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[3410-NFP]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN: 0596-AD12

Definition of a Ski Area

AGENCY: Forest Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Forest Service is amending the definition of a ski area in its regulations to make it consistent with the authority in section 3 of the Ski Area Recreational Opportunity Enhancement Act (SAROE) of 2011 to allow authorization of other snow sports besides Nordic and alpine skiing and, in appropriate circumstances, other seasonal and year-round natural resource-based recreation activities and associated facilities at ski areas on National Forest System (NFS) lands, provided that authorization of these other activities and facilities would not change the primary purpose of the ski areas to a purpose other than skiing and other snow sports.

DATE: The rule is effective [insert date 30 days from date of publication in the **FEDERAL REGISTER**].

ADDRESSES: Send comments electronically by following the instructions at the Federal eRulemaking portal at <http://www.regulations.gov>. Comments also may be submitted by mail to USDA Forest Service Ski Area Definition Comments, GMUG National Forest, 2250 Highway 50, Delta, CO 81416. If comments are sent electronically, duplicate comments should not be sent by mail. Receipt of comments cannot be confirmed.

All comments, including names and addresses when provided, will be placed in the record and will be made available for public review and copying. Those wishing to review comments should call Corey Wong at (970) 874-6668 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Corey Wong, Acting National Winter Sports Program Manager, 970-874-6668. Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Section 3 of SAROEIA amended the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) to allow authorization of other snow sports besides Nordic and alpine skiing at ski areas on NFS lands, such as snowboarding, sledding, and tubing. Section 3 of SAROEIA also amended 16 U.S.C. 497b to allow authorization, in appropriate circumstances, of other seasonal and year-round natural resource-based recreation activities and associated facilities at ski areas on NFS lands, provided that authorization of these other activities and facilities would not change the primary purpose of the ski areas to a purpose other than skiing and other snow sports.

The definition for a ski area in Forest Service regulations at 36 CFR 251.51 implementing the National Forest Ski Area Permit Act provides for development only for Nordic and alpine skiing at ski areas on NFS lands and limits ancillary facilities at ski areas on NFS lands to those that support skiing. Accordingly, the Department is amending the definition for a ski area in 36 CFR 251.51 to provide for development for snow sports besides Nordic and alpine skiing at ski areas on NFS lands and to provide, in appropriate circumstances, for facilities necessary for other seasonal and year-round natural resource-based recreation activities at ski areas on NFS lands, provided that authorization of these

other activities and facilities would not change the primary purpose of the ski area to a purpose other than skiing and other snow sports.

The Department is expanding the requirement in the current definition of a ski area in 36 CFR 251.51 that the preponderance of revenue at a ski area derive from activities and facilities that support Nordic and alpine skiing to include revenue derived from activities and facilities that support other snow sports. This requirement can then be used to determine whether authorization of other seasonal, natural resource-based recreation activities and facilities would change the primary purpose of the ski area to a purpose other than skiing and other snow sports.

The Department has also revised the terminology for types of revenue generated by ski areas on NFS lands to track the types of revenue that are included in the land use fee calculation for ski areas on NFS lands under the National Forest Ski Area Permit Fee Act of 1996 (16 U.S.C. 497c).

The amendment of the definition for a ski area in 36 CFR 251.51 merely makes the definition consistent with the authority in section 3 of SAROEPA to allow authorization of additional recreation activities and associated facilities at ski areas on NFS lands and makes additional changes in terminology consistent with the National Forest Ski Area Permit Fee Act. These revisions are dictated by statute; the Department has no discretion in implementing them. Moreover, the revisions conform precisely to the corresponding language in the statutes.

Regulatory Certifications

Environmental Impact

This interim final rule is making minor, purely technical, nondiscretionary changes to the definition of a ski area on NFS lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions. The Department has determined that this interim final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

This interim final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. It has been determined that this interim final rule is not significant. This interim final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This interim final rule will not interfere with an action taken or planned by another agency, nor will this interim final rule raise new legal or policy issues. Finally, this interim final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, this interim final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

The Department has considered this interim final rule in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This interim final rule makes minor, purely technical, nondiscretionary changes to the definition of a ski area on NFS lands. Therefore, the

Department has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act because this interim final rule will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

Federalism and Consultation and Coordination with Indian Tribal Governments

The Department has considered this interim final rule under the requirements of E.O. 13132 on federalism. The Department has determined that this interim final rule conforms to the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the states, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further determination of federalism implications is necessary at this time.

This interim final rule does not have tribal implications per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with tribes is not required in connection with the interim final rule.

No Takings Implications

The Department has analyzed the interim final rule in accordance with the principles and criteria in E.O. 12630 and has determined that his interim final rule will not pose the risk of a taking of private property.

Civil Justice Reform

The Department has reviewed this interim final rule under E.O. 12988 on civil justice reform. After adoption of this interim final rule, (1) all State and local laws and regulations that conflict with this interim final rule or that impede its full implementation

will be preempted; (2) no retroactive effect will be given to this interim final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Department has assessed the effects of this interim final rule on State, local, and tribal governments and the private sector. This interim final rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Energy Effects

The Department has reviewed this interim final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Department has determined that this interim final rule does not constitute a significant energy action as defined in the E.O.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply to this interim final rule.

List of Subjects in 36 CFR Part 251

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending subpart B of part 251 of Title 36 of the Code of Federal Regulations to read as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for part 251, subpart B, continues to read as follows:

Authority: 16 U.S.C. 4601–6a, 4601–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. Amend §251.51 by revising the definition of “ski area” to read as follows:

§251.51 Definitions.

* * * * *

Ski area—a site and associated facilities that has been primarily developed for alpine or Nordic skiing and other snow sports, but may also include, in appropriate circumstances, facilities necessary for other seasonal or year-round natural resource-based recreation activities, provided that a preponderance of revenue generated by the ski area derives from the sale of alpine and Nordic ski area passes and lift tickets, revenue from alpine, Nordic, and other snow sport instruction, and gross revenue from ancillary facilities that support alpine or Nordic skiing and other snow sports.

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Ann C. Mills
Acting Under Secretary

June 20, 2013
Date