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Authority: 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201-13; 30 U.S.C.

1740, 1761-1771.

Subpart A\_Miscellaneous Land Uses

Authority: 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76-867,

54 Stat. 1197.

Natural Resources Control

Sec. 251.9 Management of Municipal Watersheds.

(a) The Forest Service shall manage National Forest watersheds that

supply municipal water under multiple use prescriptions in forest plans

(36 CFR part 219). When a municipality desires protective actions or

restrictions of use not specified in the forest plan, within agreements,

and/or special use authorizations, the municipality must apply to the

Forest Service for consideration of these needs.

(b) When deemed appropriate by the Regional Forester, requested

restrictions and/or requirements shall be incorporated in the forest

plan without written agreements. Written agreements with municipalities

to assure protection of water supplies are appropriate when requested by

the municipality and deemed necessary by the Regional Forester. A

special use authorization may be needed to effect these agreements.

(c) In preparing any municipal watershed agreement for approval by

the Regional Forester or issuing special use authorization to protect

municipal

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water supplies, the authorized forest officer shall specify the types of

uses, if any, to be restricted; the nature and extent of any

restrictions; any special land management protective measures and/or any

necessary standards and guidelines needed to protect water quality or

quantity; and any resources that are to be provided by the municipality.

(d) A special use authorization (36 CFR 251.54) is required if the

municipality is to use the subject lands, restrict public access, or

control resource uses within the watershed. Special use authorizations

issued pursuant to this section are subject to the same fee waivers,

conditions, and procedures applicable to all other special uses as set

forth in subpart B of this part.

(e) Any municipal watershed management agreements, special use

authorizations, requirements, and/or restrictions shall be consistent

with forest plans, or amendments and revisions thereto.

[53 FR 27685, July 22, 1988]

Sec. 251.10 Prohibition of location of mining claims within certain

areas in the Norbeck Wildlife Preserve, South Dakota.

The location of mining claims in such areas within 660 feet of any

Federal, State or county road and within such other areas where the

location of mining claims would not be in the public interest, as may be

designated by the Chief, Forest Service, or the Regional Forester, of

Forest Service Region 2, is hereby prohibited. The Director, Bureau of

Land Management, Department of the Interior, shall be advised of the

areas so designated and notices of the boundaries of such areas posted

at conspicuous places in the Preserve, as well as at the county

courthouses in Pennington in the cities of Custer and Rapid City, and

Custer Counties and the post offices State of South Dakota.

[13 FR 3676, July 1, 1948, as amended at 48 FR 31854, July 12, 1983]

Sec. 251.11 Governing mining locations under the mining laws of the

United States within that portion of the Black Hills National Forest,

State of South Dakota, designated as the Norbeck Wildlife Preserve.

(a) Whoever locates a mining claim within the Norbeck Wildlife

Preserve must, within 10 days after posting the location notice upon

such claim, file a true copy of such location notice with the Forest

Supervisor of the Black Hills National Forest at Custer, South Dakota,

and further, within 10 days after said location notice is filed for

record pursuant to the State laws of South Dakota, a true copy of the

recorded location certificate must be filed with said Forest Supervisor.

(b) All mining locators shall in all developments and operations

make all reasonable provisions for the disposal of tailings, dumpage,

and other deleterious materials or substances in such manner as to

prevent obstruction, pollution, or deterioration of the land, streams,

ponds, lakes, or springs, as may be directed by the Forest Supervisor.

(c) All slash resulting from cutting or destruction of forest growth

incident and necessary to mining operations must be disposed of as

directed by the Forest Supervisor.

(d) The cutting and removal of timber, except where clearing is

necessary in connection with mining operations or to provide space for

buildings or structures used in connection with mining operations, shall

be conducted in accordance with the marking rules and timber sale

practices applicable to the Black Hills National Forest, and such

cutting and removal of timber shall be as directed by the Forest

Supervisor.

(e) No use of the surface of a mining claim or the resources

therefrom not reasonably required for carrying on mining and prospecting

shall be allowed, except under the National Forest rules and

regulations, nor shall the locator prevent or obstruct other occupancy

of the surface or use of surface resources under authority of National

Forest Regulations, or permits issued thereunder, if such occupancy or

use is not in conflict with mineral developments.

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(f) When any road is to be built for mining purposes upon a mining

claim, the locator must apply to the Forest Supervisor for the

applicable rules and regulations governing the construction and

maintenance of roads within the Black Hills National Forest, and such

road will be built in accordance with such specifications and in such

locations as the Forest Supervisor may direct.

(g) In conducting mining operations the locator, his agents,

representatives, or employees, or other persons whose presence in the

area or in the vicinity thereof, is occasioned by such mining

operations, shall use due diligence in the prevention and suppression of

fires, and shall, when requested by the Forest Supervisor, or his

authorized representative, be available for service in the

extinguishment and suppression of all fires occurring within the

Preserve: Provided, That if such fire does not originate through any

negligence on the part of the locator, his agents, representatives, or

employees, or other persons whose presence in the area or in the

vicinity thereof, is occasioned by such mining operations and does not

threaten the structures, improvements or property incident to the mining

operation, such persons shall be paid for their services at the current

rate of pay of fire fighters employed by the United States.

(h) Nothing contained in this section shall be construed to relieve

the locator from complying with any requirements of the laws of the

State of South Dakota, nor from compliance with or conformity to any

requirements of any Federal law or regulation now existing or which

later may be enacted or promulgated, and applicable to the subject

involved in this section.

[13 FR 4792, Aug. 19, 1948, as amended at 48 FR 31854, July 12, 1983]

Sec. 251.14 Conditions, rules and regulations to govern exercise of

timber rights reserved in conveyance to the United States.

(a) Except as otherwise provided in paragraphs (b) and (c) of this

section, in conveyance of lands to the United States under authorized

programs of the Forest Service, where owners reserve the right to enter

upon the conveyed lands and to cut and remove timber and timber

products, said reservations shall be subject to the following

conditions, rules and regulations which shall be expressed in and made a

part of the deed of conveyance to the United States and such

reservations shall be exercised thereunder and in obedience thereto:

(1) Whoever undertakes to exercise the reserved rights, hereinafter

called operator, shall give prior written notice to Forest Service and

shall submit satisfactory evidence of authority to exercise such rights.

Operator shall repair, replace, or restore any improvements owned by the

United States or its permittees, damaged or destroyed by the timber

operations and he shall restore the land to a condition safe and

reasonably serviceable for authorized programs of Forest Service.

(2) In cutting and removing timber and timber products and in

locating, constructing and using mills, logging roads, railroads,

chutes, landings, camps, or other improvements, no unnecessary damage

shall be done to the air, water and soil resources, and to young growth

or to trees left standing. All survey monuments and witness trees shall

be preserved.

(3) All trees, timber or timber products of species or sizes not

specifically reserved which are unnecessarily cut, damaged, or destroyed

by operator shall be paid for at double the usual rates charged in the

locality for sales of similar National Forest timber and timber

products.

(4) Slash and debris resulting from the cutting, removal, or

processing of timber or timber products, or from construction

operations, shall be disposed of or otherwise treated by methods

acceptable to the Forest Service. Such treatment or disposal shall

comply with known air and water quality criteria and standards and

include necessary preparatory work such as fireline constructing and

snag falling. The timing of log removal and preparatory work shall not

unnecessarily delay slash disposal or treatment.

(5) Operator is authorized to construct and maintain buildings,

facilities, and other improvements, including roads needed to log the

reserved timber. Construction and maintenance

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plans, designs, and location shall be approved in writing by Forest

Service before construction is started.

(6) All buildings, camps, equipment, and other structures or

improvements shall be removed from the lands within 6 months from date

of completion or abandonment of the operation, unless relieved by Forest

Service by issuance of a special-use permit. Otherwise such buildings,

camps, equipment, and other structures or improvements shall become the

property of the United States, but this does not relieve operator of

liability for the cost of removal and restoration of the site.

(7) Nothing in this section shall be construed to exempt operator

from any requirements of the laws of the States in which situated; nor

from compliance with or conformity to any requirement of any law which

later may be enacted and which otherwise would be applicable.

(8) While operations are in progress, operator, his employees, any

subcontractors, and their employees, shall take all reasonable and

practicable action in the prevention and suppression of fire, and shall

be available for service in the suppression of all fires within the

reserved area. On any fire not caused by negligence on the part of the

operator, Forest Service shall pay operator at fire-fighting rates

common in the area or at prior agreed rates for equipment or manpower

furnished by operator.

(9) Only one cutting shall be made on any portion of the area on

which timber is reserved. Forest Service may permit the cutting of

special products, or products the cutting of which is seasonal, on any

portion of the area in advance of the cutting of the chief products of

the reserved timber. Each reservation of timber shall include a specific

period of time within which material may be removed.

(10) Forest Service shall have the right to use any road constructed

under the authority of this timber reservation for any and all purposes

in connection with the protection and administration of the National

Forest.

(11) Operator shall take all reasonable precautions to prevent

pollution of the air, soil, and water, in operation hereunder.

(12) All activities by operator in the reserved area shall be

conducted in a safe, orderly, and workmanlike manner.

(13) For the protection of streamcourses, the following measures

shall be observed by operator: Culverts or bridges will be required on

temporary roads at all points where it is necessary to cross

streamcourses. Such facilities shall be of sufficient size and design to

provide unobstructed flow of water. Equipment will not be operated in

streamcourses except at designated crossings and as essential to

construction or removal of culverts and bridges. Any stream that is

temporarily diverted must be restored to the natural course as soon as

practicable, and in any event prior to a major runoff season.

(14) Operator shall perform currently as weather and soil conditions

permit, the following erosion control work on portions of the reserved

area where logging is in progress or has been completed: Construct

cross-ditches and water-spreading ditches where staked or otherwise

marked on the ground by Forest Service; after a temporary road has

served operator's purpose, operator shall remove culverts and bridges,

eliminate ditches, out-slope and cross-drain roadbed and remove ruts and

berms to the extent necessary to stabilize fills and otherwise minimize

erosion; operator shall avoid felling into, yarding in, or crossing

natural meadows; and operations will not take place when soil and water

conditions are such that excessive damage will result.

(b) The conditions, rules and regulations set forth in paragraphs

(a)(1) through (14) of this section shall not apply to reservations

contained in conveyances of land to the United States under the Act of

March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82, 16 U.S.C. 555).

(c) In cases where a State, or an agency, or a political subdivision

thereof, reserves timber rights for the cutting and removal of timber

and timber products, in the conveyance of land to the United States

under authorized programs of the Forest Service and there are provisions

in the laws of such State or in conditions, rules and regulations

promulgated by such State,

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agency or political subdivision thereof, which the Chief, Forest

Service, determines are adequate to protect the interest of the United

States in the event of the exercise of such reservation, the Chief,

Forest Service, is hereby authorized, in his discretion, to subject the

exercise of the reservation to such statutory provisions or such

conditions, rules, and regulations in lieu of the conditions, rules and

regulations set forth in paragraphs (a) (1) through (14) of this

section. In that event, such statutory provisions or such conditions,

rules and regulations shall be expressed in and made a part of the deed

of conveyance to the United States and the reservation shall be

exercised thereunder and in obedience thereto.

All regulations heretofore issued by the Secretary of Agriculture to

govern the exercise of timber rights reserved in conveyance of lands to

the United States under authorized programs of Forest Service shall

continue to be effective in the cases to which they are applicable, but

are hereby superseded as to timber rights hereafter reserved in

conveyances under such programs.

[35 FR 5401, Apr. 1, 1970]

Sec. 251.15 Conditions, rules and regulations to govern exercise

of mineral rights reserved in conveyances to the United States.

(a) Except as otherwise provided in paragraphs (b) and (c) of this

section, in conveyances of lands to the United States under authorized

programs of the Forest Service, where owners reserve the right to enter

upon the conveyed lands and to prospect for, mine and remove minerals,

oil, gas, or other inorganic substances, said reservations shall be

subject to the following conditions, rules and regulations which shall

be expressed in and made a part of the deed of conveyance to the United

States and such reservations shall be exercised thereunder and in

obedience thereto:

(1) Whoever undertakes to exercise the reserved rights shall give

prior written notice to the Forest Service and shall submit satisfactory

evidence of authority to exercise such rights. Only so much of the

surface of the lands shall be occupied, used, or disturbed as is

necessary in bona fide prospecting for, drilling, mining (including the

milling or concentration of ores), and removal of the reserved minerals,

oil, gas, or other inorganic substances.

(2)(i) None of the lands in which minerals are reserved shall be so

used, occupied, or disturbed as to preclude their full use for

authorized programs of the Forest Service until the record owner of the

reserved rights, or the successors, assigns, or lessees thereof, shall

have applied for and received a permit authorizing such use, occupancy,

or disturbance of those specifically described parts of the lands as may

reasonably be necessary to exercise of the reserved rights.

(ii) Said permit shall be issued upon agreement as to conditions

necessary to protect the interest of the United States including such

conditions deemed necessary to provide for the safety of the public and

other users of the land, and upon initial payment of the annual fee,

which shall be at the rate of $2 per acre or fraction of acre included

in the permit.

(iii) The permit shall also provide that the record owner of the

reserved right or the successors, assigns, or lessees thereof, will

repair or replace any improvements damaged or destroyed by the mining

operations and restore the land to a condition safe and reasonably

serviceable for authorized programs of the Forest Service, and shall

provide for a bond in sufficient amount as determined necessary by the

Forest Service to guarantee such repair, replacement or restoration.

(iv) Failure to comply with the terms and conditions of the permit

shall be cause for revocation of all rights to use, occupy, or disturb

the surface of the lands covered by the permit, but in the event of

revocation, a new permit shall be issued upon application when the

causes for revocation of the preceding permit have been satisfactorily

remedied and the United States has been reimbursed for any damages it

has incurred from the noncompliance.

(3) All structures, other improvements, and materials shall be

removed from the lands within one year after the date of revocation of

the permit.

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(4) Timber and/or young growth cut or destroyed in connection with

exercise of the reserved right shall be paid for at rates determined by

the Forest Service to be fair and equitable for comparable timber and/or

young growth in the locality. All slash resulting from cutting or

destruction of timber or young growth shall be disposed of as required

by the Forest Service.

(5) In the prospecting for, mining, and removal of reserved

minerals, oil, gas, or other inorganic substances all reasonable

provisions shall be made for the disposal of tailings, dumpage, and

other deleterious materials or substances in such manner as to prevent

obstruction, pollution, or deterioration of water resources.

(6) Nothing herein contained shall be construed to exempt operators

or the mining operations from any requirements of applicable State laws

nor from compliance with or conformity to any requirement of any law

which later may be enacted and which otherwise would be applicable.

(7) While any activities and/or operations incident to the exercise

of the reserved rights are in progress, the operators, contractors,

subcontractors, and any employees thereof shall use due diligence in the

prevention and suppression of fires, and shall comply with all rules and

regulations applicable to the land.

(b) The conditions, rules and regulations set forth in paragraphs

(a) (1) through (7) of this section shall not apply to reservations

contained in conveyances of lands to the United States under the Act of

March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

(c) In cases where a State, or an agency, or a political subdivision

thereof, reserves minerals, oil, gas, or other inorganic substances, in

the conveyance of land to the United States under authorized programs of

the Forest Service and there are provisions in the laws of such State or

in conditions, rules and regulations promulgated by such State, agency

or political subdivision thereof, which the Chief, Forest Service,

determines are adequate to protect the interest of the United States in

the event of the exercise of such reservation, the Chief, Forest

Service, is hereby authorized, in his discretion, to subject the

exercise of the reservation to such statutory provisions or such

conditions, rules and regulations in lieu of the conditions, rules and

regulations set forth in paragraphs (a) (1) through (7) of this section.

In that event, such statutory provisions or such conditions, rules and

regulations shall be expressed in and made a part of the deed of

conveyance to the United States and the reservation shall be exercised

thereunder and in obedience thereto.

All regulations heretofore issued by the Secretary of Agriculture to

govern the exercise of mineral rights reserved in conveyances of lands

to the United States under authorized programs of the Forest Service

shall continue to be effective in the cases to which they are

applicable, but are hereby superseded as to mineral rights hereafter

reserved in conveyances under such programs.

[28 FR 4440, May 3, 1963, as amended at 78 FR 33724, June 5, 2013]

Rights of Grantors

Sec. 251.17 Grantor's right to occupy and use lands

conveyed to the United States.

Except as otherwise provided in paragraph (h) of this section, in

conveyances of lands to the United States under authorized programs of

the Forest Service, where owners reserve the right to occupy and use the

land for the purposes of residence, agriculture, industry, or commerce,

said reservations shall be subject to the following conditions, rules

and regulations which shall be expressed in and made a part of the deed

of conveyance to the United States and such reservations shall be

exercised thereunder and in obedience thereto:

(a) Except when provided otherwise by statute, the reservation so

created shall not be assigned, used, or occupied by anyone other than

the grantor without the consent of the United States.

(b) All reasonable precautions shall be taken by the grantor and all

persons acting for or claiming under him to prevent and suppress forest

fires upon or threatening the premises or other adjacent lands of the

United States, and any person failing to comply with

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this requirement shall be responsible for any damages sustained by the

United States by reason thereof.

(c) The premises shall not be used or permitted to be used, without

the written consent of the United States, for any purpose or purposes

other than those specified in the instrument creating the reservation.

(d) The grantor and all persons acting for or claiming under him

shall maintain the premises and all buildings and structures thereon in

proper repair and sanitation and shall comply with the National Forest

laws and regulations and the laws and lawful orders of the State in

which the premises are located.

(e) Except when provided otherwise by statute, the reservation shall

terminate: (1) Upon the expiration of the period named in the deed; (2)

upon failure for a period of more than one calendar year to use and

occupy the premises for the purposes named in the deed; (3) by use and

occupancy for unlawful purposes or for purposes other than those

specified in the deed; and (4) by voluntary written relinquishment by

the owner.

(f) Upon the termination of the reservation the owners of personal

property remaining on the premises shall remove same within a period of

three months, and all such property not so removed shall become the

property of the United States except that when such removal is prevented

by conditions beyond the control of the owners the period shall be

extended in writing by the Forest Service to allow a reasonable time for

said removal, but in no event longer than one year.

(g) The said reservation shall be subject to rights-of-way for the

use of the United States or its permittees, upon, across, or through the

said land, as may hereafter be required for the erection, construction,

maintenance and operation of public utility systems over all or parts

thereof, or for the construction and maintenance of any improvements

necessary for the good administration and protection of the National

Forests, and shall be subject to the right of officials or employees of

the Forest Service to inspect the premises, or any part thereof, at all

reasonable times and as often as deemed necessary in the performance of

official duties in respect to the premises.

(h) The conditions, rules, and regulations set forth in paragraphs

(a) through (g) of this section shall not apply to reservations

contained in conveyances of lands to the United States under the Act of

March 3, 1925, as amended (43 Stat. 1133, 64 Stat. 82; 16 U.S.C. 555).

[33 FR 11452, Aug. 13, 1968, as amended at 36 FR 156, Jan. 6, 1971]

Sec. 251.18 Rights-of-way reserved by the grantor on lands

conveyed to the United States.

This section governs the use, occupancy, and operation of rights-of-

way reserved by a grantor of lands to the United States.

(a) Brush and refuse resulting from the exercise of the right-of-way

reservation shall be disposed of to the satisfaction of the Forest

Officer in charge.

(b) Timber cut and destroyed in the exercise of the right-of-way

reservation shall be paid for at rates to be prescribed by the Forest

Officer in charge, which rates shall be the usual stumpage prices

charged in the locality in sales of national forest timber of the same

kind or species; for injury to timber, second growth, and reproduction,

the amount of actual damage shall be ascertained by the Forest

Supervisor according to the rules applicable in such cases.

(c) All improvements built or maintained upon the right-of-way shall

be kept in an orderly, safe and sanitary condition. Failure to maintain

such conditions shall be cause for the termination of the reservation

after 30 days' notice in writing to the occupant or user that

unsatisfactory conditions exist and that the Department intends to

terminate all rights under the reservation unless such conditions are

forthwith corrected to the satisfaction of the Regional Forester.

(d) Upon the abandonment of a reserved right-of-way, either by

formal release, by termination, or by non-use for a period of one

calendar year, all improvements thereon not the property of the United

States shall be removed therefrom within three months

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from the date of the abandonment, otherwise such improvements shall vest

in and become the property of the United States.

(e) All reasonable precautions to prevent and suppress forest fires

shall be taken by the grantor and all persons acting for or claiming

under him; suitable crossings shall be constructed by grantor and/or

said persons where the reserved right-of-way intersects existing roads

and trails; borrow pits shall not be opened outside of the immediate

graded section except under a special use permit from the Forest

Supervisor.

(f) Officers of the Forest Service shall have free ingress and

egress on and over the reserved rights-of-way for all purposes necessary

and incidental to the protection and administration of the national

forest.

[3 FR 1953, Aug. 9, 1938]

Sec. 251.19 Exercise of water rights reserved by the

grantor of lands conveyed to the United States.

This section governs the exercise of water and related rights

reserved by the grantor of lands conveyed to the United States under the

provisions of the act of March 1, 1911 (36 Stat. 961).

(a) All reasonable precautions shall be taken by the grantor and all

persons acting for or claiming under him to prevent and suppress forest

fires upon or threatening the premises or other adjacent lands of the

United States, and any person failing to comply with this requirement

shall be responsible for any damages sustained by the United States by

reason thereof.

(b) All slash and debris resulting from the cutting and removal of

timber shall be disposed of as directed by the Forest Officer in charge.

(c) Flowage and reservoir areas shall be cleared of timber and

debris, in a manner satisfactory to the Forest Supervisor, or in

accordance with a special agreement approved by him. Timber cut and

destroyed in the exercise of the reserved rights shall be paid for at

rates to be prescribed by the Forest Officer in charge, which rates

shall be the usual stumpage price charged in the locality.

(d) The water surface created shall be open to the Forest Service

and its permittees when such use does not interfere with the original

purpose of the development.

(e) The water surface shall be open to fishing by the public in

accordance with State laws when such use does not interfere with the

original purpose of the development.

(f) Plans for dams and supplemental structures, impounding or

controlling more than 10 acre-feet of water or with a head in excess of

6 feet, shall be approved by the Regional Engineer of the Forest Service

before construction shall begin.

[3 FR 1953, Aug. 9, 1938]

Designation of Areas

Sec. 251.23 Experimental areas and research natural areas.

The Chief of the Forest Service shall establish and permanently

record a series of areas on National Forest land to be known as

experimental forests or experimental ranges, sufficient in number and

size to provide adequately for the research necessary to serve as a

basis for the management of forest and range land in each forest region.

Also, when appropriate, the Chief shall establish a series of research

natural areas, sufficient in number and size to illustrate adequately or

typify for research or educational purposes, the important forest and

range types in each forest region, as well as other plant communities

that have special or unique characteristics of scientific interest and

importance. Research Natural Areas will be retained in a virgin or

unmodified condition except where measures are required to maintain a

plant community which the area is intended to represent. Within areas

designated by this regulation, occupancy under a special-use permit

shall not be allowed, nor the construction of permanent improvements

permitted except improvements required in connection with their

experimental use, unless authorized by the Chief of the Forest Service.

[31 FR 5072, Mar. 29, 1966]

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Petersburg Watershed

Sec. 251.35 Petersburg watershed.

(a) Except as authorized in paragraphs (b) and (c), access to lands

within the Petersburg watershed, Tongass National Forest, as described

in the Act of October 17, 1940 (54 Stat. 1197), is prohibited.

(b) Access to lands within the Petersburg watershed is hereby

authorized, without further written approval, for the following routine

purposes:

(1) The discharge of official duties related to management of the

Tongass National Forest by Federal employees, holders of Forest Service

contracts, or Forest Service agents;

(2) The operation, maintenance, and improvement of the municipal

water system by Federal and State officials and employees of the city of

Petersburg; and

(3) Public recreational use of the Raven's Roost Trail for access to

and from the Raven's Roost public recreation cabin and the Alpine

Recreation Area.

(c) Any person who wishes to enter upon the lands within the

watershed for purposes other than those listed in paragraph (b) must

obtain a permit that has been signed by the appropriate city official

and countersigned by the District Ranger.

(d) Unauthorized entrance upon lands within the watershed is subject

to punishment as provided in 36 CFR 261.1b.

(e) The Forest Supervisor of the Stikine Area of the Tongass

National Forest may authorize the removal of timber from the watershed

under the regulations governing disposal of National Forest timber (36

CFR part 223). In any removal of timber from the watershed, the Forest

Supervisor shall provide adequate safeguards for the protection of the

Petersburg municipal water supply.

[53 FR 26595, July 14, 1988]

Subpart B\_Special Uses

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, 1761-1771.

Source: 45 FR 38327, June 6, 1980, unless otherwise noted.

Sec. 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 (Sec. 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); and minerals (part 228) 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 paragraphs (c) through (e)(3) of

this section.

(b) Nothing in this section prohibits the temporary occupancy of

National Forest System lands without a special use authorization when

necessary for the protection of life and property in emergencies, if a

special use authorization is applied for and obtained at the earliest

opportunity, unless waived pursuant to paragraphs (c) through (e)(3) of

this section. The authorized officer may, pursuant to Sec. 251.56 of

this subpart, impose in that authorization such terms and conditions as

are deemed necessary or appropriate and may require changes to the

temporary occupancy to conform to those terms and conditions. Those

temporarily occupying National Forest System lands without a special use

authorization assume liability, and must indemnify the United States,

for all injury, loss, or damage arising in connection with the temporary

occupancy.

(c) A special use authorization is not required for noncommercial

recreational activities, such as camping, picnicking, hiking, fishing,

boating, hunting, and horseback riding, or for noncommercial activities

involving the expression of views, such as assemblies, meetings,

demonstrations, and parades, unless:

(1) The proposed use is a noncommercial group use as defined in

Sec. 251.51 of this subpart;

(2) The proposed use is still photography as defined in Sec. 251.51

of this subpart; or

(3) Authorization of that use is required by an order issued under

Sec. 261.50

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or by a regulation issued under Sec. 261.70 of this chapter.

(d) Travel on any National Forest System road shall comply with all

Federal and State laws governing the road to be used and does not

require a special use authorization, unless:

(1) The travel is for the purpose of engaging in a noncommercial

group use, outfitting or guiding, a recreation event, commercial

filming, or still photography, as defined in Sec. 251.51 of this

subpart, or for a landowner's ingress or egress across National Forest

System lands that requires travel on a National Forest System road that

is not authorized for general public use under Sec. 251.110(d) of this

part; or

(2) Authorization of that use is required by an order issued under

Sec. 261.50 or by a regulation issued under Sec. 261.70 of this chapter.

(e) For proposed uses other than a noncommercial group use, a

special use authorization is not required if, based upon review of a

proposal, the authorized officer determines that the proposed use has

one or more of the following characteristics:

(1) The proposed use will have such nominal effects on National

Forest System lands, resources, or programs that it is not necessary to

establish terms and conditions in a special use authorization to protect

National Forest System lands and resources or to avoid conflict with

National Forest System programs or operations;

(2) The proposed use is regulated by a State agency or another

Federal agency in a manner that is adequate to protect National Forest

System lands and resources and to avoid conflict with National Forest

System programs or operations; or

(3) The proposed use is not situated in a congressionally designated

wilderness area, and is a routine operation or maintenance activity

within the scope of a statutory right-of-way for a highway pursuant to

R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for a ditch or

canal pursuant to R.S. 2339 (43 U.S.C. 661, as amended), or the proposed

use is a routine operation or maintenance activity within the express

scope of a documented linear right-of-way.

[69 FR 41964, July 13, 2004]

Sec. 251.51 Definitions.

Applicant--any individual or entity that applies for a special use

authorization.

Authorized officer--any employee of the Forest Service to whom has

been delegated the authority to perform the duties described in this

part.

Chief--the Chief of the Forest Service.

Commercial filming--use of motion picture, videotaping, sound

recording, or any other moving image or audio recording equipment on

National Forest System lands that involves the advertisement of a

product or service, the creation of a product for sale, or the use of

models, actors, sets, or props, but not including activities associated

with broadcasting breaking news, as defined in FSH 2709.11, chapter 40.

Commercial use or activity--any use or activity on National Forest

System lands (a) where an entry or participation fee is charged, or (b)

where the primary purpose is the sale of a good or service, and in

either case, regardless of whether the use or activity is intended to

produce a profit.

Easement--a type of special use authorization (usually granted for

linear rights-of-way) that is utilized in those situations where a

conveyance of a limited and transferable interest in National Forest

System land is necessary or desirable to serve or facilitate authorized

long-term uses, and that may be compensable according to its terms.

Forest road or trail. A road or trail wholly or partly within or

adjacent to and serving the National Forest System that the Forest

Service determines is necessary for the protection, administration, and

utilization of the National Forest System and the use and development of

its resources.

Group use--an activity conducted on National Forest System lands

that involves a group of 75 or more people, either as participants or

spectators.

Guiding--providing services or assistance (such as supervision,

protection, education, training, packing, touring, subsistence,

transporting people, or interpretation) for pecuniary remuneration or

other gain to individuals or groups on National Forest System lands.

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Holder--an individual or entity that holds a valid special use

authorization.

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.

Linear right-of-way--a right-of-way for a linear facility, such as a

road, trail, pipeline, electronic transmission line, fence, water

transmission facility, or fiber optic cable.

Major category--A processing or monitoring category requiring more

than 50 hours of agency time to process an application for a special use

authorization (processing category 6 and, in certain situations,

processing category 5) or more than 50 hours of agency time to monitor

compliance with the terms and conditions of an authorization (monitoring

category 6 and, in certain situations, monitoring category 5). Major

categories usually require documentation of environmental and associated

impacts in an environmental assessment and may require an environmental

impact statement.

Minor category--A processing or monitoring category requiring 50

hours or less of agency time to process an application for a special use

authorization (processing categories 1 through 4 and, in certain

situations, processing category 5) or 50 hours or less of agency time to

monitor compliance with the terms and conditions of an authorization

(monitoring categories 1 through 4 and, in certain situations,

monitoring category 5). Minor categories may require documentation of

environmental and associated impacts in an environmental assessment.

Monitoring--Actions needed to ensure compliance with the terms and

conditions in a special use authorization.

National Forest System land--all lands, waters, or interests therein

administered by the Forest Service.

National Forest System road. A forest road other than a road which

has been authorized by a legally documented right-of-way held by a

State, county, or other local public road authority.

NEPA procedures--the rules, policies, and procedures governing

agency compliance with the National Environmental Policy Act set forth

in 50 CFR parts 1500-1508, 7 CFR part 1b, Forest Service Manual Chapter

1950, and Forest Service Handbook 1909.15.

Noncommercial use or activity--any use or activity that does not

involve a commercial use or activity as defined in this section.

Outfitting--renting on or delivering to National Forest System lands

for pecuniary remuneration or other gain any saddle or pack animal,

vehicle, boat, camping gear, or similar supplies or equipment.

Permit--a special use authorization which provides permission,

without conveying an interest in land, to occupy and use National Forest

System land or facilities for specified purposes, and which is both

revocable and terminable.

Recreation event--a recreational activity conducted on National

Forest System lands for which an entry or participation fee is charged,

such as animal, vehicle, or boat races; dog trials; fishing contests;

rodeos; adventure games; and fairs.

Recreation Residence Lot--a parcel of National Forest System land on

which a holder is authorized to build, use, occupy, and maintain a

recreation residence and related improvements. A recreation residence

lot is considered to be in its natural, native state at the time when

the Forest Service first permitted its use for a recreation residence. A

recreation residence lot is not necessarily confined to the platted

boundaries shown on a tract map or permit area map. A recreation

residence lot includes the physical area of all National Forest System

land being used or occupied by a recreation residence permit holder,

including, but not limited to, land being occupied by ancillary

facilities and uses owned, operated, or maintained by the holder, such

as septic systems, water systems, boat houses and docks, major

vegetative modifications, and so forth.

Revocation--the cessation, in whole or in part, of a special use

authorization by action of an authorized officer

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before the end of the specified period of use or occupancy for reasons

set forth in Sec. 251.60(a)(1)(i), (a)(2)(i), (g), and (h) of this

subpart.

Right-of-way--land authorized to be used or occupied for the

construction, operation, maintenance and termination of a project or

facility passing over, upon, under or through such land.

Secretary--the Secretary of Agriculture.

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.

Sound business management principles--a phrase that refers to

accepted industry practices or methods of establishing fees and charges

that are used or applied by the Forest Service to help establish the

appropriate charge for a special use. Examples of such practices and

methods include, but are not limited to, appraisals, fee schedules,

competitive bidding, negotiation of fees, and application of other

economic factors, such as cost efficiency, supply and demand, and

administrative costs.

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.

Still photography--use of still photographic equipment on National

Forest System lands that takes place at a location where members of the

public generally are not allowed or where additional administrative

costs are likely, or uses models, sets, or props that are not a part of

the site's natural or cultural resources or administrative facilities.

Suspension--a temporary revocation of a special use authorization.

Termination--the cessation of a special use authorization by

operation of law or by operation of a fixed or agreed-upon condition,

event, or time as specified in the authorization, which does not require

a decision by an authorized officer to take effect, such as expiration

of the authorized term; change in ownership or control of the authorized

improvements; or change in ownership or control of the holder of the

authorization.

Term permit--a special use authorization to occupy and use National

Forest System land, other than rights-of-way under Sec. 251.53(l) of

this part, for a specified period which is both revocable and

compensable according to its terms.

[45 FR 38327, June 6, 1980, as amended at 49 FR 25449, June 21, 1984; 53

FR 16550, May 10, 1988; 54 FR 22593, May 25, 1989; 60 FR 45293, Aug. 30,

1995; 60 FR 54409, Oct. 23, 1995; 63 FR 65964, Nov. 30, 1998; 69 FR

41965, July 13, 2004; 70 FR 68290, Nov. 9, 2005; 71 FR 8913, Feb. 21,

2006; 71 FR 16621, Apr. 3, 2006; 74 FR 68381, Dec. 24, 2009; 78 FR

33725, June 5, 2013; 78 FR 38843, June 28, 2013]

Sec. 251.52 Delegation of authority.

Special use authorizations shall be issued, granted, amended,

renewed, suspended, terminated, or revoked by the Chief, or through

delegation, by the Regional Forester, Forest Supervisor, District Ranger

or other forest officer, and shall be in such form and contain such

terms, stipulations, conditions, and agreements as may be required by

the regulations of the Secretary and the instructions of the Chief (7

CFR 2.60; 36 CFR part 200, subpart B).

Sec. 251.53 Authorities.

Subject to any limitations contained in applicable statutes, the

Chief of the Forest Service, or other Agency official to whom such

authority is delegated, may issue special use authorizations for

National Forest System land under the authorities cited and for the

types of use specified in this section as follows:

(a) Permits governing occupancy and use, including group events and

distribution of noncommercial printed materials, under the act of June

4, 1897, 30 Stat. 35 (16 U.S.C. 551);

(b) Leases under the Act of February 28, 1899, 30 Stat. 908 (16

U.S.C. 495) for

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public sanitariums or hotels near or adjacent to mineral springs;

(c) Permits under the Act of June 8, 1906, 34 Stat. 225 (16 U.S.C.

431, et seq.), for the examination of ruins, the excavation of

archaeological sites, and the gathering of objects of antiquity in

conformity with the rules and regulations prescribed by the Secretaries

of the Interior, Agriculture, and War, December 28, 1906 (43 CFR part

3);

(d) Term permits under the Act of March 4, 1915, 38 Stat. 1101, as

amended, 70 Stat. 708 (16 U.S.C. 497) for periods not over 30 years and

(1) for not over 80 acres for (i) hotels, resorts, and other structures

and facilities for recreation, public convenience, or safety; (ii)

industrial or commercial purposes, and (iii) education or public

activities; and (2) for not over 5 acres for summer homes and stores;

(e) Permits or easements for a right-of-way for a pipeline for the

transportation of oil, gas, or oil or gas products, where no Federal

land besides National Forest System lands is required, and permits for

the temporary use of additional National Forest System lands necessary

for construction, operation, maintenance, or termination of a pipeline

or to protect the natural environment or public safety under section 28

of the Mineral Leasing Act, 41 Stat. 449, as amended (30 U.S.C 185);

(f) Permits, term permits, and easements in the National Grasslands

and other lands acquired or administered under title III, Act of July

22, 1937, 50 Stat. 525, as amended, (7 U.S.C. 1011(d));

(g) Permits under section 7 of the Act of April 24, 1950, 64 Stat.

84 (16 U.S.C. 580d) for periods not over 30 years for the use of

structures or improvements under the administrative control of the

Forest Service and land used in connection therewith;

(h) Permits, term permits, leases, or easements as authorized by the

Act of September 3, 1954, 68 Stat. 1146 (43 U.S.C. 931c, 931d), to

States, counties, cities, towns, townships, municipal corporations, or

other public agencies for periods not over 30 years, at prices

representing the fair market value, fixed by the Chief, through

appraisal for the purpose of constructing and maintaining on such lands

public buildings or other public works;

(i) Permits under the Wilderness Act of September 3, 1964, 78 Stat.

890 (16 U.S.C. 1131-1136) for temporary structures and commercial

services and for access to valid mining claims or other valid

occupancies and to surrounded State or private land within designated

wilderness (see part 293 of this chapter);

(j) Temporary or permanent easements under the Act of October 13,

1964, 78 Stat. 1089 (16 U.S.C. 532-538) for road rights-of-way over

lands and interests in land administered by the Forest Service (see

Sec. 212.10 of this chapter);

(k) Special recreation permits issued under section 803(h) of the

Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)), for

specialized recreation uses of National Forest System lands, such as

group activities, recreation events, and motorized recreational vehicle

use.

(l) Permits, leases and easements under the Federal Land Policy and

Management Act of 1976, 90 Stat. 2776 (43 U.S.C. 1761-1771) for rights-

of-way for:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines,

tunnels, and other facilities and systems for the impoundment, storage,

transportation, or distribution of water;

(2) Pipelines and other systems for the transportation or

distribution of liquids and gases, other than water and other than oil,

natural gas, synthetic liquid or gaseous fuels, or any refined product

produced therefrom, and for storage and terminal facilities in

connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for

transportation and distribution of solid materials, and facilities for

the storage of such materials in connection therewith;

(4) Systems and related facilities for generation, transmission, and

distribution of electric energy, except that the applicant, in addition

to obtaining a Forest Service special use authorization, shall also

comply with all applicable requirements of the Federal Energy Regulatory

Commission under the Federal Power Act of 1935, as amended, 49 Stat. 838

(16 U.S.C. 791a, et seq.);

(5) Systems for transmission or reception of radio, television,

telephone,

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telegraph, and other electronic signals and other means of

communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways,

airways, livestock driveways, or other means of transportation except

where such facilities are constructed and maintained in connection with

commercial recreation facilities;

(7) Such other necessary transportation or other systems or

facilities which are in the public interest and which require rights-of-

way over, upon, under, or through National Forest System lands; and

(8) Any Federal department or agency for pipeline purposes for the

transportation of oil, natural gas, synthetic liquid or gaseous fuels,

or any product produced therefrom;

(m) Permits under the Archaeological Resources Protection Act of

1979, 93 Stat. 721 (16 U.S.C. 470aa).

(n) Operation of nordic and alpine ski areas and facilities for up

to 40 years and encompassing such acreage as the Forest Officer

determines sufficient and appropriate as authorized by the National

Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b).

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 49

FR 25449, June 21, 1984; 53 FR 16550, May 10, 1988; 54 FR 22594, May 25,

1989; 70 FR 70498, Nov. 22, 2005; 74 FR 68381, Dec. 24, 2009]

Sec. 251.54 Proposal and application requirements and procedures.

(a) Early notice. When an individual or entity proposes to occupy

and use National Forest System lands, the proponent is required to

contact the Forest Service office(s) responsible for the management of

the affected land as early as possible in advance of the proposed use.

(b) Filing proposals. Proposals for special uses must be filed in

writing with or presented orally to the District Ranger or Forest

Supervisor having jurisdiction over the affected land (Sec. 200.2 of

this chapter), except as follows:

(1) Proposals for projects on lands under the jurisdiction of two or

more administrative units of the Forest Service may be filed at the most

convenient Forest Service office having jurisdiction over part of the

project, and the proponent will be notified where to direct subsequent

communications;

(2) Proposals for cost-share and other road easements to be issued

under Sec. 251.53(j) must be filed in accordance with regulations in

Sec. 212.10(c) and (d) of this chapter; and

(3) Proposals for oil and gas pipeline rights-of-way crossing

Federal lands under the jurisdiction of two or more Federal agencies

must be filed with the State Office, Bureau of Land Management, pursuant

to regulations at 43 CFR part 2882.

(c) Rights of proponents. A proposal to obtain a special use

authorization does not grant any right or privilege to use National

Forest System lands. Rights or privileges to occupy and use National

Forest System lands under this subpart are conveyed only through

issuance of a special use authorization.

(d) Proposal content--(1) Proponent identification. Any proponent

for a special use authorization must provide the proponent's name and

mailing address, and, if the proponent is not an individual, the name

and address of the proponent's agent who is authorized to receive notice

of actions pertaining to the proposal.

(2) Required information--(i) Noncommercial group uses. Paragraphs

(d)(3) through (d)(5) of this section do not apply to proposals for

noncommercial group uses. A proponent for noncommercial group uses shall

provide the following:

(A) A description of the proposed activity;

(B) The location and a description of the National Forest System

lands and facilities the proponent would like to use;

(C) The estimated number of participants and spectators;

(D) The starting and ending time and date of the proposed activity;

and

(E) The name of the person or persons 21 years of age or older who

will sign a special use authorization on behalf of the proponent.

(ii) All other special uses. At a minimum, proposals for special

uses other than noncommercial group uses must include the information

contained in paragraphs (d)(3) through (d)(5) of this section. In

addition, if requested by an authorized officer, a proponent in one

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of the following categories must furnish the information specified for

that category:

(A) If the proponent is a State or local government agency: a copy

of the authorization under which the proposal is made;

(B) If the proponent is a public corporation: the statute or other

authority under which it was organized;

(C) If the proponent is a Federal Government agency: the title of

the agency official delegated the authority to file the proposal;

(D) If the proponent is a private corporation:

(1) Evidence of incorporation and its current good standing;

(2) If reasonably obtainable by the proponent, the name and address

of each shareholder owning three percent or more of the shares, together

with the number and percentage of any class of voting shares of the

entity which such shareholder is authorized to vote;

(3) The name and address of each affiliate of the entity;

(4) In the case of an affiliate which is controlled by the entity,

the number of shares and the percentage of any class of voting stock of

the affiliate that the entity owns either directly or indirectly; or

(5) In the case of an affiliate which controls that entity, the

number of shares and the percentage of any class of voting stock of that

entity owned, either directly or indirectly by the affiliate; or

(E) If the proponent is a partnership, association, or other

unincorporated entity: a certified copy of the partnership agreement or

other similar document, if any, creating the entity, or a certificate of

good standing under the laws of the State.

(3) Technical and financial capability. The proponent is required to

provide sufficient evidence to satisfy the authorized officer that the

proponent has, or prior to commencement of construction will have, the

technical and financial capability to construct, operate, maintain, and

terminate the project for which an authorization is requested, and the

proponent is otherwise acceptable.

(4) Project description. Except for requests for planning permits

for a major development, a proponent must provide a project description,

including maps and appropriate resource information, in sufficient

detail to enable the authorized officer to determine the feasibility of

a proposed project or activity, any benefits to be provided to the

public, the safety of the proposal, the lands to be occupied or used,

the terms and conditions to be included, and the proposal's compliance

with applicable laws, regulations, and orders.

(5) Additional information. The authorized officer may require any

other information and data necessary to determine feasibility of a

project or activity proposed; compliance with applicable laws,

regulations, and orders; compliance with requirements for associated

clearances, certificates, permits, or licenses; and suitable terms and

conditions to be included in the authorization. The authorized officer

shall make requests for any additional information in writing.

(e) Pre-application actions--(1) Initial screening. Upon receipt of

a request for any proposed use other than for noncommercial group use,

the authorized officer shall screen the proposal to ensure that the use

meets the following minimum requirements applicable to all special uses:

(i) The proposed use is consistent with the laws, regulations,

orders, and policies establishing or governing National Forest System

lands, with other applicable Federal law, and with applicable State and

local health and sanitation laws.

(ii) The proposed use is consistent or can be made consistent with

standards and guidelines in the applicable forest land and resource

management plan prepared under the National Forest Management Act and 36

CFR part 219.

(iii) The proposed use will not pose a serious or substantial risk

to public health or safety.

(iv) The proposed use will not create an exclusive or perpetual

right of use or occupancy.

(v) The proposed use will not unreasonably conflict or interfere

with administrative use by the Forest Service, other scheduled or

authorized existing uses of the National Forest System, or use of

adjacent non-National Forest System lands.

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(vi) The proponent does not have any delinquent debt owed to the

Forest Service under terms and conditions of a prior or existing

authorization, unless such debt results from a decision on an

administrative appeal or from a fee review and the proponent is current

with the payment schedule.

(vii) The proposed use does not involve gambling or providing of

sexually oriented commercial services, even if permitted under State

law.

(viii) The proposed use does not involve military or paramilitary

training or exercises by private organizations or individuals, unless

such training or exercises are federally funded.

(ix) The proposed use does not involve disposal of solid waste or

disposal of radioactive or other hazardous substances.

(2) Results of initial screening. Any proposed use other than a

noncommercial group use that does not meet all of the minimum

requirements of paragraphs (e)(1)(i)-(ix) of this section shall not

receive further evaluation and processing. In such event, the authorized

officer shall advise the proponent that the use does not meet the

minimum requirements. If the proposal was submitted orally, the

authorized officer may respond orally. If the proposal was made in

writing, the authorized officer shall notify the proponent in writing

that the proposed use does not meet the minimum requirements and shall

simultaneously return the request.

(3) Guidance and information to proponents. For proposals for

noncommercial group use as well as for those proposals that meet the

minimum requirements of paragraphs (e)(1)(i)-(ix), the authorized

officer, to the extent practicable, shall provide the proponent guidance

and information on the following:

(i) Possible land use conflicts as identified by review of forest

land and resource management plans, landownership records, and other

readily available sources;

(ii) Proposal and application procedures and probable time

requirements;

(iii) Proponent qualifications;

(iv) Applicable fees, charges, bonding, and/or security

requirements;

(v) Necessary associated clearances, permits, and licenses;

(vi) Environmental and management considerations;

(vii) Special conditions; and

(viii) identification of on-the-ground investigations which will

require temporary use permits.

(4) Confidentiality. If requested by the proponent, the authorized

officer, or other Forest Service official, to the extent reasonable and

authorized by law, shall hold confidential any project and program

information revealed during pre-application contacts.

(5) Second-level screening of proposed uses. A proposal which passes

the initial screening set forth in paragraph (e)(1) and for which the

proponent has submitted information as required in paragraph (d)(2)(ii)

of this section, proceeds to second-level screening and consideration.

In order to complete this screening and consideration, the authorized

officer may request such additional information as necessary to obtain a

full description of the proposed use and its effects. An authorized

officer shall reject any proposal, including a proposal for commercial

group uses, if, upon further consideration, the officer determines that:

(i) The proposed use would be inconsistent or incompatible with the

purposes for which the lands are managed, or with other uses; or

(ii) The proposed use would not be in the public interest; or

(iii) The proponent is not qualified; or

(iv) The proponent does not or cannot demonstrate technical or

economic feasibility of the proposed use or the financial or technical

capability to undertake the use and to fully comply with the terms and

conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use

authorization and/or there is no person or entity willing to accept

responsibility for adherence to the terms and conditions of the

authorization.

(6) NEPA compliance for second-level screening process. A request

for a special use authorization that does not meet the criteria

established in paragraphs (e)(5)(i) through (e)(5)(v) of this section

does not constitute an agency proposal

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as defined in 40 CFR 1508.23 and, therefore, does not require

environmental analysis and documentation.

(f) Special requirements for certain proposals--(1) Oil and gas

pipeline rights-of-way. These proposals must include the citizenship of

the proponent(s) and disclose the identity of its participants as

follows:

(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 own an appreciable interest in any oil and

gas pipeline right-of-way or associated permit; and

(ii) The authorized officer shall promptly notify the House

Committee on Resources and the Senate Committee on Energy and Natural

Resources upon receipt of a proposal for a right-of-way for a pipeline

24 inches or more in diameter, and no right-of-way for that pipeline

shall be granted until notice of intention to grant the right-of-way,

together with the authorized officer's detailed findings as to the term

and conditions the authorized officer proposes to impose, have been

submitted to the committees.

(2) Major development. Proponents of a major development may submit

a request for a planning permit of up to 10 years in duration. Requests

for a planning permit must include the information contained in

paragraphs (d)(1) through (d)(3) of this section. Upon completion of a

master development plan developed under a planning permit, proponents

may then submit a request for a long-term authorization to construct and

operate the development. At a minimum, a request for a long-term permit

for a major development must include the information contained in

paragraphs (d)(1) and (d)(2)(ii) through (d)(5) of this section.

Issuance of a planning permit does not prejudice approval or denial of a

subsequent request for a special use permit for the development.

(g) Application processing and response--(1) Acceptance of

applications. Except for proposals for noncommercial group uses, if a

request does not meet the criteria of both screening processes or is

subsequently denied, the proponent must be notified with a written

explanation of the rejection or denial and any written proposal returned

to the proponent. If a request for a proposed use meets the criteria of

both the initial and second-level screening processes as described in

paragraph (e) of this section, the authorized officer shall notify the

proponent that the agency is prepared to accept a written formal

application for a special use authorization and shall, as appropriate or

necessary, provide the proponent guidance and information of the type

described in paragraphs (e)(3)(i) through (e)(3)(viii) of this section.

(2) Processing applications. (i) Upon acceptance of an application

for a special use authorization other than a planning permit, the

authorized officer shall evaluate the proposed use for the requested

site, including effects on the environment. The authorized officer may

request such additional information as necessary to obtain a full

description of the proposed use and its effects.

(ii) Federal, State, and local government agencies and the public

shall receive adequate notice and an opportunity to comment upon a

special use proposal accepted as a formal application in accordance with

Forest Service NEPA procedures.

(iii) The authorized officer shall give due deference to the

findings of another agency such as a Public Utility Commission, the

Federal Regulatory Energy Commission, or the Interstate Commerce

Commission in lieu of another detailed finding. If this information is

already on file with the Forest Service, it need not be refiled, if

reference is made to the previous filing date, place, and case number.

(iv) Applications for noncommercial group uses must be received at

least 72 hours in advance of the proposed activity. Applications for

noncommercial group uses shall be processed in order of receipt, and the

use of a particular area shall be allocated in order of receipt of fully

executed applications, subject to any relevant limitations set forth in

this section.

(v) For applications for planning permits, including those issued

for a major development as described in paragraph (f)(3) of this

section, the authorized officer shall assess only the applicant's

financial and technical

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qualifications and determine compliance with other applicable laws,

regulations, and orders. Planning permits may be categorically excluded

from documentation in an environmental assessment or environmental

impact statement pursuant to Forest Service Handbook 1909.15 (36 CFR

200.4).

(3) Response to applications for noncommercial group uses. (i) All

applications for noncommercial group uses shall be deemed granted and an

authorization shall be issued for those uses pursuant to the

determination as set forth below, unless applications are denied within

48 hours of receipt. Where an application for a noncommercial group use

has been granted or is deemed to have been granted and an authorization

has been issued under this paragraph, an authorized officer may revoke

that authorization only as provided under Sec. 251.60(a)(1)(i).

(ii) An authorized officer shall grant an application for a special

use authorization for a noncommercial group use upon a determination

that:

(A) Authorization of the proposed activity is not prohibited by the

rules at 36 CFR part 261, subpart B, or by Federal, State, or local law

unrelated to the content of expressive activity;

(B) Authorization of the proposed activity is consistent or can be

made consistent with the standards and guidelines in the applicable

forest land and resource management plan required under the National

Forest Management Act and 36 CFR part 219;

(C) The proposed activity does not materially impact the

characteristics or functions of the environmentally sensitive resources

or lands identified in Forest Service Handbook 1909.15, chapter 30;

(D) The proposed activity will not delay, halt, or prevent

administrative use of an area by the Forest Service or other scheduled

or existing uses or activities on National Forest System lands,

including but not limited to uses and activities authorized under parts

222, 223, 228, and 251 of this chapter;

(E) The proposed activity does not violate State and local public

health laws and regulations as applied to the proposed site. Issues

addressed by State and local public health laws and regulations as

applied to the proposed site include but are not limited to:

(1) The sufficiency of sanitation facilities;

(2) The sufficiency of waste-disposal facilities;

(3) The availability of sufficient potable drinking water;

(4) The risk of disease from the physical characteristics of the

proposed site or natural conditions associated with the proposed site;

and

(5) The risk of contamination of the water supply;

(F) The proposed activity will not pose a substantial danger to

public safety. Considerations of public safety must not include concerns

about possible reaction to the users' identity or beliefs from non-

members of the group that is seeking an authorization and shall be

limited to the following:

(1) The potential for physical injury to other forest users from the

proposed activity;

(2) The potential for physical injury to users from the physical

characteristics of the proposed site or natural conditions associated

with the proposed site;

(3) The potential for physical injury to users from scheduled or

existing uses or activities on National Forest System lands; and

(4) The adequacy of ingress and egress in case of an emergency;

(G) The proposed activity does not involve military or paramilitary

training or exercises by private organizations or individuals, unless

such training or exercises are federally funded; and

(H) A person or persons 21 years of age or older have been

designated to sign and do sign a special use authorization on behalf of

the applicant.

(iii) If an authorized officer denies an application because it does

not meet the criteria in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(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

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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. A

decision to grant or deny the application for which an environmental

assessment or an environmental impact statement is prepared is subject

to the notice and appeal procedures at 36 CFR part 215 and shall be made

within 48 hours after the decision becomes final under that appeal

process. A denial of an application in paragraphs (g)(3)(ii)(A) through

(g)(3)(ii)(H) of this section constitutes final agency action, is not

subject to administrative appeal, and is immediately subject to judicial

review.

(4) Response to all other applications. Based on evaluation of the

information provided by the applicant and other relevant information

such as environmental findings, the authorized officer shall decide

whether to approve the proposed use, approve the proposed use with

modifications, or deny the proposed use. A group of applications for

similar uses having minor environmental impacts may be evaluated with

one analysis and approved in one decision.

(5) Authorization of a special use. Upon a decision to approve a

special use or a group of similar special uses, the authorized officer

may issue one or more special use authorizations as defined in

Sec. 251.51 of this subpart.

[63 FR 65964, Nov. 30, 1998, as amended at 74 FR 68381, Dec. 24, 2009;

78 FR 33725, June 5, 2013]

Sec. 251.55 Nature of interest.

(a) A holder is authorized only to occupy such land and structures

and conduct such activities as is specified in the special use

authorization. The holder may sublet the use and occupancy of the

premises and improvements authorized only with the prior written

approval of the authorized officer, but the holder shall continue to be

responsible for compliance with all conditions of the special use

authorization.

(b) All rights not expressly granted are retained by the United

States, including but not limited to (1) continuing rights of access to

all National Forest System land (including the subsurface and air

space); (2) a continuing right of physical entry to any part of the

authorized facilities for inspection, monitoring, or for any other

purposes or reason consistent with any right or obligation of the United

States under any law or regulation; and (3) the right to require common

use of the land or to authorize the use by others in any way not

inconsistent with a holder's existing rights and privileges after

consultation with all parties and agencies involved. When costs can be

feasibly allocated and have not been amortized, a new holder may be

required to compensate existing holders for an equitable proportion of

the original costs or other expense associated with the common use.

(c) Special use authorizations are subject to all outstanding valid

rights.

(d) Each special use authorization will specify the lands to be used

or occupied which shall be limited to that which the authorized officer

determines: (1) Will be occupied by the facilities authorized; (2) to be

necessary for the construction, operation, maintenance, and full

utilization of the authorized facilities or the conduct of authorized

activities; and, (3) to be necessary to protect the public health and

safety and the environment.

(e) The holder will secure permission under applicable law, and pay

in advance, the value as determined by the authorized officer for any

mineral and vegetative materials (including timber) to be cut, removed,

used, or destroyed by the holder from the authorized use area or other

National Forest System land. The authorized officer may, in lieu of

requiring an advance payment, require the holder to stockpile or stack

the material at designated locations for later disposal by the United

States.

Sec. 251.56 Terms and conditions.

(a) General. (1) Each special use authorization must contain:

(i) Terms and conditions which will:

(A) Carry out the purposes of applicable statutes and rules and

regulations issued thereunder;

(B) Minimize damage to scenic and esthetic values and fish and

wildlife habitat and otherwise protect the environment;

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(C) Require compliance with applicable air and water quality

standards established by or pursuant to applicable Federal or State law;

and

(D) Require compliance with State standards for public health and

safety, environmental protection, and siting, construction, operation,

and maintenance if those standards are more stringent than applicable

Federal standards.

(ii) Such terms and conditions as the authorized officer deems

necessary to:

(A) Protect Federal property and economic interests;

(B) Manage efficiently the lands subject to the use and adjacent

thereto;

(C) Protect other lawful users of the lands adjacent to or occupied

by such use;

(D) Protect lives and property;

(E) Protect the interests of individuals living in the general area

of the use who rely on the fish, wildlife, and other biotic resources of

the area for subsistence purposes;

(F) Require siting to cause the least damage to the environment,

taking into consideration feasibility and other relevant factors; and

(G) Otherwise protect the public interest.

Note to paragraph (a)(1)(ii)(G): The Department is making explicit

its preexisting understanding of Sec. 251.56(a)(1)(ii)(G) of this

subpart in the context of authorizing noncommercial group uses of

National Forest System lands. Section 251.56(a)(1)(ii)(G) provides that

each special use authorization shall contain such terms and conditions

as the authorized officer deems necessary to otherwise protect the

public interest. In the context of noncommercial group uses, the Forest

Service interprets the term ``public interest'' found in

Sec. 251.56(a)(1)(ii)(G) to refer to the three public interests

identified by the Forest Service on August 30, 1995. These public

interests include the protection of resources and improvements on

National Forest System lands, the allocation of space among potential or

existing uses and activities, and public health and safety concerns.

Under this construction, Sec. 251.56(a)(1)(ii)(G) allows the Forest

Service to impose terms and conditions that are not specifically

addressed in Sec. 251.56(a)(1)(ii)(A)-(F) but only those that further

these public interests. The Forest Service shall implement and enforce

Sec. 251.56(a)(1)(ii)(G) in accordance with this interpretation.

(2) Authorizations for use of National Forest System lands may be

conditioned to require State, county, or other Federal agency licenses,

permits, certificates, or other approval documents, such as a Federal

Communication Commission license, a Federal Energy Regulatory Commission

license, a State water right, or a county building permit.

(b) Duration and renewability--(1) Requirements. If appropriate,

each special use authorization will specify its duration and

renewability. The duration shall be no longer than the authorized

officer determines to be necessary to accomplish the purpose of the

authorization and to be reasonable in light of all circumstances

concerning the use, including

(i) Resource management direction contained in land management and

other plans;

(ii) Public benefits provided;

(iii) Cost and life expectancy of the authorized facilities;

(iv) Financial arrangements for the project; and

(v) The life expectancy of associated facilities, licenses, etc.

Except for special use authorizations issued under the National Forest

Ski Area Permit Act of 1986, authorizations exceeding 30 years shall

provide for revision of terms and conditions at specified intervals to

reflect changing times and conditions.

(2) Ski area permits. (i) For authorizations issued under the

National Forest Ski Area Permit Act of 1986, the authorized officer

normally shall issue a ski area authorization for 40 years, if, upon

consideration of information submitted by the applicant, the authorized

officer finds that the ski area development meets the following

standards:

(A) In the case of an existing permit holder, existing on-site

investment is of sufficient magnitude to justify authorization for 40

years;

(B) In the case of an existing permit holder, existing investment of

capital is in ski-related facilities;

(C) Planned investment capital is directly related to development of

ski area facilities and is not for financing regular, ongoing operation

and maintenance costs;

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(D) Ski facilities requiring long-term investment are, or will be,

located predominately on land authorized under a permit;

(E) The number and magnitude of planned facilities, as detailed in a

Master Development Plan, clearly require long-term financing and/or

operation;

(F) The United States is not the owner of the principal facilities

within the authorized ski area.

(ii) A term of less than 40 years shall be authorized for a ski area

when the applicant requests a shorter term or when, in the authorized

officer's discretion:

(A) Analysis of the information submitted by the applicant indicates

that a shorter term is sufficient for financing of the ski area;

(B) The ski area development, whether existing or proposed, does not

meet the standards of paragraph (2)(i)(A) through (F) of this section;

or

(C) A 40-year authorization would be inconsistent with the approved

forest land and resource management plan governing the area (36 CFR part

219).

(c) Preconstruction approvals. Forest Service approval of location,

design and plans (or standards, if appropriate) of all developments

within the authorized area will be required prior to construction.

(d) Liability. Holders shall pay the United States for all injury,

loss, or damage, including fire suppression costs, in accordance with

existing Federal and State laws.

(1) Holders shall also indemnify the United States for any and all

injury, loss, or damage, including fire suppression costs, the United

States may suffer as a result of claims, demands, losses, or judgments

caused by the holder's use or occupancy.

(2) Holders of special use authorizations for high risk use and

occupancy, such as, but not limited to, powerlines and oil and gas

pipelines, shall be held liable for all injury, loss, or damage,

including fire suppression costs, caused by the holder's use or

occupancy, without regard to the holder's negligence, provided that

maximum liability shall be specified in the special use authorization as

determined by a risk assessment, prepared in accordance with established

agency procedures, but shall not exceed $1,000,000 for any one

occurrence. Liability for injury, loss, or damage, including fire

suppression costs, in excess of the specified maximum shall be

determined by the laws governing ordinary negligence of the jurisdiction

in which the damage or injury occurred.

(e) Bonding. An authorized officer may require the holder of a

special use authorization for other than a noncommercial group use to

furnish a bond or other security to secure all or any of the obligations

imposed by the terms of the authorization or by any applicable law,

regulation or order.

(f) Special terms and conditions--(1) Public service enterprises.

Special use permits authorizing the operation of public service

enterprises shall require that the permittee charge reasonable rates and

furnish such services as may be necessary in the public interest, except

where such rates and services are regulated by Federal, State or

municipal agencies having jurisdiction.

(2) Common carriers. Oil and gas pipelines and related facilities

authorized under section 28 of the Mineral Leasing Act of 1920, 41 Stat.

449, as amended (30 U.S.C. 185), shall be constructed, operated and

maintained as common carriers. The owners or operators of pipelines

shall accept, convey, transport, or purchase without discrimination all

oil or gas delivered to the pipeline without regard to whether such oil

or gas was produced on Federal or nonfederal lands. In the case of oil

or gas produced from Federal lands or from the resources on the Federal

lands in the vicinity of the pipeline, the Secretary may, after a full

hearing with due notice thereof to interested parties and a proper

finding of facts, determine the proportionate amounts to be accepted,

conveyed, transported, or purchased. The common carrier provisions of

this section shall not apply to any natural gas pipeline operated (i) by

any person subject to regulation under the Natural Gas Act, 52 Stat.

821, as amended, (15 U.S.C. 717) or (ii) by any public utility subject

to regulation by a State or municipal regulatory agency having

jurisdiction to regulate the rates and charges for the sale of natural

gas to consumers within the State or municipality. Where natural gas not

subject

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to State regulatory or conservation laws governing its purchase by

pipeline companies is offered for sale, each pipeline company shall

purchase, without discrimination, any such natural gas produced in the

vicinity of the pipeline.

(g) Conversion of Ski Area Authorizations. (1) The Forest Service

shall request that all existing permit holders convert existing

authorizations for ski areas to a new authorization issued pursuant to

the National Forest Ski Area Permit Act.

(2) Any current holder of a ski area permit who wishes to convert an

existing permit to one issued pursuant to the National Forest Ski Area

Permit Act must submit a written request for the new authorization to

the authorized officer.

(3) With the consent of the holder, the authorized officer shall

convert the authorization if:

(i) The holder is in compliance with the existing authorization;

(ii) All fees currently due under the existing authorization are

paid in full; and

(iii) Any proposed modifications of terms and conditions of the

existing authorization included in a request for conversion meet the

standards of paragraphs (2)(i) (A) through (F) of this section and the

relevant requirements of this subpart.

(4) A holder retains the right to decline a new authorization

offered pursuant to this paragraph and to continue to operate under the

terms of the existing permit. However, pursuant to the rules at

Sec. 251.61 of this subpart, major modifications of existing permits

shall require conversion to a permit issued under the authority of the

National Forest Ski Area Permit Act, unless the holder provides

compelling justification for retaining the existing permit.

[45 FR 38327, June 6, 1980, as amended at 49 FR 46895, Nov. 29, 1984; 54

FR 22594, May 25, 1989; 60 FR 45294, Aug. 30, 1995; 63 FR 65967, Nov.

30, 1998; 64 FR 48960, Sept. 9, 1999]

Sec. 251.57 Rental fees.

(a) Except as otherwise provided in this part or when specifically

authorized by the Secretary of Agriculture, special use authorizations

shall require the payment in advance of an annual rental fee as

determined by the authorized officer.

(1) The fee shall be based on the fair market value of the rights

and privileges authorized, as determined by appraisal or other sound

business management principles.

(2) Where annual fees of one hundred dollars ($100) or less are

assessed, the authorized officer may require either annual payment or a

payment covering more than one year at a time. If the annual fee is

greater than one hundred dollars ($100), holders who are private

individuals (that is, acting in an individual capacity), as opposed to

those who are commercial, other corporate, or business or government

entities, may, at their option, elect to make either annual payments or

payments covering more than one year.

(3) A base cabin user fee for a recreation residence use shall be 5

percent of the market value of the recreation residence lot, established

by an appraisal conducted in accordance with the Act of October 11, 2000

(16 U.S.C. 6201-13).

(b) All or part of the fee may be waived by the authorized officer,

when equitable and in the public interest, for the use and occupancy of

National Forest System land in the following circumstances:

(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; or

(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; or

(3) The holder provides without charge, or at reduced charge, a

valuable benefit to the public or to the programs of the Secretary; or

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(4) When the rental fee is included in the fees for an authorized

use or occupancy for which the United States is already receiving

compensation; or

(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.

(c) No rental fee will be charged when the holder is the Federal

government.

(d) No fee shall be charged when the authorization is for a

noncommercial group use as defined in Sec. 251.51 of this subpart.

(e) Special use authorizations issued under Sec. 251.53(g) of this

part may require as all or a part of the consideration the

reconditioning and maintenance of the government-owned or controlled

structures, improvements, and land to a satisfactory standard. The total

consideration will be based upon the fair market value of the rights and

privileges authorized.

(f) Special use authorizations involving government-owned or

controlled buildings, structures, or other improvements which require

caretakers' services, or the furnishing of special services such as

water, electric lights, and clean-up, may require the payment of an

additional fee or charge to cover the cost of such services.

(g) Except where specified otherwise by terms of a special use

authorization, rental fees may be initiated or adjusted whenever

necessary: (1) As a result of fee review, reappraisal; or (2) upon a

change in the holder's qualifications under paragraph (b) of this

section; and (3) notice is given prior to initiating or adjusting rental

fees.

(h) Each ski area authorization issued under the authority of the

National Forest Ski Area Permit Act shall include a clause that provides

that the Forest Service may adjust and calculate future rental fees to

reflect Agency revisions to the existing system for determining fees

based on fair market value or to comply with any new fee system for

determining fees based on fair market value that may be adopted after

issuance of the authorization.

(i) Each permit or term permit for a recreation residence use shall

include a clause stating that the Forest Service shall recalculate the

base cabin user fee at least every 10 years and shall use an appraisal

to recalculate that fee as provided in paragraph (a)(3) of this section.

[45 FR 38327, June 6, 1980, as amended at 51 FR 16683, May 6, 1986; 54

FR 22594, May 25, 1989; 60 FR 45294, Aug. 30, 1995; 63 FR 65967, Nov.

30, 1998; 71 FR 16621, Apr. 3, 2006]

Sec. 251.58 Cost recovery.

(a) Assessment of fees to recover agency processing and monitoring

costs. The Forest Service shall assess fees to recover the agency's

processing costs for special use applications and monitoring costs for

special use authorizations. Applicants and holders shall submit

sufficient information for the authorized officer to estimate the number

of hours required to process their applications or monitor their

authorizations. Cost recovery fees are separate from any fees charged

for the use and occupancy of National Forest System lands.

(b) Special use applications and authorizations subject to cost

recovery requirements. Except as exempted in paragraphs (g)(1) through

(g)(4) of this section, the cost recovery requirements of this section

apply in the following situations to the processing of special use

applications and monitoring of special use authorizations issued

pursuant to this subpart:

(1) Applications for use and occupancy that require a new special

use authorization. Fees for processing an application for a new special

use authorization shall apply to any application formally accepted by

the agency on or after March 23, 2006 and to any application formally

accepted by the agency before March 23, 2006, which the agency has not

commenced processing. Proposals accepted as applications which the

agency has commenced processing prior to March 23, 2006 shall not be

subject to processing fees. The cost recovery provisions of this section

shall not apply to or supersede written agreements providing for

recovery of processing costs executed by the agency and applicants prior

to March 23, 2006.

(2) Changes to existing authorizations. Processing fees apply to

proposals that

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require an application to amend or formally approve specific activities

or facilities as identified in an existing authorization, operating

plan, or master development plan. Processing fees also apply to agency

actions to amend a special use authorization.

(3) Agency actions to issue a special use authorization and

applications for issuance of a new special use authorization due to

termination of an existing authorization, including termination caused

by expiration, a change in ownership or control of the authorized

facilities, or a change in ownership or control of the holder of the

authorization. Upon termination of an existing authorization, a holder

shall be subject to a processing fee for issuance of a new

authorization, even if the holder's existing authorization does not

require submission of an application for a new authorization.

(4) Monitoring of authorizations issued or amended on or after March

23, 2006.

(c) Processing fee requirements. A processing fee is required for

each application for or agency action to issue a special use

authorization as identified in paragraphs (b)(1) through (b)(3) of this

section. Processing fees do not include costs incurred by the applicant

in providing information, data, and documentation necessary for the

authorized officer to make a decision on the proposed use or occupancy

pursuant to the provisions at Sec. 251.54.

(1) Basis for processing fees. The processing fee categories 1

through 6 set out in paragraphs (c)(2)(i) through (c)(2)(vi) of this

section are based upon the costs that the Forest Service incurs in

reviewing the application, conducting environmental analyses of the

effects of the proposed use, reviewing any applicant-generated

environmental documents and studies, conducting site visits, evaluating

an applicant's technical and financial qualifications, making a decision

on whether to issue the authorization, and preparing documentation of

analyses, decisions, and authorizations for each application. The

processing fee for an application shall be based only on costs necessary

for processing that application. ``Necessary for'' means that but for

the application, the costs would not have been incurred and that the

costs cover only those activities without which the application cannot

be processed. The processing fee shall not include costs for studies for

programmatic planning or analysis or other agency management objectives,

unless they are necessary for the application being processed. For

example, the processing fee shall not include costs for capacity

studies, use allocation decisions, corridor or communications site

planning, and biological studies that address species diversity, unless

they are necessary for the application. Proportional costs for analyses,

such as capacity studies, that are necessary for an application may be

included in the processing fee for that application. The costs incurred

for processing an application, and thus the processing fee, depend on

the complexity of the project; the amount of information that is

necessary for the authorized officer's decision in response to the

proposed use and occupancy; and the degree to which the applicant can

provide this information to the agency. Processing work conducted by the

applicant or a third party contracted by the applicant minimizes the

costs the Forest Service will incur to process the application, and thus

reduces the processing fee. The total processing time is the total time

estimated for all Forest Service personnel involved in processing an

application and is estimated case by case to determine the fee category.

(i) Processing fee determinations. The applicable fee rate for

processing applications in minor categories 1 through 4 (paragraphs

(c)(2)(i) through (c)(2)(iv) of this section) shall be assessed from a

schedule. The processing fee for applications in category 5, which may

be either minor or major, shall be established in the master agreement

(paragraph (c)(2)(v) of this section). For major category 5 (paragraph

(c)(2)(v) of this section) and category 6 (paragraph (c)(2)(vi) of this

section) cases, the authorized officer shall estimate the agency's full

actual processing costs. The estimated processing costs for category 5

and category 6 cases shall be reconciled as provided in paragraphs

(c)(5)(ii) and (iii) and (c)(6)(ii) and (iii) of this section.

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(ii) Reduction in processing fees for certain category 6

applications. For category 6 applications submitted under authorities

other than the Mineral Leasing Act, the applicant:

(A) May request a reduction of the processing fee based upon the

applicant's written analysis of actual costs, the monetary value of the

rights and privileges sought, that portion of the costs incurred for the

benefit of the general public interest, the public service provided, the

efficiency of the agency processing involved, and other factors relevant

to determining the reasonableness of the costs. The agency will

determine whether the estimate of full actual costs should be reduced

based upon this analysis and will notify the applicant in writing of

this determination; or

(B) May agree in writing to waive payment of reasonable costs and

pay the actual costs incurred in processing the application.

(2) Processing fee categories. No fee is charged for applications

taking 1 hour or less for the Forest Service to process. Applications

requiring more than 1 hour for the agency to process are covered by the

fee categories 1 through 6 set out in the following paragraphs i through

vi.

(i) Category 1: Minimal Impact: More than 1 hour and up to and

including 8 hours. The total estimated time in this minor category is

more than 1 hour and up to and including 8 hours for Forest Service

personnel to process an application.

(ii) Category 2: More than 8 and up to and including 24 hours. The

total estimated time in this minor category is more than 8 and up to and

including 24 hours for Forest Service personnel to process an

application.

(iii) Category 3: More than 24 and up to and including 36 hours. The

total estimated time in this minor category is more than 24 and up to

and including 36 hours for Forest Service personnel to process an

application.

(iv) Category 4: More than 36 and up to and including 50 hours. The

total estimated time in this minor category is more than 36 and up to

and including 50 hours for Forest Service personnel to process an

application.

(v) Category 5: Master agreements. The Forest Service and the

applicant may enter into master agreements for the agency to recover

processing costs associated with a particular application, a group of

applications, or similar applications for a specified geographic area.

This category is minor if 50 hours or less are needed for Forest Service

personnel to process an application and major if more than 50 hours are

needed. In signing a master agreement for a major category application

submitted under authorities other than the Mineral Leasing Act, an

applicant waives the right to request a reduction of the processing fee

based upon the reasonableness factors enumerated in paragraph

(c)(1)(ii)(A) of this section. A master agreement shall at a minimum

include:

(A) The fee category or estimated processing costs;

(B) A description of the method for periodic billing, payment, and

auditing;

(C) A description of the geographic area covered by the agreement;

(D) A work plan and provisions for updating the work plan;

(E) Provisions for reconciling differences between estimated and

final processing costs; and

(F) Provisions for terminating the agreement.

(vi) Category 6: More than 50 hours. In this major category more

than 50 hours are needed for Forest Service personnel to process an

application. The authorized officer shall determine the issues to be

addressed and shall develop preliminary work and financial plans for

estimating recoverable costs.

(3) Multiple applications other than those covered by master

agreements (category 5). (i) Unsolicited applications where there is no

competitive interest. Processing costs that are incurred in processing

more than one of these applications (such as the cost of environmental

analysis or printing an environmental impact statement that relates to

all of the applications) must be paid in equal shares or on a prorated

basis, as deemed appropriate by the authorized officer, by each

applicant, including applicants for recreation special uses that are

otherwise exempt under paragraph (g)(3) of this section when

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the Forest Service requires more than 50 hours in the aggregate to

process the applications submitted in response to the prospectus.

(ii) Unsolicited proposals where competitive interest exists. When

there is one or more unsolicited proposals and the authorized officer

determines that competitive interest exists, the agency shall issue a

prospectus. All proposals accepted pursuant to that solicitation shall

be processed as applications. The applicants are responsible for the

costs of environmental analyses that are necessary for their

applications and that are conducted prior to issuance of the prospectus.

Processing fees for these cases shall be determined pursuant to the

procedures for establishing a category 6 processing fee and shall

include costs such as those incurred in printing and mailing the

prospectus; having parties other than the Forest Service review and

evaluate applications; establishing a case file; recording data;

conducting financial reviews; and, for selected applicants, any

additional environmental analysis required in connection with their

applications. Processing fees shall be paid in equal shares or on a

prorated basis, as deemed appropriate by the authorized officer, by all

parties who submitted proposals that were processed as applications

pursuant to the solicitation, including applicants for recreation

special uses that are otherwise exempt under paragraph (g)(3) of this

section when the Forest Service requires more than 50 hours in the

aggregate to process the applications submitted in response to the

prospectus.

(iii) Solicited applications. When the Forest Service solicits

applications through the issuance of a prospectus on its own initiative,

rather than in response to an unsolicited proposal or proposals, the

agency is responsible for the cost of environmental analyses conducted

prior to issuance of the prospectus. All proposals accepted pursuant to

that solicitation shall be processed as applications. Processing fees

for these cases shall be determined pursuant to the procedures for

establishing a category 6 processing fee and shall include costs such as

those incurred in printing and mailing the prospectus; having parties

other than the Forest Service review and evaluate applications;

establishing a case file; recording data; conducting financial reviews;

and, for selected applicants, any additional environmental analysis

required in connection with their applications. Processing fees shall be

paid in equal shares or on a prorated basis, as deemed appropriate by

the authorized officer, by all parties who submitted proposals that were

processed as applications pursuant to the solicitation, including

applicants for recreation special uses that are otherwise exempt under

paragraph (g)(3) of this section when the Forest Service requires more

than 50 hours in the aggregate to process the applications submitted in

response to the prospectus.

(4) Billing and revision of processing fees. (i) Billing. When the

Forest Service accepts a special use application, the authorized officer

shall provide written notice to the applicant that the application has

been formally accepted. The authorized officer shall not bill the

applicant a processing fee until the agency is prepared to process the

application.

(ii) Revision of processing fees. Minor category processing fees

shall not be reclassified into a higher minor category once the

processing fee category has been determined. However, if the authorized

officer discovers previously undisclosed information that necessitates

changing a minor category processing fee to a major category processing

fee, the authorized officer shall notify the applicant or holder of the

conditions prompting a change in the processing fee category in writing

before continuing with processing the application. The applicant or

holder may accept the revised processing fee category and pay the

difference between the previous and revised processing categories;

withdraw the application; revise the project to lower the processing

costs; or request review of the disputed fee as provided in paragraphs

(e)(1) through (e)(4) of this section.

(5) Payment of processing fees. (i) Payment of a processing fee

shall be due within 30 days of issuance of a bill for the fee, pursuant

to paragraph (c)(4) of this section. The processing fee must be paid

before the Forest Service can

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initiate or, in the case of a revised fee, continue with processing an

application. Payment of the processing fee by the applicant does not

obligate the Forest Service to authorize the applicant's proposed use

and occupancy.

(ii) For category 5 cases, when the estimated processing costs are

lower than the final processing costs for applications covered by a

master agreement, the applicant shall pay the difference between the

estimated and final processing costs.

(iii) For category 6 cases, when the estimated processing fee is

lower than the full actual costs of processing an application submitted

under the Mineral Leasing Act, or lower than the full reasonable costs

(when the applicant has not waived payment of reasonable costs) of

processing an application submitted under other authorities, the

applicant shall pay the difference between the estimated and full actual

or reasonable processing costs.

(6) Refunds of processing fees. (i) Processing fees in minor

categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the processing fee exceeds

the agency's final processing costs for the applications covered by a

master agreement, the authorized officer either shall refund the excess

payment to the applicant or, at the applicant's request, shall credit it

towards monitoring fees due.

(iii) For category 6 cases, if payment of the processing fee exceeds

the full actual costs of processing an application submitted under the

Mineral Leasing Act, or the full reasonable costs (when the applicant

has not waived payment of reasonable costs) of processing an application

submitted under other authorities, the authorized officer either shall

refund the excess payment to the applicant or, at the applicant's

request, shall credit it towards monitoring fees due.

(iv) For major category 5 and category 6 applications, an applicant

whose application is denied or withdrawn in writing is responsible for

costs incurred by the Forest Service in processing the application up to

and including the date the agency denies the application or receives

written notice of the applicant's withdrawal. When an applicant

withdraws a major category 5 or category 6 application, the applicant

also is responsible for any costs subsequently incurred by the Forest

Service in terminating consideration of the application.

(7) Customer service standards. The Forest Service shall endeavor to

make a decision on an application that falls into minor processing

category 1, 2, 3, or 4, and that is subject to a categorical exclusion

pursuant to the National Environmental Policy Act, within 60 calendar

days from the date of receipt of the processing fee. If the application

cannot be processed within the 60-day period, then prior to the 30th

calendar day of the 60-day period, the authorized officer shall notify

the applicant in writing of the reason why the application cannot be

processed within the 60-day period and shall provide the applicant with

a projected date when the agency plans to complete processing the

application. For all other applications, including all applications that

require an environmental assessment or an environmental impact

statement, the authorized officer shall, within 60 calendar days of

acceptance of the application, notify the applicant in writing of the

anticipated steps that will be needed to process the application. These

customer service standards do not apply to applications that are subject

to a waiver of or exempt from cost recovery fees under Secs. 251.58(f)

or (g).

(d) Monitoring fee requirements. The monitoring fee for an

authorization shall be assessed independently of any fee charged for

processing the application for that authorization pursuant to paragraph

(c) of this section. Payment of the monitoring fee is due upon issuance

of the authorization.

(1) Basis for monitoring fees. Monitoring is defined at Sec. 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

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agency's estimated costs to ensure compliance with the terms and

conditions of 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

scheduled inspections to determine compliance generally with the terms

and conditions of an authorization.

(i) Monitoring fee determinations. The applicable fee rate for

monitoring compliance with authorizations in minor categories 1 through

4 (paragraphs (d)(2)(i) through (d)(2)(iv) of this section) shall be

assessed from a schedule. The monitoring fee for authorizations in

category 5, which may be minor or major, shall be established in the

master agreement (paragraph (d)(2)(v) of this section). For major

category 5 (paragraph (d)(2)(v) of this section) and category 6

(paragraph (d)(2)(vi) of this section) cases, the authorized officer

shall estimate the agency's full actual monitoring costs. The estimated

monitoring costs for category 5 and category 6 cases shall be reconciled

as provided in paragraphs (d)(3)(ii) and (iii) and (d)(4)(ii) and (iii)

of this section.

(ii) Reductions in monitoring fees for certain category 6

authorizations. For category 6 authorizations issued under authorities

other than the Mineral Leasing Act, the holder:

(A) May request a reduction of the monitoring fee based upon the

holder's written analysis of actual costs, the monetary value of the

rights or privileges granted, that portion of the costs incurred for the

benefit of the general public interest, the public service provided, the

efficiency of the agency monitoring involved, and other factors relevant

to determining the reasonableness of the costs. The agency will

determine whether the estimate of full actual costs should be reduced

based upon this analysis and will notify the holder in writing of this

determination; or

(B) May agree in writing to waive payment of reasonable costs and

pay the actual costs incurred in monitoring the authorization.

(2) Monitoring fee categories. No monitoring fee is charged for

authorizations requiring 1 hour or less for the Forest Service to

monitor. Authorizations requiring more than1 hour for the agency to

monitor are covered by fee categories 1 through 6 set out in the

following paragraphs (d)(2)(i) through (vi) of this section.

(i) Category 1: Minimal Impact: More than 1 hour and up to and

including 8 hours. This minor category requires more than1 hour and up

to and including 8 hours for Forest Service personnel to monitor

compliance with a special use authorization during construction or

reconstruction of temporary or permanent facilities and rehabilitation

of the construction or reconstruction site.

(ii) Category 2: More than 8 and up to and including 24 hours. This

minor category requires more than 8 and up to and including 24 hours for

Forest Service personnel to monitor compliance with a special use

authorization during construction or reconstruction of temporary or

permanent facilities and rehabilitation of the construction or

reconstruction site.

(iii) Category 3: More than 24 and up to and including 36 hours.

This minor category requires more than 24 and up to and including 36

hours for Forest Service personnel to monitor compliance with a special

use authorization during construction or reconstruction of temporary or

permanent facilities and rehabilitation of the construction or

reconstruction site.

(iv) Category 4: More than 36 and up to and including 50 hours. This

minor category requires more than 36 and up to and including 50 hours

for Forest Service personnel to monitor compliance with a special use

authorization during construction or reconstruction of temporary or

permanent facilities and rehabilitation of the construction or

reconstruction site.

(v) Category 5: Master agreements. The Forest Service and the holder

of an authorization may enter into a master agreement for the agency to

recover monitoring costs associated with a particular authorization or

by a group of

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authorizations for a specified geographic area. This category is minor

if 50 hours or less are needed for Forest Service personnel to monitor

compliance with an authorization and major if more than 50 hours are

needed. In signing a master agreement for a major category authorization

issued under authorities other than the Mineral Leasing Act, a holder

waives the right to request a reduction of the monitoring fee based upon

the reasonableness factors enumerated in paragraph (d)(1)(ii)(A) of this

section. A master agreement shall at a minimum include:

(A) The fee category or estimated monitoring costs;

(B) A description of the method for periodic billing, payment, and

auditing of monitoring fees;

(C) A description of the geographic area covered by the agreement;

(D) A monitoring work plan and provisions for updating the work

plan;

(E) Provisions for reconciling differences between estimated and

final monitoring costs; and

(F) Provisions for terminating the agreement.

(vi) Category 6: More than 50 hours. This major category requires

more than 50 hours for Forest Service personnel to monitor compliance

with the terms and conditions of the authorization during all phases of

its term, including, but not limited, to monitoring compliance with the

authorization during the construction or reconstruction of temporary or

permanent facilities and rehabilitation of the construction or

reconstruction site.

(3) Billing and payment of monitoring fees. (i) The authorized

officer shall estimate the monitoring costs and shall notify the holder

of the required fee. Monitoring fees in minor categories 1 through 4

must be paid in full before or at the same time the authorization is

issued. For authorizations in major category 5 and category 6, the

estimated monitoring fees must be paid in full before or at the same

time the authorization is issued, unless the authorized officer and the

applicant or holder agree in writing to periodic payments.

(ii) For category 5 cases, when the estimated monitoring costs are

lower than the final monitoring costs for authorizations covered by a

master agreement, the holder shall pay the difference between the

estimated and final monitoring costs.

(iii) For category 6 cases, when the estimated monitoring fee is

lower than the full actual costs of monitoring an authorization issued

under the Mineral Leasing Act, or lower than the full reasonable costs

(when the holder has not waived payment of reasonable costs) of

monitoring an authorization issued under other authorities, the holder

shall pay the difference in the next periodic payment or the authorized

officer shall bill the holder for the difference between the estimated

and full actual or reasonable monitoring costs. Payment shall be due

within 30 days of receipt of the bill.

(4) Refunds of monitoring fees. (i) Monitoring fees in minor

categories 1 through 4 are nonrefundable and shall not be reconciled.

(ii) For category 5 cases, if payment of the monitoring fee exceeds

the agency's final monitoring costs for the authorizations covered by a

master agreement, the authorized officer shall either adjust the next

periodic payment to reflect the overpayment or refund the excess payment

to the holder.

(iii) For category 6 cases, if payment of the monitoring fee exceeds

the full actual costs of monitoring an authorization issued under the

Mineral Leasing Act, or the full reasonable costs (when the holder has

not waived payment of reasonable costs) of monitoring an authorization

issued under other authorities, the authorized officer shall either

adjust the next periodic payment to reflect the overpayment or refund

the excess payment to the holder.

(e) Applicant and holder disputes concerning processing or

monitoring fee assessments; requests for changes in fee categories or

estimated costs. (1) If an applicant or holder disagrees with the

processing or monitoring fee category assigned by the authorized officer

for a minor category or, in the case of a major processing or monitoring

category, with the estimated dollar amount of the processing or

monitoring costs, the applicant or holder may submit a written request

before the disputed fee is due for substitution

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of an alternative fee category or alternative estimated costs to the

immediate supervisor of the authorized officer who determined the fee

category or estimated costs. The applicant or holder must provide

documentation that supports the alternative fee category or estimated

costs.

(2) In the case of a disputed processing fee:

(i) If the applicant pays the full disputed processing fee, the

authorized officer shall continue to process the application during the

supervisory officer's review of the disputed fee, unless the applicant

requests that the processing cease.

(ii) If the applicant fails to pay the full disputed processing fee,

the authorized officer shall suspend further processing of the

application pending the supervisory officer's determination of an

appropriate processing fee and the applicant's payment of that fee.

(3) In the case of a disputed monitoring fee:

(i) If the applicant or holder pays the full disputed monitoring

fee, the authorized officer shall issue the authorization or allow the

use and occupancy to continue during the supervisory officer's review of

the disputed fee, unless the applicant or holder elects not to exercise

the authorized use and occupancy of National Forest System lands during

the review period.

(ii) If the applicant or holder fails to pay the full disputed

monitoring fee, the authorized officer shall not issue the applicant a

new authorization or shall suspend the holder's existing authorization

in whole or in part pending the supervisory officer's determination of

an appropriate monitoring fee and the applicant's or holder's payment of

that fee.

(4) The authorized officer's immediate supervisor shall render a

decision on a disputed processing or monitoring fee within 30 calendar

days of receipt of the written request from the applicant or holder. The

supervisory officer's decision is the final level of administrative

review. The dispute shall be decided in favor of the applicant or holder

if the supervisory officer does not respond to the written request

within 30 days of receipt.

(f) Waivers of processing and monitoring fees. (1) All or part of a

processing or monitoring fee may be waived, at the sole discretion of

the authorized officer, when one or more of the following criteria are

met:

(i) The applicant or holder is a local, State, or Federal

governmental entity that does not or would not charge processing or

monitoring fees for comparable services the applicant or holder provides

or would provide to the Forest Service;

(ii) A major portion of the processing costs results from issues not

related to the project being proposed;

(iii) The application is for a project intended to prevent or

mitigate damage to real property, or to mitigate hazards or dangers to

public health and safety resulting from an act of God, an act of war, or

negligence of the United States;

(iv) The application is for a new authorization to relocate

facilities or activities to comply with public health and safety or

environmental laws and regulations that were not in effect at the time

the authorization was issued;

(v) The application is for a new authorization to relocate

facilities or activities because the land is needed by a Federal agency

or for a Federally funded project for an alternative public purpose; or

(vi) The proposed facility, project, or use will provide, without

user or customer charges, a valuable benefit to the general public or to

the programs of the Secretary of Agriculture.

(2) An applicant's or holder's request for a full or partial waiver

of a processing or monitoring fee must be in writing and must include an

analysis that demonstrates how one or more of the criteria in paragraphs

(f)(1)(i) through (f)(1)(vi) of this section apply.

(g) Exemptions from processing or monitoring fees. No processing or

monitoring fees shall be charged when the application or authorization

is for a:

(1) Noncommercial group use as defined in Sec. 251.51, or when the

application or authorization is to exempt a noncommercial activity from

a closure order, except for an application or authorization for access

to non-Federal lands within the boundaries of the National Forest System

granted pursuant

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to section 1323(a) of the Alaska National Interest Lands Conservation

Act (16 U.S.C. 3210(a)).

(2) Water systems authorized by section 501(c) of the Federal Land

Policy and Management Act of 1976 (43 U.S.C. 1761(c)).

(3) A use or activity conducted by a Federal agency that is not

authorized under Title V of the Federal Land Policy and Management Act

of 1976 (43 U.S.C. 1761-1771); the Mineral Leasing Act of 1920 (30

U.S.C. 185); the National Historic Preservation Act of 1966 (16 U.S.C.

470h-2); or the Act of May 26, 2000 (16 U.S.C. 460l-6d).

(4) Recreation special use as defined in the Forest Service's

directive system and requires 50 hours or less for Forest Service

personnel to process, except for situations involving multiple

recreation special use applications provided for in paragraph (c)(3) of

this section. No monitoring fees shall be charged for a recreation

special use authorization that requires 50 hours or less for Forest

Service personnel to monitor.

(h) Appeal of decisions. (1) A decision by the authorized officer to

assess a processing or monitoring fee or to determine the fee category

or estimated costs is not subject to administrative appeal.

(2) A decision by an authorized officer's immediate supervisor in

response to a request for substitution of an alternative fee category or

alternative estimated costs likewise is not subject to administrative

appeal.

(i) Processing and monitoring fee schedules. (1) The Forest Service

shall maintain schedules for processing and monitoring fees in its

directive system (36 CFR 200.4). 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.

(2) Within 5 years of the effective date of this rule, March 23,

2006, the Forest Service shall review these rates:

(i) To determine whether they are commensurate with the actual costs

incurred by the agency in conducting the processing and monitoring

activities covered by this rule and

(ii) To assess consistency with processing and monitoring fee

schedules established by the United States Department of the Interior,

Bureau of Land Management.

[71 FR 8913, Feb. 21, 2006]

Sec. 251.59 Transfer of authorized improvements.

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. Except for easements issued under

authorities other than Sec. 251.53(e) and leases and easements under

Sec. 251.53(l) of this subpart, 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 and conditions of the

authorization and any new terms and conditions warranted by existing or

prospective circumstances.

[63 FR 65967, Nov. 30, 1998]

Sec. 251.60 Termination, revocation, and suspension.

(a) Grounds for termination, revocation, and suspension--(1)

Noncommercial group uses--(i) Revocation or suspension. An authorized

officer may revoke or suspend a special use authorization for a

noncommercial group use only under one of the following circumstances:

(A) Under the criteria for which an application for a special use

authorization may be denied under Sec. 251.54(g)(3)(ii);

(B) For noncompliance with applicable statutes or regulations or the

terms and conditions of the authorization;

(C) For failure of the holder to exercise the rights or privileges

granted; or

(D) With the consent of the holder.

(ii) Judicial review. Revocation or suspension of a special use

authorization under this paragraph constitutes final agency action, is

not subject to administrative appeal, and is immediately subject to

judicial review.

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(iii) Termination. A special use authorization for a noncommercial

group use terminates when it expires by its own terms. Termination of a

special use authorization under this paragraph does not involve agency

action and is not subject to administrative or judicial review.

(2) All other special uses--(i) Revocation or suspension. An

authorized officer may revoke or suspend a special use authorization for

all other special uses, except a permit or an easement issued pursuant

to Sec. 251.53(e) or an easement issued under Sec. 251.53(l) of this

subpart:

(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.

(ii) Administrative review. Except for revocation or suspension of

an easement issued pursuant to Sec. 251.53(e) or Sec. 251.53(l) of this

subpart, revocation or suspension of a special use authorization under

this paragraph is subject to appeal pursuant to 36 CFR part 214.

(iii) Termination. For all special uses except noncommercial group

uses, a special use authorization terminates when, by its terms, a fixed

or agreed-upon condition, event, or time occurs. Termination of a

special use authorization under this paragraph does not involve agency

action and is not subject to administrative or judicial review.

(b) For purposes of this section, the authorized officer is that

person who issues the authorization or that officer's successor.

(c) A right-of-way authorization granted to another Federal agency

will be limited, suspended, revoked, or terminated only with that

agency's concurrence.

(d) A right-of-way authorization serving another Federal agency will

be limited, suspended, revoked, or terminated only after advance notice

to, and consultation with, that agency.

(e) Except when immediate suspension pursuant to paragraph (f) of

this section is indicated, the authorized officer shall give the holder

written notice of the grounds for suspension or revocation under

paragraph (a) of this section and reasonable time to cure any

noncompliance, prior to suspension or revocation pursuant to paragraph

(a) of this section.

(f) Immediate suspension of a special use authorization, in whole or

in part, may be required when the authorized officer deems it necessary

to protect the public health or safety or the environment. In any such

case, within 48 hours of a request of the holder, the superior of the

authorized officer shall arrange for an on-site review of the adverse

conditions with the holder. Following this review, the superior officer

shall take prompt action to affirm, modify, or cancel the suspension.

(g) The authorized officer may suspend or revoke permits or

easements issued under Sec. 251.53(e) or easements issued under

Sec. 251.53(l) of this subpart under the Rules of Practice Governing

Formal Adjudicatory Administrative Proceedings instituted by the

Secretary under 7 CFR 1.130 through 1.151.

(h)(1) The Chief may revoke any easement granted under the

provisions of the Act of October 13, 1964, 78 Stat. 1089, 16 U.S.C. 534:

(i) By consent of the owner of the easement;

(ii) By condemnation; or

(iii) Upon abandonment after a 5-year period of nonuse by the owner

of the easement.

(2) Before any such easement is revoked upon abandonment, the owner

of the easement shall be given notice and, upon the owner's request made

within 60 days after receipt of the notice, shall be given an appeal in

accordance with the provisions of 36 CFR part 214.

(i) Upon revocation or termination of a special use authorization,

the holder must remove within a reasonable time the structures and

improvements and shall restore the site to a condition satisfactory to

the authorized officer, unless the requirement to remove structures or

improvements is otherwise waived in writing or in the authorization. If

the holder fails to remove the structures or improvements within a

reasonable period, as determined by the authorized officer, they shall

become the property of the United States, but holder shall remain

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liable for the costs of removal and site restoration.

[45 FR 38327, June 6, 1980; 45 FR 43167, June 26, 1980, as amended at 48

FR 28639, June 23, 1983; 60 FR 45295, Aug. 30, 1995; 63 FR 65968, Nov.

30, 1998; 74 FR 68381, Dec. 24, 2009; 75 FR 14995, Mar. 26, 2010; 75 FR

24802, May 6, 2010; 78 FR 33725, June 5, 2013]

Sec. 251.61 Applications for new, changed, or additional uses or area.

(a) Holders shall file a new or amended application for

authorization of any new, changed, or additional uses or area, including

any changes that involve any activity that has an impact on the

environment, other uses, or the public. In approving or denying new,

changed, or additional uses or area, the authorized officer shall

consider, at a minimum, the findings or recommendations of other

affected agencies and whether to revise the terms and conditions of the

existing authorization or issue a new authorization. Once approved, any

new, changed, or additional uses or area must be reflected in the

existing or a new authorization.

(b) A holder may be required to furnish as-built plans, maps, or

surveys upon completion of construction.

[78 FR 33725, June 5, 2013]

Sec. 251.62 Acceptance.

Except for an easement, a special use authorization shall become

effective when signed by both the applicant and the authorized officer.

The authorization must be signed by the applicant and returned to the

authorized officer within 60 days of its receipt by the applicant,

unless extended by the authorized officer. Refusal of an applicant to

sign and accept a special use authorization within the time allowed, and

before its final approval and signature by an authorized officer, shall

terminate an application and constitute denial of the requested use and

occupancy.

[53 FR 16550, May 10, 1988]

Sec. 251.63 Reciprocity.

If it is determined that a right-of-way shall be needed by the

United States across nonfederal lands directly or indirectly owned or

controlled by an applicant for a right-of-way across Federal lands, the

authorized officer may condition a special use authorization to require

the holder to grant the United States the needed right-of-way.

Sec. 251.64 Renewals.

(a) When a special use authorization provides for renewal, the

authorized officer shall renew it where such renewal is authorized by

law, if the project or facility is still being used for the purpose(s)

previously authorized and is being operated and maintained in accordance

with all the provisions of the authorization. In making such renewal,

the authorized officer may modify the terms, conditions, and special

stipulations to reflect any new requirements imposed by current Federal

and State land use plans, laws, regulations or other management

decisions. Special uses may be reauthorized upon expiration so long as

such use remains consistent with the decision that approved the expiring

special use or group of uses. If significant new information or

circumstances have developed, appropriate environmental analysis must

accompany the decision to reauthorize the special use.

(b) When a special use authorization does not provide for renewal,

it is discretionary with the authorized officer, upon request from the

holder and prior to its expiration, whether or not the authorization

shall be renewed. A renewal pursuant to this section shall comply with

the same provisions contained in paragraph (a) of this section.

[45 FR 38327, June 6, 1980, as amended at 63 FR 65968, Nov. 30, 1998]

Sec. 251.65 Information collection requirements.

The rules of this subpart governing special use proposals and

applications (Sec. 251.54), terms and conditions (Sec. 251.56), rental

fees (Sec. 251.57), and modifications (Sec. 251.61) specify the

information that proponents or applicants for special use authorizations

or holders of existing authorizations must provide to allow an

authorized officer to act on a request or administer the authorization.

Therefore, these rules contain information collection requirements as

defined in 5 CFR part 1320. These information

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collection requirements are assigned OMB Control Number 0596-0082.

[74 FR 68382, Dec. 24, 2009]

Subpart C [Reserved]

Subpart D\_Access to Non-Federal Lands

Source: 56 FR 27417, June 14, 1991, unless otherwise noted.

Sec. 251.110 Scope and application.

(a) The regulations in this subpart set forth the procedures by

which landowners may apply for access across National Forest System

lands and the terms and conditions that govern any special use or other

authorization that is issued by the Forest Service to permit such

access.

(b) These regulations apply to access across all National Forest

System lands, including Congressionally designated areas, and supplement

the regulations in subpart B of this part, and in parts 212 and 293 of

this chapter. The regulations of this subpart do not affect rights-of-

way established under authority of R.S. 2477 (43 U.S.C. 932); rights-of-

way transferred to States under 23 U.S.C. 317; access rights outstanding

in third parties at the time the United States acquired the land; or the

rights reserved in conveyances to the United States and in other

easements granted by an authorized officer of the Forest Service. Except

for the aforementioned rights-of-way, currently valid special-use

authorizations will become subject to the rules of this subpart upon

expiration, termination, reversion, modification, or reauthorization.

(c) Subject to the terms and conditions contained in this part and

in parts 212 and 293 of this chapter, as appropriate, landowners shall

be authorized such access as the authorized officer deems to be adequate

to secure them the reasonable use and enjoyment of their land.

(d) ln those cases where a landowner's ingress or egress across

National Forest System lands would require surface disturbance or would

require the use of Government-owned roads, trails, or transportation

facilities not authorized for general public use, the landowner must

apply for and receive a special-use or road-use authorization

documenting the occupancy and use authorized on National Forest System

lands or facilities and identifying the landowner's rights, privileges,

responsibilities, and obligations.

(e) Where ingress and egress will require the use of existing

Government-owned roads, trails, or other transportation facilities which

are open and available for general public use, use by the landowner

shall be in accordance with the provisions of part 212 of this chapter.

(f) The rules of this subpart do not apply to access within

conservation system units in Alaska which are subject to title XI of the

Alaska National Interest Lands Conservation Act (16 U.S.C. 3101), except

for access to inholdings authorized by section 1110(b) of that Act.

(g) Where there is existing access or a right of access to a

property over non-National Forest land or over public roads that is

adequate or that can be made adequate, there is no obligation to grant

additional access through National Forest System lands.

Sec. 251.111 Definitions.

In addition to the definitions in subpart B of this part, the

following terms apply to this subpart:

Access means the ability of landowners to have ingress and egress to

their lands. It does not include rights-of-way for power lines or other

utilities.

Adequate access means a route and method of access to non-Federal

land that provides for reasonable use and enjoyment of the non-Federal

land consistent with similarly situated non-Federal land and that

minimizes damage or disturbance to National Forest System lands and

resources.

Congressionally designated area means lands which are within the

boundaries of a component of the National Wilderness Preservation

System, National Wild and Scenic River System, National Trails System,

and also National Monuments, Recreation, and Scenic

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Areas within the National Forest System, and similar areas designated by

Federal statute.

Landowner(s) means the owner(s) of non-Federal land or interests in

land within the boundaries of the National Forest System.

Sec. 251.112 Application requirements.

(a) A landowner shall apply for access across National Forest System

lands in accordance with the application requirements of Sec. 251.54 of

this part. Such application shall specifically include a statement of

the intended mode of access to, and uses of, the non-Federal land for

which the special-use authorization is requested.

(b) The application shall disclose the historic access to the

landowner's property and any rights of access which may exist over non-

federally owned land and shall provide reasons why these means of access

do not provide adequate access to the landowners property.

(c) The information required to apply for access across National

Forest lands under this subpart is approved for use under subpart B of

this part and assigned OMB control number 0596-0082.

Sec. 251.113 Instrument of authorization.

To grant authority to construct and/or use facilities and structures

on National Forest System lands for access to non-Federal lands, the

authorized officer shall issue a special-use authorization in

conformance with the provisions of subpart B of this part or a road-use

permit. In cases where Road Rights-of-way Construction And Use

Agreements are in effect, the authorized officer may grant an easement

in accordance with the provisions of part 212 of this chapter.

Sec. 251.114 Criteria, terms and conditions.

(a) In issuing a special-use authorization for access to non-Federal

lands, the authorized officer shall authorize only those access

facilities or modes of access that are needed for the reasonable use and

enjoyment of the land and that minimize the impacts on the Federal

resources. The authorizing officer shall determine what constitutes

reasonable use and enjoyment of the lands based on contemporaneous uses

made of similarly situated lands in the area and any other relevant

criteria.

(b) Landowners must pay an appropriate fee for the authorized use of

National Forest System lands in accordance with Sec. 251.57 of this

part.

(c) A landowner may be required to provide a reciprocal grant of

access to the United States across the landowner's property where such

reciprocal right is deemed by the authorized officer to be necessary for

the management of adjacent Federal land. In such case, the landowner

shall receive the fair market value of the rights-of-way granted to the

United States. If the value of the rights-of-way obtained by the

Government exceeds the value of the rights-of-way granted, the

difference in value will be paid to the landowner. If the value of the

rights-of-way across Government land exceeds the value of the rights-of-

way across the private land, an appropriate adjustment will be made in

the fee charged for the special-use authorization as provided in

Sec. 251.57(b)(5) of this part.

(d) For access across National Forest System lands that will have

significant non-Forest user traffic, a landowner may be required to

construct new roads or reconstruct existing roads to bring the roads to

a safe and adequate standard. A landowner also may be required to

provide for the operation and maintenance of the road. This may be done

by arranging for such road to be made part of the local public road

system, or formation of a local improvement district to assume the

responsibilities for the operation and maintenance of the road as either

a private road or as a public road, as determined to be appropriate by

the authorizing officer.

(e) When access is tributary to or dependent on forest development

roads, and traffic over these roads arising from the use of landowner's

lands exceeds their safe capacity or will cause damage to the roadway,

the landowner(s) may be required to obtain a road-use permit and to

perform such reconstruction as necessary to bring the road to a safe and

adequate standard to accommodate such traffic in addition to the

Government's traffic. In such case, the landowner(s) also shall enter

into a cooperative maintenance

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arrangement with the Forest Service to ensure that the landowner's

commensurate maintenance responsibilities are met or shall make

arrangements to have the jurisdiction and maintenance responsibility for

the road assumed by the appropriate public road authority.

(f) In addition to ensuring that applicable terms and conditions of

paragraphs (a) through (e) of this section are met, the authorizing

officer, prior to issuing any access authorization, must also ensure

that:

(1) The landowner has demonstrated a lack of any existing rights or

routes of access available by deed or under State or common law;

(2) The route is so located and constructed as to minimize adverse

impacts on soils, fish and wildlife, scenic, cultural, threatened and

endangered species, and other values of the Federal land;

(3) The location and method of access is as consistent as reasonably

possible with the management of any congressionally designated area and

is consistent with Forest Land and Resource Management Plans or the

plans are amended to accommodate the access grant, and;

(4) When access routes exist across the adjacent non-Federal lands

or the best route as determined by the authorizing officer is across

non-Federal lands, the applicant landowner has demonstrated that all

legal recourse to obtain reasonable access across adjacent non-Federal

lands has been exhausted or has little chance of success.

(g) In addition to the other requirements of this section, the

following factors shall be considered in authorizing access to non-

federally owned lands over National Forest System lands which are

components of the National Wilderness Preservation System:

(1) The use of means of ingress and egress which have been or are

being customarily used with respect to similarly situated non-Federal

land used for similar purposes;

(2) The combination of routes and modes of travel, including

nonmotorized modes, which will cause the least lasting impact on the

wilderness but, at the same time, will permit the reasonable use of the

non-federally owned land;

(3) The examination of a voluntary acquisition of land or interests

in land by exchange, purchase, or donation to modify or eliminate the

need to use wilderness areas for access purposes.

Subpart E\_Revenue-Producing Visitor Services in Alaska

Authority: 16 U.S.C. 3197.

Source: 68 FR 35121, June 11, 2003, unless otherwise noted.

Sec. 251.120 Applicability and scope.

(a) These regulations implement section 1307 of the Alaska National

Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3197) with regard to

the continuation of visitor services offered as of January 1, 1979, and

the granting of a preference to local residents and certain Native

Corporations to obtain special use authorizations for visitor services

provided on National Forest System lands within Conservation System

Units of the Tongass and Chugach National Forests in Alaska.

(b) Except as may be specifically provided in this subpart, the

regulations at subpart B shall apply to special use authorizations

issued under this subpart. However, if subpart B conflicts with subpart

E, subpart E controls.

(c) This subpart does not apply to the guiding of sport hunting and

fishing.

Sec. 251.121 Definitions.

In addition to the definitions in subpart B of this part, the

following terms apply to this subpart:

Best application--the application, as determined by the authorized

officer, that best meets the evaluation criteria contained in a

prospectus to solicit visitor services.

Conservation System Unit (CSU) as it relates to the Tongass and

Chugach National Forests in Alaska--a National Forest Monument or any

unit of the National Wild and Scenic Rivers System, National Trails

System, or National Wilderness Preservation System, including existing

units and any such unit established, designated, or expanded hereafter.

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Controlling interest--in the case of a corporation, an interest,

beneficial or otherwise, of sufficient outstanding voting securities or

capital of the business so as to permit the exercise of managerial

authority over the actions and operations of the corporation or election

of a majority of the board of directors of the corporation. In the case

of a partnership, limited partnership, joint venture, or individual

entrepreneurship, a beneficial ownership of or interest in the entity or

its capital so as to permit the exercise of managerial authority over

the actions and operations of the entity. In other circumstances, any

arrangement under which a third party has the ability to exercise

management authority over the actions or operations of the business.

Historical operator--a holder of a valid special use authorization

to provide visitor services in a CSU under Forest Service jurisdiction

who:

(1) On or before January 1, 1979, was lawfully and adequately

providing visitor services in that CSU;

(2) Has continued lawfully and adequately to provide the same or

similar types of visitor services within that CSU; and

(3) Is otherwise determined by the authorized officer to have a

right to continue to provide the same or similar visitor services.

Local area--any site within 100 miles of the location within a CSU

where any visitor services covered by a single solicitation by the

Forest Service are to be authorized.

Local resident:

(1) For individuals--Alaska residents who have lived within the

local area for 12 consecutive months prior to issuance of a solicitation

of applications for a visitor services authorization for a CSU; who

maintain their primary, permanent residence and business within the

local area; and who, whenever absent from this primary, permanent

residence, have the intention of returning to it.

(2) For corporations, partnerships, limited partnerships, joint

ventures, individual entrepreneurships, and other circumstances--where

the controlling interest is held by an individual or individuals who

qualify as local residents within the meaning of this section.

(3) For nonprofit entities--where a majority of the board members

and a majority of the officers qualify as local residents within the

meaning of this section.

Native Corporation has the same meaning as under section 102(6) of

ANILCA (16 U.S.C. 3197).

Preferred operator--a Native Corporation that is determined,

pursuant to Sec. 251.123, to be most directly affected by establishment

or expansion of a CSU; or a local resident, as defined in this section,

who competes for a visitor service special use authorization under

Sec. 251.124 of this subpart.

Responsive application--an application that is received in a timely

manner and that meets the requirements stated in the prospectus.

Visitor service--any service or activity for which persons who visit

a CSU pay a fee, commission, brokerage, or other compensation, including

such services as providing food, accommodations, transportation, tours,

and outfitting and guiding, except the guiding of sport hunting and

fishing.

Sec. 251.122 Historical operator special use authorizations.

(a) A historical operator has the right to continue to provide

visitor services under appropriate terms and conditions contained in a

special use authorization, as long as such services are determined by

the authorized officer to be consistent with the purposes for which the

CSU was established or expanded. A historical operator may not operate

without such an authorization.

(b) Any person who qualifies as a historical operator under this

subpart and who wishes to exercise the rights granted to historical

operators under section 1307(a) of ANILCA (16 U.S.C. 1397(a)) must

notify the authorized officer responsible for the CSU.

(c) A historical operator may apply for a special use authorization

to provide visitor services similar to but in lieu of those provided by

that historical operator before January 1, 1979. The authorized officer

shall grant the application if those visitor services are

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determined by the authorized officer to be:

(1) Consistent with the purposes for which the applicable CSU was

established or expanded;

(2) Similar in kind and scope to the visitor services provided by

the historical operator before January 1, 1979; and

(3) Consistent with the legal rights of any other person.

(d) Upon the authorized officer's determination that the person

qualifies as a historical operator, under either paragraph (a) or

paragraph (c) of this section, the authorized officer shall amend the

current special use authorization or issue a new special use

authorization to identify that portion of the authorized services that

is deemed to be historical operations. The special use authorization

shall identify the location, type, and frequency or volume of visitor

services to be provided.

(e) When a historical operator's special use authorization expires,

the authorized officer shall offer to reissue the special use

authorization for the same or similar visitor services, as long as the

visitor services remain consistent with the purposes for which the CSU

was established or expanded, the historical operator was lawfully and

adequately providing visitor services under the previous special use

authorization, and the historical operator continues to possess the

capability to provide the visitor services adequately.

(1) If the operator accepts the offer to reissue, the authorized

officer shall issue a new special use authorization that clearly

identifies the historical operations as required by paragraph (d) of

this section.

(2) If the authorized officer determines that it is necessary to

reduce the visitor services to be provided by a historical operator, the

authorized officer shall modify the historical operator's special use

authorization to reflect the reduced services as follows:

(i) If more than one historical operator provides services in the

area where visitor service capacity is to be reduced, the authorized

officer shall apportion the reduction among the historical operators,

taking into account historical operating levels and such other factors

as are relevant to achieve a proportionate reduction among the

operators.

(ii) If the reductions in visitor service capacity make it necessary

to reduce operators in an area, the authorized officer shall select,

through a competitive process that is limited to historical operators

only, the operator or operators to receive a special use authorization

from among the historical operators. Historical operators participating

in this competitive process may not claim a preference as a preferred

operator under Sec. 251.124.

(f) Any of the following shall result in the loss of historical

operator status:

(1) Revocation of a special use authorization for historical types

and levels of visitor services for failure to comply with the terms and

conditions of the special use authorization;

(2) A historical operator's refusal of an offer to reissue a special

use authorization made pursuant to paragraph (e) of this section;

(3) A change in the controlling interest of a historical operator

through sale, assignment, devise, transfer, or otherwise, except as

provided in paragraph (g) of this section; or

(4) An operator's failure to provide the authorized services for a

period of more than 24 consecutive months.

(g) A change in the controlling interest of a historical operator

that results only in the acquisition of the controlling interest by an

individual or individuals, who were personally engaged in the visitor

service activities of the historical operator before January 1, 1979,

shall not be deemed a change in the historical operator's controlling

interest for the purposes of this subpart.

(h) Nothing in this section shall prohibit the authorized officer

from authorizing persons other than historical operators to provide

visitor services in the same area, as long as historical operators

receive authorization to provide visitor services that are the same as

or similar to those they provided on or before January 1, 1979.

(i) If an authorized officer grants to a historical operator an

increase in the scope or level of visitor services from what was

provided on or before January 1, 1979, beyond what was authorized under

paragraph (d) of this section, for

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either the same or similar visitor services, the historical operator has

no right of preference for the increased amount of authorized services.

If additional operations are authorized, the special use authorization

shall explicitly state that they are not subject to the historical

operator preference.

Sec. 251.123 Most directly affected Native Corporation determination.

(a) Before issuance of the first special use authorization for a

specific CSU pursuant to Sec. 251.124 on or after the effective date of

this subpart, the authorized officer shall give notice to Native

Corporations interested in providing visitor services within the CSU and

give them an opportunity to submit an application to be considered the

Native Corporation most directly affected by the establishment or

expansion of the CSU under section 1307(b) of ANILCA (16 U.S.C.

1397(b)). In giving notice of the application procedure, the authorized

officer shall make clear that this is the only opportunity to apply for

most directly affected status for that particular CSU.

(1) At a minimum, an application from an interested Native

Corporation shall include the following:

(i) Name, address, and telephone number of the Native Corporation;

date of its incorporation; its articles of incorporation and structure;

and the name of the applicable CSU and the solicitation to which the

Native Corporation is responding;

(ii) Location of the Native Corporation's population centers; and

(iii) An assessment of the socioeconomic impacts (including changes

in historical and traditional use and landownership patterns) on the

Native Corporation resulting from establishment or expansion of the

applicable CSU.

(2) In addition to the minimum information required by paragraph

(a)(1) of this section, Native Corporations may submit such additional

information as they consider relevant.

(b) Upon receipt of all applications from interested Native

Corporations, the authorized officer shall determine the most directly

affected Native Corporation considering the following factors:

(1) Distance and accessibility from the Native Corporation's

population centers and/or business address to the applicable CSU;

(2) Socioeconomic impacts (including changes in historical and

traditional use and landownership patterns) on Native Corporations

resulting from establishment or expansion of the applicable CSU; and

(3) Information provided by Native Corporations and other

information considered relevant by the authorized officer to assessment

of the effects of establishment or expansion of the applicable CSU.

(c) In the event that two or more Native Corporations are determined

to be equally affected for purposes of the most directly affected Native

Corporation determination pursuant to this section, each such Native

Corporation shall be considered a preferred operator under this subpart.

(d) A Native Corporation determined to be most directly affected for

a CSU shall maintain that status for all future visitor service

solicitations for that CSU.

Sec. 251.124 Preferred operator competitive special use

authorization procedures.

(a) In selecting persons to provide visitor services for a CSU, the

authorized officer shall, if the number of visitor service

authorizations is to be limited, give a preference (subject to any

rights of historical operators under this subpart) to preferred

operators as defined in this subpart who are determined to be qualified

to provide such visitor services.

(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 2709.11,

chapter 40, 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.

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(c) To qualify as a preferred operator under this subpart, an

applicant responding to a solicitation made under this section must be

determined by the authorized officer to be a local resident as defined

in Sec. 251.121 of this subpart, or the Native Corporation most directly

affected by establishment or expansion of the CSU covered by the

solicitation pursuant to Sec. 251.123 of this subpart.

(d) Applicants seeking preferred operator status based on local

residency must provide documentation verifying their claim. Factors

demonstrating the location of an individual's primary, permanent

residence and business include, but are not limited to, the permanent

address indicated on licenses issued by the State of Alaska, tax

returns, and voter registration.

(e) An application from a preferred operator in the form of a

corporation, partnership, limited partnership, joint venture, individual

entrepreneurship, nonprofit entity, or other form of organization shall

be considered valid only when the application documents to the

satisfaction of the authorized officer that the preferred operator holds

the controlling interest in the corporation, partnership, limited

partnership, joint venture, individual entrepreneurship, nonprofit

entity, or other form of organization.

(f) A qualified preferred operator shall be given preference,

pursuant to paragraph (g) of this section, over all other applicants,

except with respect to use allocated to historical operators pursuant to

Sec. 251.122 of this subpart.

(g) If the best application from a preferred operator is at least

substantially equal to the best application from a non-preferred

operator, the preferred operator shall be issued the visitor service

authorization. If an application from an applicant other than a

preferred operator is determined to be the best application (and no

preferred operator submits a responsive application that is

substantially equal to it), the preferred operator who submitted the

best application from among the applications submitted by preferred

operators shall be given the opportunity, by amending its application,

to meet the terms and conditions of the best application received. If

the amended application of that preferred operator is considered by the

authorized officer to be at least substantially equal to the best

application, the preferred operator shall be issued the visitor service

authorization. If a preferred operator does not amend its application to

meet the terms and conditions of the best application, the authorized

officer shall issue the visitor service authorization to the applicant

who submitted the best application in response to the prospectus.

Sec. 251.125 Preferred operator privileges and limitations.

(a) A preferred operator has no preference within a National Forest

in Alaska beyond that authorized by section 1307 of ANILCA (16 U.S.C.

1397) and by Sec. 251.124 of this subpart.

(b) Local residents and most directly affected Native Corporations

have equal priority for consideration in providing visitor services

pursuant to Sec. 251.124 of this subpart.

(c) Nothing in this subpart shall prohibit the authorized officer

from issuing special use authorizations to other applicants within the

CSU, as long as the requirements of Sec. 251.124 are met.

(d) If an operator qualifies as a local resident for any part of an

area designated in the solicitation for a specific visitor service, in

matters related solely to that solicitation, the operator shall be

treated as a local resident for the entire area covered by that

solicitation.

(e) The preferences described in this section may not be sold,

assigned, transferred, or devised, either directly or indirectly, in

whole or in part.

Sec. 251.126 Appeals.

Decisions related to the issuance of special use authorizations in

response to written solicitations by the Forest Service under this

subpart or related to the modification of special use authorizations to

reflect historical use are subject to administrative appeal under 36 CFR

part 214.

[78 FR 33725, June 5, 2013]

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