



## DEPARTMENT OF AGRICULTURE

### Forest Service

#### **Alaska Region Supplement to Forest Service Manual 2720: Special Uses; Outfitting and Guiding Permit for Strictly Point-To-Point Commercial Transportation to, from, and within the Mendenhall Glacier Visitor Center Subunit of the Mendenhall Glacier Recreation Area.**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability for public comment.

**SUMMARY:** The United States Department of Agriculture (USDA), Forest Service, is seeking public comment on a proposed revision to a directive supplement that would require an outfitting and guiding permit for strictly point-to-point commercial transportation to, from, and within the Mendenhall Glacier Visitor Center subunit of the Mendenhall Glacier Recreation Area (Visitor Center subunit) in the Alaska Region of the Forest Service (Alaska Region). Comment is also requested on the revision to the Forest Service's approved information collection for outfitting and guiding permits.

**DATE:** Comments must be received in writing by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** The proposed revision to the directive supplement is available at, and comments may be submitted electronically to, <https://cara.ecosystem-management.org/Public/CommentInput?project=ORMS-2314>. Written comments may be mailed to Jennifer Berger, Alaska Region Public Services Program Leader (RLM), P.O. Box 21628, Room 535b, Juneau, AK 99802-1628. All timely comments, including names and addresses, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received at <https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2314>.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berger, Alaska Region Public Services Program Leader, at 907-586-8843 or *jennifer.berger@usda.gov*. Individuals using telecommunication devices for the hearing-impaired may call the Federal Information Relay Service at 800-877-8339 between 8 a.m. and 8 p.m. Eastern Daylight Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Forest Service's special use regulations require a special use authorization for commercial activities like outfitting and guiding (36 CFR 251.50(a), 251.51) and define the term "guiding" to include transporting people on National Forest System (NFS) lands for remuneration or other gain (36 CFR 251.51). The principal purpose of outfitting and guiding is to provide or facilitate an outdoor recreational experience involving NFS lands, improvements, or resources. In contrast, the primary purpose of public transportation such as taxi and bus service is to provide point-to-point public transportation.

Because public transportation such as taxi, air taxi, and bus service in Alaska is often provided on NFS lands, the Alaska Region issued a supplement to Forest Service Manual (FSM) 2721.53 that exempts strictly point-to-point commercial transportation from the requirement to obtain an outfitting and guiding permit. The existing FSM supplement also provides that in areas where activities are causing conflicts with recreational users on NFS lands, operators must cooperate with the District Ranger to reduce the conflicts. Since 2007, the Alaska Region has used this authority in the existing FSM supplement to require existing outfitters and guides to obtain an outfitting and guiding permit for commercial point-to-point transportation to, from, and within the Visitor Center subunit during cruise ship season to manage traffic congestion prompted by growing cruise ship tourism.

Cruise ship visitation to the Visitor Center subunit has continued to grow, increasing by 20 percent between 2007 and 2017. While the COVID-19 pandemic has depressed visitation, the Forest Service expects it to return to pre-pandemic levels and continue to

increase now that vaccines are more widely available. In 2015, the Alaska Region reassessed the commercial capacity of the Visitor Center subunit to address growing tourism demand and allocated all existing commercial capacity by means of a prospectus. Due to overwhelming demand, current permit holders could not be granted the level of use they had requested, and only five new operators could be issued a permit.

Commercial point-to-point transportation to, from, and within the Visitor Center subunit increased substantially after 2017 when the State of Alaska allowed transportation network companies (TNCs) such as Uber and Lyft to begin operating in the State. There are 5 to 10 businesses that attempt to operate at the Visitor Center subunit without a permit each year. Some TNCs are known nationally (like Uber and Lyft), and some are local small businesses. Juneau is a landlocked city of 30,000 residents. The number of TNC drivers conducting business in the city fluctuates to accommodate residents in the non-cruise season (when there are fewer drivers) and to accommodate a surge of an additional 3,600 to 18,000 cruise passengers per day during cruise season (when there are more drivers). The highest number of TNC drivers the Forest Service has recorded operating at one time within the city of Juneau is 12 at the height of cruise season on a 5-ship-day, meaning 18,000 passengers disembarked. Although the 4 to 12 drivers do not operate simultaneously in the Visitor Center subunit, they operate there repeatedly throughout the day during the 6-month cruise season, contributing significantly to congestion. Based on the number of Uber and Lyft trips recorded by Forest Service personnel and reported by permit holders, approximately 1,440 to 4,320 trips occur during cruise season per (non-pandemic) year. This is a conservative estimate based on a 6-month cruise season and 4 to 12 Uber and Lyft drivers traveling to the Visitor Center subunit twice per day.

Under the existing FSM supplement, the Alaska Region cannot require an outfitting and guiding permit for TNCs and other new operators. Consequently, these new operators are unfairly competing with existing outfitters and guides. In addition, the unmanaged

commercial use in the Visitor Center subunit is resulting in use conflicts, increased risks to black bears frequenting the area from wildlife/vehicle conflicts, greater congestion and public safety risks such as near-miss vehicle/pedestrian incidents, and a diminished recreational experience for visitors. Feedback from visitors, permit holders, and Forest Service personnel indicates that wildlife/vehicle conflicts average 10 to 14 per season and that vehicle/pedestrian near-misses average 5 to 7 per season in the Visitor Center subunit.

To address these concerns, the Alaska Region is proposing to revise its FSM supplement to require an outfitting and guiding permit for all strictly point-to-point commercial transportation (including services provided by TNCs) to, from, and within the Visitor Center subunit. Consistent with the definition for guiding in the Forest Service's regulations, this activity involves transporting people and has as its principal purpose the facilitation of an outdoor recreational experience involving NFS lands, improvements, or resources. The permit requirement would apply only during the cruise season as reflected in the calendar published annually by Cruise Line Agencies of Alaska, approximately April 1 to October 31, and only to the Visitor Center subunit. All other strictly point-to-point commercial transportation in the Alaska Region would continue to be exempt from the permit requirement. The existing exemption from the permit requirement and the criteria for applying the permit requirement in the Alaska Region are also being published for public comment.

Environmental analysis for major road, trail, and other infrastructure upgrades is underway to accommodate additional outfitted and guided use in the Visitor Center subunit. The draft environmental impact statement (EIS) for the infrastructure improvements at the Visitor Center subunit is scheduled to be published in the summer of 2021. The final EIS is expected to be published and site design and contracting are expected to begin in fiscal year 2022. Construction is anticipated to begin in fiscal year 2023 with funding through the Great American Outdoors Act. Once the new infrastructure is in place, the Alaska Region

will issue a new prospectus to allocate additional use for strictly point-to-point commercial transportation to, from, and within the Visitor Center subunit. Until then, and after allocation of additional use if they do not obtain a permit, the Alaska Region has identified a location on the border of the Visitor Center subunit where operators without a permit can pick up and drop off clients.

The Forest Service has determined that the proposed FSM supplement formulates a standard, criterion, or guideline applicable to a Forest Service program and is therefore publishing the proposed FSM supplement for public comment in accordance with 36 CFR part 216.

After the public comment period closes, the Alaska Region will consider timely and relevant comments in the development of the final FSM supplement. A notice of the final FSM supplement, including a response to timely and relevant comments, will be posted on the Forest Service's webpage at <https://www.fs.fed.us/about-agency/regulations-policies>.

The Forest Service has conducted an economic analysis of the proposed directive pursuant to the Regulatory Flexibility Act, 5 U.S.C. 602 *et seq.*, and has determined that the proposed directive would not have a significant economic impact on a substantial number of small entities. The Forest Service invites public comment on the economic analysis. The Juneau Economic Development Council (JEDC) reported that in 2019 there were just over 1.7 million visitors to Juneau. The Visitor Center subunit attracted approximately 540,000 of these visitors during cruise season. This means that in 2019 about 1.16 million visitors engaged in tourism activities other than Visitor Center subunit visitation while in Juneau. Under the proposed directive, nonpermitted operators could still deliver clients to a location on the border of the Visitor Center subunit or provide service to the 1.16 million visitors engaged in Juneau tourism activities other than the Visitor Center subunit visitation. The JEDC reported \$103,225,389 in leisure, hospitality, and transportation industry earnings (i.e., tourism revenue) for Juneau during 2019. Figures have not yet been published for

2020 calendar year. Thus, not doing business in the Visitor Center subunit does not equate to not doing business in Juneau, either for large or small entities. In 2015, all commercial capacity in the Visitor Center subunit was allocated by means of a prospectus, consistent with existing Forest Service regulations. Due to overwhelming demand, current permit holders could not be granted the level of use they had requested, and only five new operators could be issued a permit. The 2015 prospectus resulted in distribution of 157,179 Visitor Center subunit service days (1 service day = 1 client) to 15 permit holders, all of which were small businesses. Of these 15 small businesses, 10 were allocated new use that was added to existing permits, while 5 of the small businesses became first-time permit holders through this prospectus. There were 3 small businesses that applied but were not selected. There are currently 26 permits issued to tourism businesses operating in the Visitor Center subunit. One is a large business (affiliated with Princess-Holland-America Cruises); the other 25 are small businesses. Thus, most of the businesses currently operating in the Visitor Center subunit are small. There are 5 to 10 businesses that attempt to operate at the Visitor Center subunit without a permit each year. Some of these companies are known nationally (like Uber and Lyft), and some are local small businesses.

The 25 small businesses would continue to operate in the Visitor Center subunit. Companies without a permit would be invited to submit an application in response to a prospectus once the infrastructure improvements have been completed and recreation capacity in the Visitor Center subunit has increased. Like the 2015 prospectus, this prospectus is expected to help existing permit holders expand their operations, if desired, and allow new operators to enter the market. Companies issued a permit would be authorized to provide transportation to, from, and within the Visitor Center subunit. Companies who apply for but do not obtain a permit could continue to drop off and pick up passengers at the border of the Visitor Center subunit and could still deliver clients to a

location on the border of the Visitor Center subunit or provide service to the 1.16 million visitors engaged in Juneau tourism activities other than Visitor Center subunit visitation.

Paperwork Reduction Act Compliance

*Title:* Special Uses Administration.

*OMB Number:* 0596-0082.

*Type of Request:* Revision.

*Abstract:* The agency uses Form FS-2700-4i to issue outfitting and guiding permits, and the proposed directive, by requiring an outfitting and guiding permit for strictly point-to-point commercial transportation to, from, and within the Visitor Center subunit, would expand the use of this form and therefore increase the burden hours associated with the form.

*Affected Public:* Individuals or businesses providing strictly point-to-point commercial transportation to, from, and within the Visitor Center subunit would need to have an outfitting and guiding permit, Form FS-2700-4i.

*Estimate of Burden Per Response:* 1 hour.

*Estimated Annual Number of Respondents:* 3-5.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 3-5 hours.

Dated: June 17, 2021.

**Tina Johna Terrell,**

*Associate Deputy Chief, National Forest System.*

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