

posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

#### IV. Procedural Determinations

##### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

##### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

##### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that

such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### *Unfunded Mandates*

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

#### List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 18, 1997.

##### **Deborah Watford,**

*Acting Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97-10772 Filed 4-24-97; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 251

RIN 0596-AB57

#### Land Uses

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Forest Service proposes regulations to establish the procedures by which certain persons may conduct revenue-producing visitor services in Conservation System Units within the National Forests in Alaska. These regulations are required by section 1307 of the Alaska National Interest Lands Conservation Act. The intended effect is to establish workable procedures for recognizing and administering the statutory rights and preferences for conducting visitor services.

**DATES:** Comments must be received in writing by June 24, 1997.

**ADDRESSES:** Send written comments to Regional Forester, Alaska Region, Forest Service, USDA, PO Box 21628, Juneau, AK 99802-1628.

The public may inspect comments received on this proposed rule at the Alaska Regional Office, Room 519A, Federal Building, 709 W. 9th Street, Juneau, AK 99802, Monday through Friday between the hours of 8 a.m. to noon and 12:30 p.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Arn Albrecht, Public Services Staff, Alaska Region, (907) 586-7886.

#### SUPPLEMENTARY INFORMATION:

##### **Background**

The Forest Service manages National Forest System lands in Alaska consisting of the Tongass and the Chugach National Forests in southeast and southcentral areas of the State. A number of laws govern the issuance and administration of special use authorizations that authorize a variety of visitor services operated by private concessionaires, ranging from outfitting and guiding to resorts. These laws include the Organic Organization Act of June 4, 1897; the Term Permit Act of March 4, 1915; the Granger-Thye Act of April 24, 1950; the Land and Water Conservation Fund Act of September 3, 1964; the Wilderness Act of September 3, 1964, the Alaska National Interest Lands Conservation Act of 1980; and the National Ski Area Permit Act of 1986. Regulations at 36 CFR part 251, subpart B address the special-use application process; the nature of interest of an authorization; terms and conditions of use; rental fees; issuance; termination; revocation; suspension; and renewal. These regulations must be augmented to implement the special statutory requirements specific to Conservation System Units within the National Forests in Alaska.

##### **Statutory Requirements**

The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) provided for the disposition and use of a variety of federally owned lands in Alaska. Section 1307 (16 U.S.C. 3197) contains two provisions concerning persons and entities who are to be given special rights and preferences with respect to revenue producing "visitor services" on certain lands within the National Forest System designated by ANILCA as Conservation System Units under the administration of the Secretary of Agriculture.

A Conservation System Unit, as it relates to the National Forests, means any unit in Alaska of the National Wild and Scenic River System, National Trail System, National Wilderness Preservation System or a National Forest Monument including existing Units or any such Unit established, designated, or expanded hereafter. (ANILCA section 102(4)) (43 U.S.C. 1618)

Subsection (a) of section 1307 (16 U.S.C. 3197) provides that, notwithstanding any other provision of law, the Secretary of Agriculture, under

such terms and conditions as he determines are reasonable, shall permit any persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within any area established as or added to a Conservation System Unit to continue providing such type of service and similar types of visitor services within such area, if such service or services are consistent with the purposes for which such unit is established or expanded.

Subsection (b) of section 1307 (16 U.S.C. 3197) provides that in selecting persons to provide any type of visitor service for any Conservation System Unit, except sport fishing and hunting guiding activities, and except as provided in subsection (a), the Secretary of Agriculture shall (1) give preference to the Native Corporation which the Secretary determines is most directly affected by the establishment or expansion of such unit by or under the provisions of this Act; and (2) give preference to persons whom he determines, by rule, are local residents. (16 U.S.C. 3197)

Subsection (c) of section 1307 (43 U.S.C. 1611) defines "Visitor Service" to mean any service made available for a fee or charge to persons who visit a Conservation System Unit, including such services as providing food, accommodations, transportation, tours and guides, excepting the guiding of sport hunting and fishing.

#### Interagency Coordination

On April 25, 1995, the National Park Service and the United States Fish and Wildlife Service each issued proposed rules to implement section 1307 of ANILCA for national park lands and refuges in Alaska. The Forest Service has coordinated with these agencies in the development of these proposed regulations in order to provide consistency in the implementation of this section of ANILCA in so far as is practical within the framework of each agency's legal mandates.

#### Section-by-Section Explanation

The Forest Service proposes to augment the special uses rules at subpart B by establishing a new subpart E to govern "Revenue Producing Visitor Services in Alaska". An explanation of each section of this proposed subpart follows.

#### *Proposed Section 251.120 Scope and Applicability*

This section explains that these regulations implement section 1307 of ANILCA with regard to the continuation of visitor services existing as of January

1, 1979, and to granting preference to local residents and certain Native Corporations to obtain special use authorizations for visitor services on designated lands within the Tongass and Chugach National Forests in Alaska. The regulations will apply only to Forest Service administered Conservation System Units (CSU's), not all National Forest Lands. Existing CSU's within the Tongass and Chugach National Forests include the following:

#### *National Monuments Established Within the Tongass National Forest*

Misty Fiords National Monument  
Admiralty Island National Monument

#### *Wilderness Areas Established Within the Tongass National Forest*

Chuck River Wilderness  
Coronation Island Wilderness  
Endicott River Wilderness  
Karta Wilderness  
Kootznoowoo Wilderness  
Kuiu Wilderness  
Maurelle Islands Wilderness  
Misty Fiords National Monument  
Wilderness  
Petersburg Creek-Duncan Salt Chuck  
Wilderness  
Pleasant/Lemesurier/Indian Islands  
Wilderness  
Russell Fiord Wilderness  
South Baranof Wilderness  
South Etolin Wilderness  
South Prince of Wales Wilderness  
Stikine-LeConte Wilderness  
Tebenkof Bay Wilderness  
Tracy Arm-Fords Terror Wilderness  
Warren Island Wilderness  
West Chichagof-Yakobi Wilderness

#### *Units of the National Trails System*

Iditarod National Historic Trail (Seward to Girdwood Section on the Chugach National Forest)  
National Recreation Trails (six on Tongass NF and four on the Chugach NF)

#### *Units of the Wild and Scenic River System*

There are no Wild, Scenic, or Recreation Rivers currently designated within the National Forests in Alaska.

This section also explains that existing regulations in 36 CFR part 251, subpart B, concerning special use authorizations apply unless expressly waived by the rules in subpart E. In conformance with ANILCA, this section states that this subpart does not apply to the guiding of sport hunting and fishing.

#### *Proposed Section 251.121 Definitions*

This section provides a number of definitions for special terms used in the

regulations. Pertinent definitions are discussed under various sections of the proposed rule.

#### *Proposed Section 251.122 Historical Operator Special Use Authorizations*

These provisions implement subsection (a) of section 1307 and permit persons who were adequately providing visitor services in applicable National Forest areas in Alaska prior to January 1, 1979, to continue to do so under reasonable terms and conditions.

Persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within a Conservation System Unit in Alaska, who have continued to provide that visitor service, and who have retained controlling interest in the business would be considered "historical operators" under these regulations.

Proposed § 251.122 establishes the process by which persons who qualify as historical operators could exercise the rights and preferences granted under section 1307(a) of ANILCA.

This section makes it clear that the existence of a right to continue to provide visitor services under subsection 1307(a) is not an unlimited right. Rather, such a right is subordinate to the management of the CSU and does not grant a monopoly to provide all visitor services in a given area to the exclusion of other individuals or entities. A historical operator; however, may provide services similar to those provided prior to January 1, 1979, if acceptable to the Forest Service as consistent with the purposes of the CSU and provided that the similar services are not in excess of those provided by the permit holder as of January 1, 1979.

This section also specifies under what circumstances historical operator rights are lost. These include revocation due to failure to comply with the special use authorization terms and conditions; declination of a special use authorization renewal offer; and failure to provide authorized services for a period of 24 consecutive months. In addition, the rights of a historical operator would be considered terminated upon a change in the controlling interest in the historical operator. This provision is necessary to prevent transfer of these "grandfathered" rights to third parties. If the acquisition of the controlling interest is by an individual(s) personally engaged in the visitor service activity before January 1, 1979, historical operator rights would continue to be recognized. For example, an individual (qualified as a historical operator) holding a special use authorization may

transfer a controlling interest in the business to a spouse, child, or informal partner if the transferee was personally engaged in the conduct of the historical business prior to January 1, 1979.

*Proposed Section 251.123 Preferred Operator Competitive Special Use Authorization Procedures*

This section implements subsection (b) of section 1307 and would grant a preference to certain individuals and Native Corporations in the award of special use authorizations to provide visitor services in CSUs.

The provisions of this section apply to two categories of persons to be given a preference pursuant to section 1307(b) of ANILCA, collectively referred to as "preferred operators". Both categories have equal preference in the award of a special use authorization.

The first category of preferred operators is the Native Corporation determined by the authorized officer to be most directly affected by the establishment or expansion of the CSU.

The second category of preferred operators consists of persons who are determined by the authorized officer to be current local residents. A "local resident" is defined in these proposed regulations to mean:

(1) *For individuals.* Those individuals who have lived within the local area for 12 consecutive months before issuance of a solicitation of applications for a special use authorization for visitor services in a CSU and 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. Factors demonstrating the locations of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on licenses issued by the State of Alaska, tax returns, and voter registration.

(2) *For corporations.* A corporation in which the controlling interest is held by an individual or individuals who qualify as "local resident(s)" within the meaning of this section. For non-profit corporations a majority of the board members and a majority of the officers must qualify as "local residents".

A "local area" is defined as that area within 100 miles of the location within a Conservation System Unit where any visitor services covered by a single solicitation by the Forest Service are to be authorized. The area covered by a particular solicitation where visitor services would be authorized could vary from a specific location within a CSU to the entire area within the CSU boundary

depending upon the particular visitor services being solicited.

Proposed § 251.124 establishes a procedure for the solicitation and award of special use authorizations, which incorporates the rights of preferred operators under section 1307(b). This section of the law takes effect only when there is a competitive award of a special use authorization. Under proposed § 251.124 the authorized officer must publicly solicit offers to provide visitor services by issuing a prospectus, when the Forest Service determines the following:

- (1) There is a need for visitor services within the area of the CSU;
- (2) There is a need to limit authorized visitor use in the area and/or the number of authorized operators;
- (3) There is an opportunity for competitive bidding to provide such services; and
- (4) The proposed visitor services are consistent with the applicable Forest Plan direction and all applicable laws and regulations.

In all other situations, except as provided in proposed § 251.122 for historical operators, special use authorizations would be issued non-competitively on a first-come, first-serve basis upon application to the authorized officer in accordance with the rules at subpart B.

In soliciting applications for special use authorizations for visitor services, the authorized officer must include the selection criteria in the prospectus describing the services to be provided. At a minimum, the authorized officer's selection of the best offer shall be based on an evaluation of the applicant's timely response to the following criteria:

- (1) The kind and quality of visitor service(s) to be provided;
- (2) The experience and qualifications required of the operator to demonstrate capability;
- (3) The applicant's financial resources and status; and
- (4) The amount of return to the Government.

In order to exercise the preference, a preferred operator must submit a responsive offer under the terms of a public solicitation generally referred to as a prospectus. If the preferred operator submits the best overall offer, that operator would be awarded the special use authorization if the preferred operator is determined to be capable of carrying out the terms of the special use authorization. If the best offer received in response to the solicitation is made by an applicant other than a preferred operator, then the preferred operator, who made the best offer of all the preferred operators, shall be given the

opportunity to amend the offer to meet the terms and conditions of the best offer. The special use authorization would be awarded to that preferred operator, if the authorized officer concludes that the preferred operator's amended offer is substantially equal to the best offer and that the preferred operator is capable of carrying out the terms of the special use authorization. Otherwise, the special use authorization will be awarded to the original overall best offer. By allowing only the operator with the best offer among the preferred operators to meet the terms and conditions of the overall best offer, this section provides a process for dealing with offers from multiple preferred operators in a way that encourages initial competitive offers from all applicants, while still providing for the statutory preferences.

If a preferred operator's offer under this subpart is in the form of a joint venture, the offer shall be considered valid only when it documents to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the joint venture.

Native Corporations and local residents, who submit an offer in the form of a joint venture with other persons, will retain their preferred operator status so long as they have the controlling interest in the joint venture. This provision allows business flexibility without compromising the statutory intent of section 1307.

*Proposed Section 251.124 Most Directly Affected Native Corporation Determination*

This section establishes procedures and criteria for determining which Native Corporation is most directly affected by the establishment or expansion of a particular CSU and, accordingly, is a preferred operator with respect to that CSU. Before the award of the first special use authorizations after the effective date of this subpart, interested Native Corporations will be given the opportunity to be considered for a determination of "most directly affected". In giving notice of the application procedure, the authorized officer would make clear that this is the only opportunity to apply for "most directly affected" status for that particular CSU. In the event that more than one Native Corporation is determined to be equally affected, each such corporation will be considered a preferred operator. An authorized officer's decision as to the "most directly affected" Native Corporation or, if appealed under 36 CFR part 251, subpart C, the reviewing officer's

decision, is applicable for all future visitor services for that particular CSU.

*Proposed Section 251.125 Preferred Operator Privileges and Limitations*

This proposed section specifies the privileges and limitations accorded to preferred operators. Except as provided at § 251.122(d)(2)(ii) for historic operators, preferred operators would have preference over all other applicants in the issuance of special use authorizations. The preferences described in this section could not be sold, assigned, transferred, or devised, directly or indirectly. If an operator qualifies as a local resident for any part of an area designated in a solicitation for a specific visitor service, the operator shall be treated in matters related solely to that solicitation as a local resident for the entire area covered by that solicitation. Local residents and "most directly affected" Native Corporations have equal priority for consideration in providing visitor services. As with historical operators, the Forest Service does not intend that preferred operators obtain an exclusive right to provide visitor services to the exclusion of other individuals or entities.

*Proposed Section 251.126 Appeal Procedures*

This section of the proposed rule makes clear that decisions related to the issuance of special use authorizations in response to written Forest Service solicitations or to the modifications of special use authorizations to reflect historical use may be appealed under existing Forest Service appeal regulations in part 251 subpart C.

**Conclusions**

These regulations are needed to implement the provisions of ANILCA concerning the rights and preferences granted to historical operators, local residents, and "most affected" Native Corporations in the award of special use authorizations for visitor services. For a number of years following the passage of ANILCA, there was little need to limit use or the number of special use authorizations for visitor services within the CSUs administered by the Forest Service. With increasing tourism and numbers of applicants for special use authorizations to provide visitor services, there may be a need to limit the number of special use authorizations in specific areas to protect resource values. In these situations, special use authorizations will need to be competitively awarded in a process that honors the statutory rights and preferences. These proposed regulations are intended to provide that process.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed rule.

**Regulatory Impact**

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to OMB review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it is certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. The agency estimates that less than 100 small entities would be affected by this rule for the foreseeable future and the effect would not be a significant economic one. The statute itself provides a competitive advantage for Native Corporations and local residents which may qualify as small entities. The rules merely provide the process by which the statute can be implemented and, in and of themselves, do not add or decrease any preference granted by the statute.

**Environmental Impact**

An environmental assessment has been prepared on this proposed rule and is available from the office listed under **ADDRESSES** earlier in this document. A determination of the significance of environmental impacts of the proposed action will be made upon adoption of the final rule. Reviewers may include comments on the environmental assessment along with any comments submitted on the proposed rule.

**No Takings Implications**

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule does not pose a risk of a taking of Constitutionally-protected private property.

**Controlling Paperwork Burdens on the Public**

The information required to determine the most directly affected Native Corporations in § 251.124 of this proposed rule represents a new information requirement as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. In accordance with those rules and the Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3507), the Forest Service is requesting Office of Management and Budget review and approval of the information required for making the most affected Native Corporation determinations.

The collections of information contained in § 251.122 and § 251.123 of this proposed rule are for purposes of preparing an offer in response to visitor services solicitation pursuant to 36 CFR part 251, subpart B, and have been approved by the Office of Management and Budget and assigned a clearance number of 0596-0082.

**Description of Information Collection**

The following describes the information collection associated with this rulemaking:

*Title:* Most directly affected Native corporation determination.

*OMB Number:* New.

*Expiration Date of Approval:* New.

*Type of Request:* The following describes a new collection requirement and has not received approval by the Office of Management and Budget.

*Abstract:* This paperwork collection provides the necessary information for the Forest Service to determine which Alaska Native corporations qualify for the statutory preference in the award competitively issued special use authorizations for commercial visitor services on designated lands within the National Forests in Alaska. The Forest Service must determine which Native Corporations were most affected by the establishment of particular Conservations System Units (CSU) in order to provide the statutory priority required by the Alaska National Interest Lands Conservation Act (16 U.S.C. 3197). The collection of needed information will require time to review instructions, search existing data sources, and to gather and maintain data. Data collected in this information collection is not available from other sources. This is a one time collection for each CSU. Information gathering and "most affected" determinations will likely be made on only one CSU annually.

*Estimate of Burden:* 20 hours.

*Type of Respondents:* Alaska Native Corporations.

*Estimated Number of Respondents:* 10 per year.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1×20×10=200 hours.

*Comments are Invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of this agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

#### Use of Comments

All comments received in response to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Regional Forester, Alaska Region, at the address shown in this document as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

#### Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Forest Service has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

#### Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; (3) it would not require administrative proceedings before parties may file suite in court challenging its provisions.

#### List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forest land uses, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 251 of title 36 of the Code of Federal Regulations as follows:

#### PART 251—LAND USES

1. The authority citation for Part 251 is revised to read as follows:

**Authority:** 16 U.S.C. 472, 551, 1134, 3170, 3197, 3210; and 30 U.S.C. 185; and 43 U.S.C. 1740, unless otherwise noted.

2. Add a new subpart E to read as follows:

#### Subpart E—Revenue Producing Visitor Services in Alaska

Sec.

251.120 Applicability and scope.

251.121 Definitions.

251.122 Historical operator special use authorizations.

251.123 Preferred operator competitive special use authorization procedures.

251.124 Most directly affected Native corporation determinations.

251.125 Preferred operator privileges and limitations.

251.126 Appeals.

#### Subpart E—Revenue Producing Visitor Services in Alaska

##### § 251.120 Applicability and scope.

(a) These regulations implement section 1307 of Alaska National Interest Lands Conservation Act (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 on Conservation System Units of the Tongass and Chugach National Forests in Alaska (hereafter CSUs).

(b) Except as may be specifically provided in this subpart, the regulations at subpart B shall apply to special use authorizations considered or issued under this subpart.

(c) This subpart does not apply to the guiding of sport hunting and fishing.

##### § 251.121 Definitions.

In addition to the definitions in subpart B of this part, the following terms apply to this subpart:

**Best offer** means the offer, as determined by the authorized officer, that best meets the selection criteria established in a prospectus soliciting specific visitor services in CSUs in National Forests in Alaska.

**Conservation System Unit (CSU)** as it relates to the Tongass and Chugach

National Forests in Alaska means a National Forest Monument or any unit of the National Wild and Scenic River System, National Trail System, or National Wilderness Preservation System.

**Controlling interest** means, 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 authorization 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, "controlling interest" means a beneficial ownership of, or interest in, the business entity so as to permit the exercise of managerial authority over the actions and operations of the entity. In other circumstances, "controlling interest" means any arrangement under which a third party has the ability to exercise general management authority over the actions or operations of the business.

**Historical operator** means a current holder of a valid special use authorization for providing revenue producing visitor services on a CSU under Forest Service jurisdiction that meets the following criteria:

(1) On or before January 1, 1979, the holder was lawfully engaged in adequately providing visitor services in the same CSU;

(2) The holder has continued to lawfully provide the same or similar types of visitor services within the same CSU; and

(3) The holder is otherwise determined by the authorized officer to have a right to continue to provide the same or similar visitor services.

**Local area** means that area 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** means the following:

(1) **For individuals.** Those individuals who have lived within the local area for 12 consecutive months before issuance of a solicitation of applications for a use authorization for visitor services for a CSU and 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. Factors demonstrating the locations of an individual's primary, permanent residence and business may include, but are not limited to, the permanent address indicated on

licenses issued by the State of Alaska, tax returns, and voter registration.

(2) *For corporations.* A corporation in which the controlling interest is held by an individual or individuals who qualify as "local resident(s)" within the meaning of this section. For non-profit corporations, a majority of the board members and a majority of the officers must qualify as "local residents".

*Native Corporation* has the same meaning as the term is defined in section 102(6) of the Alaska National Interest Lands Conservation Act (ANILCA).

*Preferred operator* means a Native Corporation that is determined, pursuant to § 251.124, to be "most directly affected" by establishment or expansion of the CSU, or a local resident, as defined in this section, who competes for a visitor service special use authorization under § 251.123 of this subpart.

*Responsive offer* is one that is timely received and meets the terms and conditions of the solicitation document.

*Visitor service* means 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.

**§ 251.122 Historical operator special use authorizations.**

(a) A historical operator has a right to continue to provide visitor services existing on or before January 1, 1979, in a CSU under appropriate terms and conditions contained in a special use authorization so long as such services are determined by the authorized officer to be consistent with the purposes for which the CSU was established. 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 and preferences granted to historical operators under section 1307(a) of ANILCA must notify the authorized officer responsible for the CSU. In determining whether a person qualifies as a historical operator, the authorized officer has the discretion to determine on a case-by-case basis whether visitor services are the same or similar to those provided on or before January 1, 1979.

(c) Upon the authorized officer's determination that the person qualifies as a historical operator, 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

are deemed to be historical operations. The special use authorization shall identify the location(s), type(s), frequency(ies), or volume of visitor services to be provided.

(d) When a historical operator's special use authorization expires, the authorized officer shall offer to renew the special use authorization for the same or similar visitor services so long as the services provided under the previous special use authorization were adequate, the services remain consistent with the purposes for which the CSU was established or expanded, and the holder continues to possess the capability to provide the visitor services adequately.

(1) If the operator accepts the renewal offer, the authorized officer shall issue a new special use authorization that clearly identifies the historical operations as required by paragraph (c) 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 historic 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 feasible to support only one operator in an area, the authorized officer shall select, through a competitive process that is limited to historical operators only, the operator to receive the special use authorization from among the historical operators.

(e) Any of the following shall result in the loss of historical operator status:

(1) Revocation of a special use authorization for historic 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 declination of a special use authorization renewal offer made pursuant to paragraph (d) of this section;

(3) A change in the controlling interest of the historical operator through sale, assignment, devise, transfer, or otherwise except as provided in paragraph (f) of this section; or

(4) An operator's failure to provide the authorized services for a period of more than 24 consecutive months.

(f) 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, such as a child or sibling, 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 purpose of this subpart.

(g) Nothing in this section shall prohibit the authorized officer from authorizing persons other than historical operators to provide visitor services in the same area, so long as historical operators receive authorization to provide visitor services at a level and scope equal to those they provided on or before January 1, 1979.

(h) In the event that an authorized officer grants to a historical operator an increase in scope or level of visitor services from that provided on or before January 1, 1979, 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 clearly indicate that the additional amount is not subject to the historical operations preference.

**§ 251.123 Preferred operator competitive special use authorization procedures.**

(a) The authorized officer shall publicly solicit offers to provide visitor services when the Forest Service determines the following:

(1) There is a need for visitor services within the area of the CSU;

(2) There is a need to limit authorized visitor use in the area and/or the number of authorized operators;

(3) There is an opportunity for competitive bidding to provide such services; and

(4) The proposed visitor services are consistent with the Forest Plan direction and all applicable laws and regulations.

(b) In soliciting applications for special use authorizations, the authorized officer shall include the selection criteria in the prospectus describing the services to be provided. At a minimum, the authorized officer's selection of the most responsive offer shall be based on evaluation of the applicant's timely response to the following criteria:

(1) The kind and quality of visitor service(s) to be provided;

(2) The experience and qualifications required of the operator to demonstrate capability;

(3) Applicant's financial resources and status; and

(4) The amount of return to the Government.

(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 § 251.121 of this subpart, or the most directly affected Native Corporation by establishment or expansion of the CSU covered by the solicitation pursuant to § 251.124 of this subpart.

(d) A qualified preferred operator shall be given preference, pursuant to paragraph (e) of this section, over all other operators except as provided for historical operators in section 251.122 of this subpart.

(e) If the best offer received in response to the solicitation is made by an applicant other than a preferred operator, then the preferred operator who made the best offer of all the preferred operators shall be given the opportunity to amend its offer to meet the terms and conditions of the best offer.

(1) If the preferred operator amends its offer, the authorized officer shall award the special use authorization to the preferred operator, if the following conditions are met:

(i) The authorized officer concludes the preferred operator's amended offer is substantially equal to that of the best offer; and

(ii) The authorized officer determines the preferred operator is capable of carrying out the terms of the special use authorization.

(2) The authorized officer shall award the special use authorization to the applicant who made the initial best offer in either of the following circumstances:

(i) The authorized officer concludes that the preferred operator's amended offer is not substantially equal to the initial best offer; or

(ii) The authorized officer concludes that the preferred operator's amended offer is substantially equal to the initial best offer, but the operator is not capable of carrying out the terms of the special use authorization.

(f) An offer from a preferred operator under this subpart, in the form of a joint venture, shall be considered valid only when the offer documents to the satisfaction of the authorized officer that the preferred operator holds the controlling interest in the joint venture.

**§ 251.124 Most directly affected Native corporation determination.**

(a) Before the award of the first special use authorization issued after the effective date of this subpart pursuant to § 251.123 for a specific CSU,

the authorized officer shall give notice to and provide an opportunity for Native Corporations interested in providing visitor services within the CSU to submit an application to be considered the Native Corporation most directly affected by the establishment or expansion of the CSU by or under the provisions of ANILCA. 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 information:

(i) Name, address, and phone number of the Native Corporation; date of incorporation; its articles of incorporation and structure; and the name of the applicable CSU and the solicitation that the Native Corporation is responding to; and

(ii) Location of the corporation's population center or centers; and

(iii) An assessment of the socioeconomic impacts, including changes in historical and traditional use and landownership patterns and their effects on the Native Corporation, resulting from the expansion or establishment of the applicable CSU by ANILCA; and

(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 corporation's population center and/or business address to the applicable CSU; and

(2) Socioeconomic impacts, including changes in historical and traditional use and landownership patterns and their effects on Native Corporations resulting from the expansion or establishment of the applicable CSU; and

(3) Information provided by Native Corporations and other information considered relevant by the authorized officer to the particular facts and circumstances related to the effects of the establishment or expansion of the applicable CSU.

(c) In the event that more than one Native Corporation is determined to be equally affected within the meaning of this section, each such Native

Corporation shall be considered a preferred operator under this subpart.

(d) A corporation determined to be most directly affected for a CSU will maintain that status for all future visitor service solicitations.

**§ 251.125 Preferred operator privileges and limitations.**

(a) Except as provided at § 251.122(d)(2)(ii), preferred operators have preference over all other applicants in the issuance of special use authorizations pursuant to § 251.123 of this subpart.

(b) The preferences described in this section may not be sold, assigned, transferred, or devised, directly or indirectly.

(c) 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.

(d) An offer from a preferred operator made in the form of a joint venture is considered valid, only if the offer documents to the satisfaction of the authorized officer, that the preferred operator holds the controlling interest in the joint venture.

(e) Nothing in this subpart shall prohibit the authorized officer from issuing special use authorizations to other applicants within the CSU so long as the requirements of § 251.123 are met.

(f) A preferred operator has no preference within a National Forest in Alaska beyond that authorized by section 1307 of the Act and by § 251.123 of this subpart.

(g) Local residents and "most directly affected" Native Corporations have equal priority for consideration in providing visitor services.

**§ 251.126 Appeals.**

Decisions related to the issuance of special use authorizations in response to written solicitations by the Forest Service or to the modification of special use authorizations to reflect historical use are subject to administrative appeal under subpart C of this part.

Dated: March 26, 1997.

**David G. Unger,**  
*Associate Chief.*

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