



DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596-AD68

Administrative Site Leases

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule; request for public comment.

SUMMARY: The United States Department of Agriculture (Department), Forest Service (Forest Service or Agency), is proposing to amend its land use regulations to exempt administrative site leases from the regulations for special uses. The purpose of this deregulatory action is to better align Forest Service leasing activities with private real estate market practices.

DATES: Comments must be received in writing by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please submit comments via the Federal eRulemaking Portal at <https://www.regulations.gov>. In the search box, enter 0596-AD68, which is the RIN for this proposed rulemaking. Then, in the search panel on the left side of the screen, under the Document Type heading, click on the “Notice” link to locate this document. You may submit a comment by clicking on the “Comment” button.

We request that you send comments only by the method described above.

Comments should be confined to issues pertinent to the proposed rule, should explain the reasons for any recommended changes, and should reference the specific section and wording being addressed where possible. All timely comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments may be viewed on the Federal eRulemaking Portal at

<https://www.regulations.gov>. In the search box, enter 0596-AD68 and click the “Search” button. Note that personal information provided, such as name, phone number, and mailing address, will be included in the record.

FOR FURTHER INFORMATION CONTACT: Matthew Fountain, Sales and Leasing Program Manager, 202-205-1464 or matthew.fountain1@usda.gov. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service, then provide the phone number of the person named as a point of contact for further information.

SUPPLEMENTARY INFORMATION: Administrative sites are land or property controlled by the Forest Service used for administrative purposes. The 2018 Farm Bill provides that the Secretary of Agriculture may lease an administrative site that is under the Secretary’s jurisdiction under P.L. 115-334 Sec. 8623. The Forest Service Facility Realignment and Enhancement Act of 2005 (FSFREA), P.L. 109-54, also provides that the Forest Service may dispose of administrative sites by sale, lease, exchange, and other methods. The Administrative Site Leasing Program, which includes leasing administrative sites under both the Farm Bill and FSFREA authorities, was initially classified as a special use authorization. This classification prevents the Agency from issuing leases that function as they are commonly legally defined, and the terms of the existing special use framework can discourage private-sector investment. For example, the standard lease form, due to special use authorization regulatory requirements, constrains use of the leasehold interest as collateral for loans, limits assignment and transfer of the lease, and provides for unilateral termination of the authorization by the Forest Service. These requirements limit financing options and negatively impact the marketability of leasing projects.

Reclassifying the Administrative Site Leasing Program as a non-special use activity will remove regulatory constraints incompatible with modern real estate leasing

practices and reflect the unique statutory basis and long-term real property nature of these leases. Without this regulatory change, private developers will continue to face challenges in obtaining the financing needed to pursue affordable housing and other projects under this program.

These regulations are intended to provide a consistent framework for leases under both FSFREA and the 2018 Farm Bill. Where differences in statutory authority apply, such as with limitations on lease terms or revenue retention, implementing direction will clarify applicable requirements. Existing special use authorizations for administrative site leasing may remain in effect under their original terms or, at the authorized officer's discretion, be converted to the new lease structure upon mutual agreement with the lessee.

This rule proposes to remove Administrative Site Leasing Program authorities from 36 CFR 251 subpart B. This amendment moves administrative site leasing activities out of the regulations for special uses. This change is expected to increase flexibility in how leasing projects are administered by separating incompatible processes that are unnecessary, irrelevant, or do not add value, while retaining processes necessary for legal sufficiency and public accountability. Additional programmatic guidance on administrative site leases can be found in Forest Service Manual 2750.

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 proposed 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 proposed 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 proposed rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The proposed rule is purely administrative in nature and would better align the Administrative Site Leasing Program's practices with private-sector leasing practices, thereby increasing the viability of leasing-related investments (for example, collateralization and assignability). 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 preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Regulatory Flexibility Act

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

determined that this proposed rule would 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 proposed rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the proposed rule conforms to the federalism principles set out in this E.O., would not impose any compliance costs on the States; and would 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 proposed rule would 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 proposed rule is purely administrative in nature and would better align the Administrative Site Leasing Program practices with leasing practices in the private sector, thereby increasing viability of leasing associated investments. The Department has reviewed this proposed rule in accordance with the requirements of E.O. 13175 and has determined that this proposed rule would not 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, consultation and coordination with Indian Tribal governments is not required for this

proposed 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 proposed rule would 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 proposed rule.

Takings Implications

The Department has analyzed the proposed 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 proposed rule would not pose the risk of a taking of private property.

Energy Effects

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

Civil Justice Reform

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon publication of the proposed rule, (1) all State and local laws and regulations that conflict with the proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would 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 proposed rule on State, local, and Tribal governments and the private sector. The proposed rule would not compel the expenditure of \$100 million or more, adjusted annually for inflation, in any one 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 proposed 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. However, if implementation of this rule results in changes to current Forest Service forms or collections previously approved under the special uses Information Collection Request (ICR), a revised ICR may be submitted prior to the effective date of the final rule.

List of Subjects in 36 CFR Part 251

Land uses, National forests.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend 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 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.

2. Amend § 251.50 (a) to read as follows:

§ 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except

those authorized by the regulations governing sharing use of roads (section 212.9); grazing and livestock use (part 222); the sale and disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223); minerals (part 228); and administrative site leases (P.L. 115-334 Sec. 8623 and P.L. 109-54) are designated “special uses.” Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraph (c) through (e)(3) of this section.

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3. Amend § 251.51 by revising the definitions of lease and special use authorization to read as follows:

§ 251.51 Definitions.

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Lease – A type of special use authorization (usually granted for uses other than linear rights-of-way) that is used when substantial capital investment is required and when conveyance of a conditional and transferable interest in National Forest System lands is necessary or desirable to serve or facilitate authorized long-term uses, and that may be revocable and compensable according to its terms. This definition does not apply to administrative site leases covered under P.L. 115-334 Sec. 8623 and P.L. 109-54.

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Special use authorization – A written permit, term permit, lease, or easement that authorizes use or occupancy of National Forest System lands and specifies the terms and conditions under which the use or occupancy may occur. This definition does not apply to administrative site leases covered under P.L. 115-334 Sec. 8623 and P.L. 109-54.

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Under Secretary,

Natural Resources and Environment.

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