



DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 212, 214, and 251

RIN 0596-AD54

Travel Management; Administration of the Forest Transportation System; Postdecisional Administrative Review Process for Occupancy or Use of National Forest System Lands and Resources; Land Uses; Special Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture, Forest Service (Forest Service or Agency) is making purely technical, clarifying revisions to its existing regulations governing administration of the forest transportation system, administrative appeal of certain written decisions pertaining to written authorizations for occupancy or use of National Forest System (NFS) lands and resources, and issuance and administration of special use authorizations for use and occupancy of NFS lands. The purely technical, clarifying revisions update citations and enhance consistency of the existing regulations with governing statutes.

DATES: This rule is effective [insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Information on this final rule may be obtained via written request addressed to the Director, Lands, Minerals, and Geology Management, USDA Forest Service, 201 14th Street, NW, Washington, DC 20250-1124 or by email to SM.FS.WO_LandStaff@usda.gov.

FOR FURTHER INFORMATION CONTACT: Mark Chandler, Realty Specialist, (202) 205-1117 or mark.chandler@usda.gov. Individuals who use telecommunication devices for the hearing impaired may call the Federal Relay Service at (800) 877-8339 between 8:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: This final rule makes purely technical, clarifying revisions to the Agency's existing regulations at 36 CFR 212.8, 214.4, 251.50, 251.51, 251.53, 251.54, 251.55, 251.57, 251.58, 251.59, 251.60, 251.64, and 251.124 governing administration of the forest transportation system, administrative appeal of certain written decisions pertaining to written authorizations for occupancy or use of NFS lands and resources, and issuance and administration of special use authorizations for use and occupancy of NFS lands. The purely technical, clarifying revisions update citations and enhance consistency of the existing regulations with governing statutes. These purely technical, clarifying revisions do not formulate standards, criteria, or guidelines applicable to Forest Service programs and therefore do not require public notice and opportunity to comment under section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1612(a)).

36 CFR Part 212, Subpart A

The Department is revising text in § 212.8(d)(5)(i) to track revisions being made to § 251.60(a)(2)(i) and to provide that a formal adjudicatory hearing is required for revocation for nonuse of an easement issued under the National Forest Roads and Trails Act (FRTA).

36 CFR Part 214

The Department is revising § 214.4(c)(1)(i) to provide that suspension or revocation of permits as well as easements issued under the Mineral Leasing Act (MLA) and revocation for nonuse of an easement issued under FRTA are not subject to administrative appeal under 36 CFR part 214. In contrast to the Federal Land Policy and Management Act (FLPMA) addressed in 36 CFR 251.53(l), the MLA addressed in 36 CFR 251.53(e) requires a formal adjudicatory proceeding for suspension or revocation of permits as well as easements (30 U.S.C. 185(o)(1)(C)). Therefore, suspension or revocation of permits as well as easements issued under the MLA must be exempt from the informal administrative appeal process under 36 CFR part 214. FRTA provides for a formal hearing for revocation of an easement for nonuse (16 U.S.C. 534).

36 CFR Part 251, Subpart B

§ 251.50

The Department is removing paragraph (c)(3) of § 251.50, which requires a special use authorization for a noncommercial recreational activity if required by an order issued under 36 CFR part 261, subpart B, or by a regulation issued under 36 CFR part 261, subpart C. There is no basis for issuance of such an order under 36 CFR part 261, subpart B. Moreover, there is no need for issuance of such an order or regulation because the Forest Service has the authority to require a noncommercial special recreation permit under the Federal Lands Recreation Enhancement Act and its implementing directives in Forest Service Handbook (FSH) 2309.13, Chapter 30.

§ 251.51

The Department is revising the definitions for “outfitting” and “guiding” by replacing the phrase “pecuniary remuneration” with the word “monetary.” The revised language is more contemporary and easier to understand.

§ 251.53

The Department is revising § 251.53(a) by changing the phrase “group events” to “noncommercial group use” and deleting the phrase “and distribution of noncommercial printed materials” for authorizations issued under the Organic Administration Act (16 U.S.C. 551). The term of art per the definitions for special uses in 36 CFR 251.51 is “noncommercial group use.” The distribution of noncommercial printed materials does not require a special use authorization under 36 CFR 251.50(c).

The Department is adding paragraph (o) to § 251.53 to include the Forest Service’s authority under section 111 of the National Historic Preservation Act of 1966 (54 U.S.C. 306121) to issue leases for Federally owned historic properties on NFS lands.

§ 251.54

The Department is revising § 251.54(d) through (g) to use appropriate terminology when referring to a proponent or a proposal and to enhance clarity.

The Department is revising § 251.54(e)(1)(iv), which precludes consideration of proposals for a permanent use and occupancy of NFS lands, to add an exception for permanent easements issued under FRTA (16 U.S.C. 533).

The Department is revising § 251.54(f)(1)(i) regarding who may apply for an oil or gas pipeline right-of-way authorization for greater consistency with the MLA (30 U.S.C. 181).

The Department is revising § 251.54(g)(3)(iii) to replace the citation to 36 CFR part 215 with a citation to 36 CFR part 218. The postdecisional administrative appeal process in 36 CFR part 215 has been replaced with the predecisional objection process in 36 CFR part 218.

§ 251.55

The Department is revising the second sentence of § 251.55(a) to replace the word “sublet” with the word “lease.” The word “sublet” is appropriate only when the issued authorization is a lease. Many special use authorizations are not leases. The Department is making other minor clarifications to the wording of § 251.55(a).

§ 251.57

The Department is changing the heading of § 251.57 from “Rental fees” to “Land use fees.” The term “rent” is associated with leases, and many special use authorizations are not leases.

The Department is revising § 251.57(a)(2), consistent with section 504(g) of FLPMA (43 U.S.C. 1764(g)), to authorize the Forest Service to require either annual land use fee payments or annual land use fee payments covering more than one year, regardless of the amount of the land use fee.

The Department is revising § 251.57(a)(3) by replacing the language from and citation to the Cabin User Fee Fairness Act with language from and citation to the Cabin Fee Act. The

Cabin Fee Act (16 U.S.C. 6214) has supplanted the Cabin User Fee Fairness Act (16 U.S.C. 6201–6213) as the authority for land use fees for recreation residence permits.

The Department is revising § 251.57(b) governing land use fee waivers by adding text and removing the word “or” at the end of paragraphs (1) through (5) to clarify, consistent with Forest Service directives, that if a holder is ineligible for a land use fee waiver under one criterion, the holder is ineligible for a land use fee waiver under any of the other criteria.

The Department is removing § 251.57(i). Paragraph (i) of § 251.57 addresses implementation of the Cabin User Fee Fairness Act, which has been superseded by the Cabin Fee Act of 2014.

§ 251.58

The Department is revising § 251.58(d)(1) by replacing the phrase “scheduled inspections” with the phrase “routine on-site reviews” to distinguish between inspections, which are the holder’s responsibility, and monitoring, which is the Forest Service’s responsibility.

The Department is revising § 251.58(i)(1) by changing the first sentence from, “The Forest Service shall maintain schedules for processing and monitoring fees in its directive system (36 CFR 200.4),” to “The Forest Service shall maintain schedules for processing and monitoring fees on its website.” It is more efficient to update a website than a directive, and other Forest Service land use fee schedules such as the communications use rental fee schedule are maintained on the Forest Service’s website.

§ 251.59

The Department is clarifying § 251.59 by revising the first sentence, “If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, ceases to be the owner of the authorized improvements, the authorization terminates upon change of ownership,” to read, “If the holder through death, voluntary sale, transfer, or enforcement of a valid legal proceeding or operation of law ceases to be the owner of the authorized improvements, the special use authorization terminates upon change of ownership

and issuance of a new special use authorization to another party for the authorized use and occupancy.” This revision clarifies that the existing holder is responsible for the authorized use and occupancy until a new authorization is issued. In addition, the Department is revising § 251.59 to clarify that an application and new authorization are not necessary for leases and easements issued under the MLA, FRTA, or FLPMA and that assignments of leases and easements are subject to the terms of the applicable authorization.

§ 251.60

In § 251.60, the Department is revising paragraphs (a)(2)(i), (a)(2)(ii), and (c); removing paragraph (d); designating existing paragraphs (e) and (f) as paragraphs (d) and (e); revising existing paragraph (g) and redesignating it as paragraph (f); removing paragraph (h); and redesignating existing paragraph (i) as paragraph (g), as discussed below.

The Department is revising paragraph (a)(2)(i) by removing the exception for permits and easements issued under the MLA and easements issued under FLPMA, adding an exception for authorizations issued under FRTA, and including separate bases for revocation and suspension for authorizations issued under FRTA. FLPMA and the MLA provide for revocation and suspension of land use authorizations issued under those statutes, but the current language in the regulations does not include any bases for revocation or suspension of authorizations issued under FLPMA or the MLA. FRTA provides for revocation only with the grantee’s consent, by condemnation, or after a 5-year period of nonuse (16 U.S.C. 534).

The Department is revising paragraph (a)(2)(ii) to provide that suspension or revocation of permits as well as easements issued under the MLA and revocation for nonuse of easements issued under FRTA are not subject to appeal under 36 CFR part 214. In contrast to FLPMA, the MLA requires a formal adjudicatory proceeding for suspension or revocation of permits as well as easements. Therefore, suspension or revocation of permits as well as easements issued under the MLA must be exempt from the informal administrative appeal process under 36 CFR part

214. FRTA provides for a formal hearing for revocation of an easement for nonuse (16 U.S.C. 534).

The Department is revising § 251.60(c) by removing references to limiting and terminating a right-of-way authorization issued to a Federal entity. The reference to limiting a right-of-way is redundant, and the reference to terminating a right-of-way is incorrect. Termination of an authorization occurs by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in an authorization, without any action of the authorized officer (36 CFR 251.51). The correct term is revocation, which occurs by action of the authorized officer (36 CFR 251.51). The Department is also revising § 251.60(c) to state that a special use authorization issued to a Federal agency under 36 CFR 251.53(l) may be suspended or revoked only with the concurrence of the head of that Federal agency. Only authorizations issued to a Federal agency under FLPMA are subject to this restriction (43 U.S.C. 1767(b)). By statute, the consent must be from the agency head. The Department is also removing the word “termination” because it is defined in the special use regulations to mean an action that occurs by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in an authorization, without any action of the authorized officer.

The Department is removing § 251.60(d), which provides for notice to and consultation with a Federal agency before suspending or revoking a special use authorization issued to that agency, as this provision is unnecessary. Preceding § 251.60(c) provides that an authorization issued to a Federal entity under FLPMA may be suspended or revoked only with the Federal holder’s consent. A Federal holder would not consent to suspension or revocation of an authorization issued under FLPMA without notice and consultation.

The Department is revising and redesignating existing § 251.60(g) as § 251.60(f) to clarify the requirements for a formal adjudicatory proceeding for revocation or suspension of an authorization consistent with FLPMA (43 U.S.C. 1766) and the MLA (30 U.S.C. 185(o)(1)) and to require a formal adjudicatory proceeding for revocation for nonuse of an easement issued

under FRTA (16 U.S.C. 534). The language in existing § 251.60(g) is not entirely consistent with FLPMA and the MLA. FRTA provides for a formal hearing for revocation for nonuse of an easement upon request within 60 days of receipt of notice (16 U.S.C. 534).

The Department is removing existing § 251.60(h) in its entirety and including its contents in § 251.60(a)(2)(i). The Department is redesignating existing § 251.60(i) as § 251.60(g).

§ 251.64

The Department is revising the title and text of § 251.64 to track statutes governing issuance of special use authorizations and special use authorization forms approved by the Office of Management and Budget, which provide for reauthorization of the use and occupancy, not renewal of the authorization, and which require reauthorization of the use and occupancy, subject to conditions, only for authorizations issued under the MLA (43 U.S.C. 185(n)) and priority use outfitting and guiding permits (FSH 2709.14, Ch. 50, sec. 53.1m, para. 4). Only permits and easements issued under these authorities require reauthorization of the use and occupancy, subject to specified conditions. Reauthorization of any other type of use and occupancy is at the sole discretion of the authorized officer.

36 CFR Part 251, Subpart E

§ 251.124

The Department is updating the citation in the second sentence of § 251.124(b) by replacing “Forest Service Handbook 2709.11, chapter 40,” with “Forest Service Handbook 2709.14, Chapter 50.”

Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Consistent with Executive Order (E.O.) 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether proposed, interim, and final rules that impose, eliminate, or modify requirements on non-Forest Service parties are significant and will review any proposed, interim, or final rules that OIRA has

designated as significant. This final rule does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not require a significance determination by OIRA. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed this final rule consistent with E.O. 13563.

Congressional Review Act

Since this final rule does not impose, eliminate, or modify requirements on non-Forest Service parties, it is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act, 5 U.S.C. 804(2)).

National Environmental Policy Act

This final rule will make only technical, clarifying revisions to existing Forest Service regulations at 36 CFR part 212, subpart A, part 214, and part 251, subparts B and E. Forest Service regulations at 36 CFR 220.6(d)(2) (73 FR 43093) 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 concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Flexibility Act Analysis

The Department has considered this final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant

economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered this final rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the final rule conforms with 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 concluded that the final rule does not have federalism implications.

Consultation with Tribal Governments

The Department has reviewed this final rule in accordance with the requirements of E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*. The Department has determined that national Tribal consultation is not necessary for the final rule. The final rule, which will make only technical, clarifying revisions to existing Forest Service regulations in 36 CFR part 212, subpart A, part 214, and part 251, subparts B and E, does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not have any direct effects on Tribes.

Environmental Justice

The Department has considered the final rule under the requirements of E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. The final rule, which will make only technical, clarifying revisions to existing Forest Service regulations in 36 CFR part 212, subpart A, part 214, and part 251, subparts B and E, does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore will not result in disproportionately high and adverse impacts on minority or low-

income populations or the exclusion of minority and low-income populations from meaningful involvement in decision making.

No Takings Implications

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*. The Department has determined that the final rule will not pose the risk of a taking of private property.

Energy Effects

The Department has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211, and OIRA has not otherwise designated the final rule as a significant energy action.

Civil Justice Reform

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon issuance of the final rule, (1) all state and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted, (2) no retroactive effect will be given to this 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), signed into law on March 22, 1995, the Department has assessed the effects of the final rule on state, local, and Tribal governments, and the private sector. The 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.

Controlling Paperwork Burdens on the Public

The final rule does not contain 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 of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects

36 CFR Part 212

Highways and roads, National forests, Public lands-rights-of-way, Transportation.

36 CFR Part 214

Administrative practice and procedure, National forests.

36 CFR Part 251

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

Therefore, for the reasons set forth in the preamble, the Department is amending chapter II of title 36 of the Code of Federal Regulations as follows:

PART 212—TRAVEL MANAGEMENT

Subpart A—Administration of the Forest Transportation System

1. The authority citation for part 212, subpart A, continues to read as follows:

Authority: 16 U.S.C. 551, 23 U.S.C. 205.

2. Amend § 212.8 by revising paragraph (d)(5) to read as follows:

§ 212.8 Permission to cross lands and easements owned by the United States and administered by the Forest Service.

* * * * *

(d) * * *

(5)(i) The Chief may revoke an easement granted under 36 CFR 251.53(j):

(A) With the grantee's consent;

(B) By condemnation; or

(C) After a 5-year period of nonuse by the grantee.

(ii) Before revocation of an easement granted under 36 CFR 251.53(j) for nonuse, a formal adjudicatory proceeding must be conducted pursuant to 7 CFR part 1, subpart H, provided the grantee requests the hearing within 60 days of receipt of the notice of revocation.

PART 214—POSTDECISIONAL ADMINISTRATIVE REVIEW PROCESS FOR OCCUPANCY OR USE OF NATIONAL FOREST SYSTEM LANDS AND RESOURCES

3. The authority citation for part 214 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551.

4. Amend § 214.4 by revising paragraph (c)(1)(i) to read as follows:

§ 214.4 Decisions that are appealable.

* * * * *

(c) * * *

(1) * * *

(i) A special use authorization issued under 36 CFR part 251, subpart B or D, other than modification, suspension, or revocation of a noncommercial group use permit; suspension or revocation of a permit or easement issued under 36 CFR 251.53(e); suspension or revocation of an easement issued under 36 CFR 251.53(l); revocation for nonuse of an easement issued under 36 CFR 251.53(j); or revocation of a special use authorization with the consent of the holder.

* * * * *

PART 251—LAND USES

Subpart B—Special Uses

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

Authority: 16 U.S.C. 460l-6a, 460l-6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1772.

§ 251.50 [Amended]

6. Amend § 251.50 by removing paragraph (c)(3).

7. Amend § 251.51 by revising the definitions for “Guiding” and “Outfitting” to read as follows:

§ 251.51 Definitions.

* * * * *

Guiding – providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for monetary or other gain to individuals or groups on National Forest System lands.

* * * * *

Outfitting – renting on or delivering to National Forest System lands for monetary or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment.

* * * * *

8. Amend § 251.53 by revising paragraph (a) and adding paragraph (o) to read as follows:

§ 251.53 Authorities.

* * * * *

(a) Permits governing occupancy and use, including noncommercial group use, under the act of June 4, 1897 (16 U.S.C. 551);

* * * * *

(o) Leases governing occupancy and use of Federally owned historic properties under section 111 of the National Historic Preservation Act of 1966 (54 U.S.C. 306121).

9. Amend § 251.54 by revising paragraphs (d)(2)(i) introductory text, (e)(1)(iv), (f)(1) introductory text, (f)(1)(i), (g)(1), and (g)(3)(iii) to read as follows:

§ 251.54 Proposal and application requirements and procedures.

* * * * *

(d) * * *

(2) *Required information*—(i) *Noncommercial group uses*. Paragraphs (d)(3) through (5) of this section do not apply to proposed noncommercial group uses. A proponent for a noncommercial group use shall provide the following:

* * * * *

(e) * * *

(1) * * *

(iv) Except for permanent easements issued under § 251.53(j), the proposed use will not create an exclusive or perpetual right of use or occupancy.

* * * * *

(f) * * *

(1) *Oil and gas pipeline rights-of-way*. An individual proposing an oil or gas pipeline right-of-way must be a United States citizen and must provide proof of United States citizenship. An entity proposing an oil or gas pipeline right-of-way must be established, and must provide documentation that the entity was established, under the laws of the United States, a state or territory of the United States, or in the case of coal, oil, shale, or gas, a municipality of the United States.

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not by stock ownership, stock holding, or stock control own an appreciable interest in any oil or gas pipeline right-of-way or associated special use authorization; and

* * * * *

(g) * * *

(1) *Acceptance of applications*. Except for proposed noncommercial group uses, if a proposed use does not meet both the initial and second-level screening criteria in paragraph (e) of this section, the authorized officer shall reject the proposal. The authorized officer shall notify the proponent in writing of the rejection and the reasons for the rejection. If a proposed use meets

both the initial and second-level screening criteria in paragraph (e) of this section, the authorized officer shall notify the proponent that the proponent may submit a written application for evaluation under this paragraph. The authorized officer shall, as appropriate or necessary, provide the proponent guidance and information of the type described in paragraphs (e)(3)(i) through (viii) of this section.

* * * * *

(3) * * *

(iii) If an authorized officer denies an application because it does not meet the criteria in paragraphs (g)(3)(ii)(A) through (H) of this section, the authorized officer shall notify the applicant in writing of the reasons for the denial. If an alternative time, place, or manner will allow the applicant to meet the eight evaluation criteria, an authorized officer shall offer that alternative. If an application is denied solely under paragraph (g)(3)(ii)(C) of this section and all alternatives suggested are unacceptable to the applicant, the authorized officer shall offer to have completed the requisite environmental and other analyses for the requested site. An environmental assessment or an environmental impact statement prepared for the requested site is subject to the predecisional objection procedures at 36 CFR part 218. Notwithstanding the timing provisions set forth in 36 CFR 218.12, a decision to grant or deny an application for which an environmental assessment or an environmental impact statement is prepared for the requested site shall be made within 48 hours after the time for filing an objection expires or, if an objection is filed, the objection process is completed. A denial of an application in paragraphs (g)(3)(ii)(A) through (H) of this section constitutes final agency action, is not subject to administrative appeal, and is immediately subject to judicial review.

* * * * *

10. Amend § 251.55 by revising paragraph (a) to read as follows:

§ 251.55 Nature of interest.

(a) A holder is authorized to use and occupy only the land and structures and conduct only the activities specified in the holder's special use authorization. The holder may lease the authorized facilities and improvements to other parties only with the prior written approval of the authorized officer. The holder shall remain responsible for compliance of facilities and improvements leased to other parties with all the terms of the holder's special use authorization.

* * * * *

11. Amend § 251.57 by revising the section heading and paragraphs (a)(2) and (3), (b), and (h) and removing paragraph (i).

The revisions read as follows:

§ 251.57 Land use fees.

(a) * * *

(2) The authorized officer may require either an annual land use fee payment or a land use fee payment covering more than one year, provided a holder that is a private individual (rather than a commercial or other entity) and that has an annual land use fee of more than \$100 may elect to make either an annual land use fee payment or a land use fee payment covering more than one year.

(3) The annual land use fee for a recreation residence permit shall be assessed in accordance with the tiered land use fee structure and inflation adjustment specified in the Cabin Fee Act (16 U.S.C. 6214).

(b) All or part of the land use fee may be waived by the authorized officer, when equitable and in the public interest, for the use and occupancy of National Forest System lands when one of the following criteria is met. If an applicant or a holder is ineligible for a land use fee waiver under one criterion in this paragraph, the applicant or holder is ineligible for a land use fee waiver under any other criteria in this paragraph:

(1) The holder is a State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue from the authorized use is customer charges;

(2) The holder is a nonprofit association or nonprofit corporation, which is not controlled or owned by profit-making corporations or business enterprises, and which is engaged in public or semi-public activity to further public health, safety, or welfare, except that free use will not be authorized when funds derived by the holder through the authorization are used to increase the value of the authorized improvements owned by the holder or are used to support other activities of the holder;

(3) The holder provides without charge, or at reduced charge, a valuable benefit to the public or to the programs of the Secretary;

(4) When the land use fee is included in the land use fee for an authorized use or occupancy for which the United States is already receiving compensation;

(5) When a right-of-way is authorized in reciprocation for a right-of-way conveyed to the United States; or

(6) For rights-of-way involving cost-share roads or reciprocal right-of-way agreements.

* * * * *

(h) Each ski area permit issued under the National Forest Ski Area Permit Act shall include a clause that provides that the Forest Service may adjust and calculate future land use fees to reflect Forest Service revisions to the existing system for determining land use fees based on fair market value or to comply with any new system for determining land use fees based on fair market value that may be adopted after issuance of the permit.

12. Amend § 251.58 by revising paragraphs (d)(1) and (i)(1) to read as follows:

§ 251.58 Cost recovery.

* * * * *

(d) * * *

(1) *Basis for monitoring fees.* Monitoring is defined at § 251.51. For monitoring fees in minor categories 1 through 4, authorization holders are assessed fees based upon the estimated time needed for Forest Service monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Major category 5 and category 6 monitoring fees shall be based upon the agency's estimated costs to ensure compliance with the authorization during all phases of its term, including but not limited to monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site. Monitoring for all categories does not include billings, maintenance of case files, annual performance evaluations, or routine on-site reviews to determine compliance generally with the terms of an authorization.

* * * * *

(i) * * *

(1) The Forest Service shall maintain schedules for processing and monitoring fees on its website. The rates in the schedules shall be updated annually by using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator–Gross Domestic Product (IPD–GDP) index. The Forest Service shall round the changes in the rates either up or down to the nearest dollar.

* * * * *

13. Revise § 251.59 to read as follows:

§ 251.59 Transfer of authorized improvements.

If the holder through death, voluntary sale, transfer, or enforcement of a valid legal proceeding or operation of law ceases to be the owner of the authorized improvements, the special use authorization terminates upon change of ownership and issuance of a new special use authorization to another party for the authorized use and occupancy. Except for leases and easements issued under § 251.53(e), (j), and (l) that are assignable in accordance with their

terms, the new owner of the authorized improvements must apply for and receive a new special use authorization. The new owner must meet requirements under applicable regulations of this subpart and agree to comply with the terms of the authorization and any new terms warranted by existing or prospective circumstances. Assignment of leases and easements must comply with all terms governing their assignment.

* * * * *

14. Amend § 251.60 by:

- a. Revising paragraphs (a)(2)(i) and (ii) and (c);
- b. Removing paragraph (d);
- c. Redesignating paragraphs (e) and (f) as paragraphs (d) and (e);
- d. Redesignating paragraph (g) as paragraph (f) and revising it;
- e. Removing paragraph (h); and
- f. Redesignating paragraph (i) as paragraph (g).

The revisions read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) * * *

(2) * * *

(i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except an easement issued under § 251.53(j):

(A) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(B) For failure of the holder to exercise the rights or privileges granted;

(C) With the consent of the holder; or

(D) At the discretion of the authorized officer for specific and compelling reasons in the public interest. The Chief may revoke an easement issued under § 251.53(j) with the consent of

the holder; by condemnation; or upon abandonment after a 5-year period of nonuse by the holder.

(ii) *Administrative review.* Except for revocation or suspension of a permit or easement issued under § 251.53(e), revocation or suspension of an easement issued under § 251.53(l), and revocation for nonuse of an easement issued under § 251.53(j), revocation or suspension of a special use authorization under this paragraph is subject to appeal pursuant to 36 CFR part 214.

* * * * *

(c) A special use authorization issued to a Federal agency under § 251.53(l) may be suspended or revoked only with the consent of the head of that Federal agency.

* * * * *

(f) Before suspension or revocation of permits and easements issued under § 251.53(e) and suspension or revocation of easements issued under § 251.53(l), a formal adjudicatory proceeding must be conducted pursuant to 7 CFR part 1, subpart H, as amended, and the authorized officer must determine, based on the proceeding, that grounds for revocation or suspension exist and that revocation or suspension is justified. Before revocation of easements issued under § 251.53(j) for nonuse, a formal adjudicatory proceeding must be conducted pursuant to 7 CFR part 1, subpart H, provided the holder requests the hearing within 60 days of receipt of the notice of revocation.

* * * * *

15. Revise § 251.64 to read as follows:

§ 251.64 Reauthorization of existing uses.

(a) Upon expiration of a permit or easement issued under § 251.53(e), a powerline facility permit issued to a federal entity or a powerline facility easement issued under § 251.53(l)(4), or a private road easement or a forest road easement issued under § 251.53(l)(6), the authorized officer shall issue a new special use authorization for the authorized use and occupancy, provided the use and occupancy authorized by the existing authorization are consistent with the

applicable land management plan and applicable laws and regulations; the authorized activities and improvements are still being conducted or used for the purposes previously authorized; and the holder is in compliance with all the terms of the existing authorization.

(b) A priority use outfitting and guiding permit is subject to renewal without competition as provided in accordance with applicable Forest Service directives.

(c) Issuance of a new special use authorization upon expiration of any other type of special use authorization is at the sole discretion of the authorized officer, subject to the same conditions in paragraph (a) of this section.

(d) In reauthorizing existing uses under paragraph (a), (b), or (c) of this section, the authorized officer may modify the terms of the authorization to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. Appropriate environmental analysis must accompany the decision to reauthorize the special use.

Subpart E—Revenue-Producing Visitor Services in Alaska

16. The authority citation for part 251, subpart E, continues to read as follows:

Authority: 16 U.S.C. 3197.

17. Amend § 251.124 by revising paragraph (b) to read as follows:

§ 251.124 Preferred operator competitive special use authorization procedures.

* * * * *

(b) In such circumstances, the authorized officer shall solicit applications competitively by issuing a prospectus for persons to apply for a visitor services authorization. Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook 2709.14, Chapter 50, when authorizations, including priority use permits for activities other than sport hunting and fishing, expire in accordance with their terms, they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

* * * * *

Homer Wilkes,
Under Secretary,
Natural Resources and Environment.

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