

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 251**

RIN 0596-AB57

Land Uses; Revenue-Producing Visitor Services in Alaska

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting regulations to establish 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. This final rule will guide the solicitation, selection of applications, and issuance of permits for visitor services within Conservation System Units for the National Forests in Alaska. The intent is to establish workable procedures for recognizing and administering statutory rights and preferences for conducting visitor services within these units.

EFFECTIVE DATE: This rule is effective July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Hagadorn, Recreation, Lands, and Minerals Staff, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802, (907) 586-9336.

SUPPLEMENTARY INFORMATION:**Statutory Requirements**

The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) provides for the disposition and use of a variety of federally administered 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 designated by ANILCA as Conservation Units (CSUs) under the administration of the Secretary of Agriculture.

Under section 102(4) of ANILCA, a CSU, as it relates to the National Forests, means any unit in Alaska of the National Wild and Scenic Rivers System, National Trails System, and National Wilderness Preservation System, or a National Forest Monument, including existing units or any such unit established, designated, or expanded hereafter (16 U.S.C. 3102(4)).

Section 1307(a) of ANILCA (16 U.S.C. 3197(a)) provides that, notwithstanding any other provision of law, the Secretary

of Agriculture, under such terms and conditions as the Secretary deems reasonable, shall allow any person who, on or before January 1, 1979, was engaged in adequately providing any type of visitor service within any area established as, or added to a CSU, to continue providing that type of service and similar types of visitor services within that CSU, if those services are consistent with the purposes for which the CSU was established or expanded.

Section 1307(b) of ANILCA (16 U.S.C. 3197(b)) provides that in selecting a person to provide any type of visitor service for any CSU, except sport fishing and hunting guiding activities, and except as provided in section 1307(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 that CSU; and (2) give preference to persons determined to be local residents.

Section 1307(c) of ANILCA (16 U.S.C. 3197(c)) defines "visitor service" to mean any service made available for a fee or charge to persons who visit a CSU, including such services as providing food, accommodations, transportation, tours, and outfitting and guiding, except the guiding of sport hunting and fishing.

Summary of Public Comments

The Forest Service proposed rule at 36 CFR part 251, subpart E, was published in the **Federal Register** on April 25, 1997 (62 FR 20140) and provided for a 60-day comment period ending June 24, 1997. Efforts to notify the public of this proposal included news releases, published legal notices, and notification letters to permit holders, Native Corporations in southeast and southcentral Alaska, and Federal, State, and local community officials. Four written comments on the proposed rule were received: One from the State of Alaska, two from Native Corporations, and one from a private, nonprofit corporation.

Most of the comments dealt with (1) § 251.120, involving the scope and applicability of the regulations; (2) § 251.122, the process of how historical rights would be determined; and (3) § 251.123, the administration of preferred operator preferences, including the effect of the regulations on other operators without preferred status. No comments were received on the information collection requirements or criteria for determining the most directly affected Native Corporation status. One Native Corporation responded enthusiastically about the prospect for participating in the visitor

industry and requested a determination of most directly affected status. Minor changes have been made in the final rule to respond to the comments received and to achieve clarity and consistency with Forest Service policy. In addition, to be consistent with section 1307 of ANILCA, the final rule will apply only to CSUs on the Tongass and Chugach National Forests in Alaska and not to other designations of National Forest System lands.

Interagency Coordination

The Forest Service has coordinated with the National Park Service and the U.S. Fish and Wildlife Service in the U.S. Department of the Interior in the development of this final rule. While not identical, this final rule is consistent (insofar as is practical within the framework of each agency's legal mandates) with provisions of the final rules of the U.S. Department of the Interior implementing section 1307 of ANILCA for the National Park Service at 36 CFR part 13 (61 FR 54334, Oct. 18, 1996) and for the U.S. Fish and Wildlife Service at 50 CFR part 36 (62 FR 1838, Jan. 14, 1997).

Analysis of Public Comments and Section-by-Section Description of Final Rule

The following is an analysis of public comments received on the proposed rule and a section-by-section description of the final rule for revenue-producing visitor services in Alaska.

Section 251.120 Scope and Applicability

Section 251.120 of the proposed rule explained that the regulations at subpart E would implement section 1307 of ANILCA with regard to the continuation of visitor services existing as of January 1, 1979. It also explained the preferences granted to local residents and certain Native Corporations for obtaining special use authorizations for visitor services on designated lands within National Forest System lands in Alaska. The proposed rule stated that the provisions of subpart E would apply only to existing and future Forest Service-administered CSUs in Alaska, not to all National Forest System lands, and provided a comprehensive list of CSUs within the Tongass and Chugach National Forests.

This section also explained that existing regulations in 36 CFR part 251, subpart B, apply to all requests involving revenue-producing visitor services in Alaska unless expressly waived by subpart E, and that subpart E would not apply to the guiding of sport hunting and fishing.