



DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596-AD12

Definition of a Ski Area

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture, Forest Service (Forest Service or Agency) is issuing a final rule revising the definition of a ski area in its special use regulations. The revised definition aligns more closely with the Forest Service’s statutory authority for ski area administration and reduces burden on the agency and special use permit holders.

DATES: The final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: Sean Wetterberg, National Winter Sports Program Manager at 385-235-0318. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service and then provide the phone number of the person named as a point of contact for further information.

SUPPLEMENTARY INFORMATION: The Department defines “ski area” in regulation because it allows the agency to determine what uses qualify for a ski area permit under the National Forest Ski Area Permit Act of 1986 (16 USC 497b) and importantly, what uses do not. The National Forest Ski Area Permit Act of 1986 is the sole authority for authorizing Nordic and alpine ski areas on National Forest System lands and the Ski Fee Act of 1996 (16 USC 497c) requires that qualifying ski areas be

charged following the Ski Area Permit Rental Charge formula provided in the Act. The Ski Area Recreation Opportunity Enhancement Act of 2011 further amended 16 USC 497b, adding more details about other recreational activities that may be authorized under a Ski Area Permit beyond skiing and other snow sports. The 2011 Act provides for authorizing only those other recreational uses as the Secretary deems appropriate, describes the requirements of those recreational activities, and lists specific inclusions and exclusions. At 497b(5), a limitation is put on the authorization of those other recreational uses if they would “result in the primary purpose of the ski area permit to be a purpose other than skiing and other snow-sports.” The ski area definition at 36 CFR 251.51 incorporates the primary purpose concept from the statute to clarify the requirement to limit recreational activities other than skiing and other snow sports in ski areas, and to facilitate agency decision making and compliance with law.

The Department issued an interim final rule on June 28, 2013, revising the definition of a ski area to make it consistent with the authority in section 3 of the Ski Area Recreational Opportunity Enhancement Act of 2011, which allows ski areas to provide other types of natural resource-based recreation as long as the primary purpose of the site remains snow sports (78 FR 38842). The definition of a ski area, as promulgated in the 2013 interim final rule, also includes a revenue test to determine if a ski area’s primary purpose is for skiing and snow sports based solely on whether the preponderance of revenue generated by the ski area comes from those activities. This revenue test was carried forward from the previous version of the definition of a ski area. The interim final rule implementing the new definition went into effect on July 29, 2013.

The Department received one comment letter during the public comment period that accompanied the interim final rule. The comment submitted by the National Ski Areas Association argued that the revenue test included in the definition is inappropriate for determining whether the primary purpose of a ski area is snow sports because of its

lack of basis in statute. The comment suggested that the Department remove the revenue test to preserve the flexibility for four-season operations that the Ski Area Recreational Opportunity Enhancement Act authorized.

Since the current definition became effective in 2013, the Forest Service has observed that the preponderance of revenue test has not singularly correlated to whether a ski area's primary purpose is skiing and other snow sports. Rather, experience demonstrates that the agency should be considering multiple factors, assessed on a case-by-case basis, to more accurately determine the primary purpose of a ski area. In addition to revenue, these other factors may include skiing vs. non-skiing comparisons of visitation, acreage, facility square footage, length of season, financial investment, or even a general comparison of whether the permitted area looks and feels primarily like a ski area.

The revenue test has also become less useful in the last decade due to significant fluctuations in seasonal snow conditions. Many ski areas, especially those in southern regions, now rely more on revenue from non-skiing activities to stay solvent between years of greater snowfall. This trend further suggests that the Forest Service should consider multiple factors on a site-specific basis to determine the primary purpose of a ski area, rather than relying solely on the preponderance of revenue.

After consideration of the comment received on the interim final rule, the agency's experience in implementing the current definition, and changing conditions on the ground, the Department has determined that the preponderance of revenue test currently found at 36 CFR 251.51 is inappropriate. The revenue test is not found in the authorizing statutes, including the Ski Area Recreational Opportunity Enhancement Act of 2011, the Ski Fee Act of 1996, and the National Forest Ski Area Permit Act of 1986. Removing the revenue test from the definition will align the regulation more closely with statute and provide for additional discretion of authorized officers to determine whether a

site and associated facilities qualify as a ski area. Such discretion remains bounded by the statutory requirement in 16 U.S.C. 497b that the primary purpose of a ski area permit be skiing and other snow sports. Therefore, in this final rule, the revenue test is removed.

The Department has determined that additional notice and comment is not required for this final rule. The interim final rule expressly solicited public comment on the revised definition of a ski area, including the preponderance of revenue test. The final rule is a logical outgrowth of the interim final rule and the comment received because it adopts the precise change requested by the commenter and does not introduce new regulatory concepts or requirements beyond the scope of the interim final rule.

The Department also notes that the interim final rule has been in effect since 2013, and this final rule removes an existing regulatory constraint rather than imposing new obligations. Accordingly, the Department has determined that the final rule does not raise additional notice concerns despite the period between issuance of the interim final rule and adoption of this final rule.

The final rule maximizes the discretion of authorized officers to determine whether a site and associated facilities qualify as a ski area based on any number of relevant factors consistent with statutory limitations. It also reduces the regulatory burden on ski area permit holders should an area not meet the revenue test but is otherwise designed and managed primarily for skiing and other snow sports. The final rule allows additional flexibility in how permit holders set up their operations while allowing them to retain the unique benefits afforded by a ski area term permit. The revised definition in the final rule does not eliminate the possibility that a ski area may be found to no longer qualify as a ski area under the “primary purpose” requirement found in 16 USC 497b. Ski areas that no longer meet this requirement may seek re-authorization under an authority other than 16 USC 497b for continued use and occupancy of NFS lands.

Regulatory Certifications

Regulatory Planning and Review

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this final rule is not significant as defined by E.O. 12866. 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 the final rule consistent with E.O. 13563.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The final rule will revise the definition of a ski area by rescinding the revenue test currently found in the definition. Departmental regulations at 7 CFR 1b.4(c)(20) exclude from documentation in an environmental assessment or environmental impact statement "rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions." The Department's assessment is that this final rule falls within this category of actions and that no extraordinary circumstances exist which will require preparation of an environmental assessment or environmental impact statement.

Regulatory Flexibility Act

The Department has considered this final rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). Removing the preponderance of revenue test from the

definition of a ski area may benefit large and small ski areas by providing increased flexibility to maintain authorization for skiing and snow sports alongside other authorized year-round uses under a ski area term permit. This 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 this final rule will not have federalism implications.

Consultation and Coordination with Indian Tribal Governments

E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule revises the definition of a ski area by rescinding the revenue test currently found in the definition. The Department has reviewed this final rule in accordance with the

requirements of E.O. 13175 and has determined that this final rule could have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, the Department determined that consultation and coordination with Indian Tribal governments is required for this final rule.

Tribal Summary Impact Statement: The Forest Service sent out information about the draft final rule, along with an invitation to consult on July 31, 2025. On September 2, 2025, the Forest Service received a request from the Quapaw Nation for maps associated with the final rule. The final rule applies to all ski areas and future ski areas throughout the National Forest System and does not contain a specific spatial component that could be suitably depicted on a map. Therefore, the Forest Service responded that maps are not available for this final rule. On November 18, 2025, the Forest Service received a letter from the Snoqualmie Tribe expressing frustration with the lack of information provided on the draft final rule and highlighting that Tribal interests could be impacted by the final rule. The Forest Service followed up with the Snoqualmie Tribe to provide any additional information that would be helpful to their understanding and analysis of the final rule. No requests for consultation have been received for this final rule.

Family Policymaking Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for a rule that may affect family well-being. The final rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment for the final rule.

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 Protect 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.

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 publication 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), 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, adjusted annually for inflation, in any 1 year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required.

Paperwork Reduction Act

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

List of Subjects in 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 amends chapter II of title 36 of the Code of Federal Regulations as follows:

Part 251—LAND USES

Subpart B—Special Uses

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

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, 1761-1772.

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

§ 251.51 Definitions.

* * * * *

Ski area — a site designed and managed primarily for skiing, which may also include other snow sports. Associated facilities may also support seasonal or year-round natural resource-based recreation activities consistent with applicable law.

* * * * *

Michael K. Boren

Under Secretary,
Natural Resources and Environment.

[FR Doc. 2026-05767 Filed: 3/24/2026 8:45 am; Publication Date: 3/25/2026]