broadcast on local radio stations in a manner reasonably calculated to inform local prospective applicants.

(5) The Service may limit the number of applications that an individual may submit for competitively awarded offerings.

(e) *Competitively awarded permits.* (1) Where the number of available permits is limited, refuge managers will award permits competitively. A prospectus with invitation to bid system will be the primary competitive method used for selecting commercial visitor services. Where justified, other selection methods, including but not limited to lotteries, may be used. Such circumstances may include, but not be limited to, the timely refilling of use areas that have become vacant during regularly scheduled terms to prevent commercial visitor service opportunities from going unused, and initiating trial programs on individual refuges. The refuge manager has discretionary authority to issue noncompetitive permits on a one-time, short-term basis to accredited educational institutions and other nonprofit organizations to conduct primarily environmental

education-related activities that also may be recreational in nature in use areas where permits for that type of guided recreational activity are otherwise limited to competitive award.

(2) Where numbers of permits have been limited for an activity prior to the promulgation of these regulations and a prospectus with invitation to bid system has not yet been developed, refuge managers may issue noncompetitive five-year permits consistent with the terms set forth in paragraph (e)(16) of this section on a one-time basis to existing permittees.

(3) The Service will publish notice of all solicitations for competition in accordance with paragraph (d)(4) of this section and include reasonable application periods of not less than 60 days. When competitively selecting permittees for an activity in a use area where permits for that activity were not previously competitively awarded, the Service will publish notice of the upcoming opportunity a minimum of 18 months prior to the effective date of the permit term.

(4) All prospectuses will identify the selection criteria that the Service will use to evaluate the proposals. All prospectuses involving commercial visitor services must include experience and performance in providing the same or similar services as a criterion. In evaluating the experience of an applicant, the Service will specifically consider knowledge of the specific area covered by the prospectus and the nature of the technical skills required to provide quality service to the public.

(5) A panel of Service employees who use a scoring process based on the selection criteria will evaluate and rank applications received in response to a prospectus.

(6) The Service has discretionary authority to not evaluate or consider proposals that are incomplete or improperly submitted.

(7) The Service may establish minimum scores to qualify for the award of permits. If established, these minimum scores will be identified in the prospectus.

(8) The Service may establish limits on the number of use areas within an individual refuge, or on refuges statewide, in which a permittee is authorized to operate. This limit applies to different corporations in which the same individual has any ownership interests.

(9) When vacancies occur in competitively filled use areas, the procedure for reissuing the permits will depend on how long it has been since the permit originally was issued. The Service will award the permit to the next highest ranking interested applicant in the original solicitation, if a vacancy occurs within the first 12 months of the permit's effective date. Resolicited competition for the area will occur as soon as practicable if:

(i) A vacancy occurs after 12 months of the permit's effective date; and

(ii) At least 24 months of the original permit term is available for a new permittee after completion of the solicitation, application, evaluation and awards period. If less than 24 months of the term of the permit is available, the Service has the discretion to solicit competition during the regularly scheduled solicitation period. The Service may annually issue noncompetitive permits for vacant areas, where there has not been significant permittee interest, until competition can be solicited in conjunction with other solicitations for vacant areas.

(10) Terms of permits awarded under the prospectus with invitation method are valid for 5 years except in those instances where the Service issues permits to fill vacancies occurring during a scheduled award cycle. In these instances, the permit duration is limited to the expiration date of the original award period. Permits awarded under the prospectus by invitation method must be renewed noncompetitively by the refuge manager for a period of 5 additional years upon application and a showing of permittee compliance with all applicable permit terms and conditions and a satisfactory record of performance. After one renewal, the Service shall not extend or noncompetitively renew another permit.

(11) Permit privileges may be transferred to other qualified entities that demonstrate the ability to meet Service standards, as outlined in the prospectus upon which the existing permit was based, subject to approval by the refuge manager. Requests for transfers must be made in writing to the refuge manager. A permittee who transfers his/her privileges will not be eligible to be considered for competitively awarded permits for the same type of activity on the same national wildlife refuge for a period of three years following the authorized transfer. The Service retains complete discretion in allowing transfers. In general, the Service approves transfers only upon demonstrating that it is to the government's benefit and if all the following criteria are satisfied:

(i) The transfer is part of the sale or disposition of the current permittee's entire business as earlier defined;

(ii) The current permittee was either conducting the commercial operation in the refuge under authorization of a permit for a minimum of 12 years or owns significant real property in the area, the value of which is dependent on holding a refuge permit. Consideration of the last element will include, but is not limited to:

(A) The relationship of the real property to permitted refuge activities as documented in the operations plan;

(B) The percentage that the authorized refuge activities comprise of the total commercial use associated with the real property; and

(C) The appraised value of the real property.

(iii) The transferee must be independently qualified to hold the permit under the standards of the prospectus of the original existing permit.

(iv) The transferee has an acceptable history of compliance with State and Federal fish and wildlife and related permit regulations during the past 5 years. An individual with any felony conviction is an ineligible transferee. Transfer approval to an individual having any violations, convictions, or pleas of nolo contendere for fish and wildlife related federal misdemeanors or State violations will be discretionary. Denial is based on, but not limited to, whether the individual committed any violation in which the case disposition resulted in any of the following:

(A) Any jail time served or probation;

(B) Any criminal fine of $250 or greater;

(C) Forfeiture of equipment or harvested animal (or parts thereof) valued at $250 or greater;

(D) Suspension of privileges or revocation of any fish and wildlife related license/permits;

(E) Other alternative sentencing that indicates the penalty is of equal severity to the foregoing elements; or

(F) Any multiple convictions or pleas of nolo contendere for fish and wildlife-related Federal misdemeanors or State fish and wildlife-related violations or misdemeanors irrespective of the amount of the fine.

(12) The transferee must follow the operations plan of the original permittee. The transferee may modify the operations plan with the written consent of the refuge manager as long as the change does not result in increased adverse impacts to refuge resources or other refuge users.

(13) Upon timely approval of the transfer, the Service will issue the new permittee a permit for the remaining portion of the original permit term. The refuge manager retains the right to restrict, suspend, revoke, or not renew

the permit for failure to comply with its terms and conditions.

(14) Permit privileges issued under this paragraph (e) may be transferred, subject to refuge manager approval, to a former spouse when a court awards permit-associated business assets in a divorce settlement agreement to that person. The recipient must independently qualify to hold the originally issued permit under the minimum standards identified by the Service, and the permittee must have an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(15) Permit privileges issued under this paragraph (e) may be transferred in the case of death or disability of the permittee, subject to refuge manager approval, as provided in this paragraph (e). In these cases, the permit privileges may pass to a spouse who can demonstrate he/she is capable of providing the authorized services and who has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section. A spouse who lacks any required license(s) but otherwise qualifies may hire an employee, who holds the required license(s) and who has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section, to assist in the operation. Permit privileges may also pass to another member of the immediate family or a person who was a business partner at the time of original permit issuance. This person must be independently qualified under the minimum standards identified by the Service at the time of original permit issuance and have an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(16) Upon September 26, 1997, refuge managers will amend existing competitively-awarded permits through the prospectus method to make the terms fully consistent with this section, including eligibility for a 5-year non-competitive renewal.

(f) *Fees.* Permittees must pay fees formally established by regional and/or nation-wide Service policy. The refuge manager must document any fee exemption.

(g) *Subletting and subcontracting.* A permittee may not sublet any part of an authorized use area. Subcontracting any service authorized by the permit requires written approval from the refuge manager unless the subcontracted service is specifically identified in the permittee's approved operations plan.

(h) *Restriction, suspension and revocation of permits.* The refuge manager may suspend, revoke, or reasonably restrict the terms of a permit for noncompliance with the terms and conditions of the regulations in this subchapter C; for nonuse of the permit; for violations/convictions (including pleas of nolo contendere) of any law or regulation pertaining to the same type of activity authorized by the permit, whether or not the activity occurred on or off the refuge; to protect public health or safety; or if the refuge manager determines the use to be incompatible with refuge purposes or is inconsistent with the Service's obligations under Title VIII of the Alaska National Interest Lands Conservation Act. All actions pertaining to this paragraph are subject to the appeal process as set forth in paragraph (i) of this section.

(i) *Appeals.* (1) Any person adversely affected by a refuge manager's decision or order relating to the person's permit, or application for a permit, has the right to have the decision or order reviewed by the regional director. This section does not apply to permits or applications for rights-of-way. See 50 CFR 29.22 for the hearing and appeals procedure on rights-of-way.

(2) Prior to making any adverse decision or order on any permit or an application for a noncompetitively issued permit, the refuge manager will notify the permittee or applicant, verbally or in writing, of the proposed action and its effective date. A permittee or applicant of noncompetitively issued permits, shall have 45 calendar days after notification in which to present to the refuge manager, orally or in writing, a statement in opposition to the proposed action or effective date. Notification in writing to a valid permit holder shall occur within 10 calendar days after receipt of the statement in opposition to the refuge manager's final decision or order. An applicant for a noncompetitively issued permit shall be notified in writing within 30 calendar days after receipt of the statement in opposition, of the refuge manager's final decision or order. An applicant for a competitively issued permit who is not selected will not receive advance notice of the award decision. Such applicants, who wish to appeal the decision must appeal directly to the regional director within the time period provided for in paragraph (i)(3) of this section.

(3) The permittee or applicant shall have 45 calendar days from the postmarked date of the refuge manager's final decision or order in which to file a written appeal to the regional director. In appeals involving applicants who were not selected during a competitive selection process, the selected applicant concurrently will have the opportunity to provide information to the regional director prior to the final decision. Selected applicants who choose to take advantage of this opportunity, will retain their right of appeal should the appeal of the unsuccessful applicant result in reversal or revision of the original decision. For purposes of reconsideration, appellants shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, permit or competitive prospectus, which demonstrates that the appellant satisfies the criteria set forth in the document under which the permit application/award was made;

(ii) The basis for the permit applicant's disagreement with the decision or order being appealed; and

(iii) Whether or not the permit applicant requests an informal hearing before the regional director.

(4) The regional director will provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, and within a reasonable time, the regional director shall affirm, reverse, or modify the refuge manager's decision or order and shall set forth in writing the basis for the decision. The applicant must be sent a copy of the decision promptly. The decision will constitute final agency action.

(5) Permittee compliance with any decision or order of a refuge manager shall be required during the appeal process unless the regional director makes a preliminary finding contrary to the refuge manager's decision, and prepares a written determination that such action is not detrimental to the interests of the United States, or upon submission and acceptance of a bond deemed adequate by the refuge manager to indemnify the United States from loss or damage.

(j) *State selection of guide-outfitters.* Nothing in this section will prohibit the Service from cooperating with the State of Alaska in administering the selection of sport fishing guides and big game hunting guide-outfitters operating on national wildlife refuges should the State develop a competitive selection process which is acceptable to the Service.

Dated: August 22, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–22827 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–55–P