

The following is an analysis of and response to comments received on § 251.120 of the proposed rule.

Comment: The State of Alaska wanted the Forest Service to clarify that the proposed regulations would not apply to State-owned lands and waters, including navigable waters, shore lands, tidelands, and submerged lands within the boundaries of national forests in Alaska. The State of Alaska contends that these lands and waters are, and will continue to be, managed and regulated by the State.

Response: The regulations at 36 CFR part 251, subpart E, apply only to CSUs, which, in accordance with section 103(c) of ANILCA, exclude State and private lands. To provide further clarification of the application of subpart E, the words "National Forest System lands" have been added to § 251.120(a) in the final rule.

Comment: The State of Alaska believed that it was unclear whether the proposed regulation applied to the Nellie Juan-College Fiord Wilderness Study Area and to rivers identified as eligible for inclusion in the Wild and Scenic Rivers System. The State of Alaska supported application of these regulations to the wilderness study area and to these rivers.

Response: Section 102(4) of ANILCA defines CSUs as existing units or units that are established, designated, or expanded in the future. Therefore, the statutory rights and preferences created by section 1307 of ANILCA do not apply to study areas or areas identified as eligible units of the Wild and Scenic Rivers System. To clarify the applicability of the regulations, the following wording based on section 102(4) of ANILCA has been added to the end of the definition of "Conservation System Unit" in § 251.121 of the final rule: " * * * including existing units and any such unit established, designated, or expanded hereafter."

Comment: One respondent stated that section 506 of ANILCA provides certain Alaska natives specific rights on Admiralty Island in addition to the more general rights granted by section 1307 of ANILCA.

Response: Section 506 of ANILCA addresses a number of specific lands issues associated with the Admiralty Island National Monument that involve several Native Corporations, including a provision for consultation and cooperation in the management of specific lands with Kootznoowoo, Incorporated. The regulations at 36 CFR part 251, subpart E, are not intended to diminish or supersede the provisions of section 506 of ANILCA; therefore, no

change has been made in the final rule with regard to this issue.

In the final rule, the Department has added a sentence to § 251.120(b) providing that in case of a conflict between subpart B and subpart E, subpart E controls.

Section 251.121 Definitions

Proposed § 251.121 provided definitions for special terms used in the regulations. No public comments were received on § 251.121. However, the Department has made minor changes in the final rule to clarify definitions, revise references, and maintain a format consistent with subpart B.

The term *best offer* in the proposed rule has been changed to *best application* in the final rule for consistency with the agency's competitive application process.

The definition of *Conservation System Unit* has been clarified to address the applicability of the rule to future CSUs and to additions to existing CSUs, consistent with the wording in section 102(4) of ANILCA. This change was made in response to a comment from the State of Alaska regarding application of the rule to Wilderness Study areas and areas eligible for inclusion in the Wild and Scenic Rivers System.

The definition of *controlling interest* has been revised by adding the phrase "or its capital" following "the entity" to clarify that a controlling interest includes ownership of capital assets. Additionally, the word "business," which preceded the word "entity," has been deleted because it was unnecessary.

The definition of *historical operator* has been simplified to remove the word "current" as a description of a holder because the three criteria adequately describe a qualifying holder. Additionally, the words "revenue-producing" as a description of visitor services have been removed because this concept applies to all of subpart E and is addressed in its title.

Local area in the proposed rule was defined as "that area within 100 miles * * *" In the final rule, the definition has been modified to read "any site within 100 miles * * *" to allow for greater specificity in determining the point to which a measurement will be made.

The definition of *local resident* for individuals has been changed by adding the phrase "Alaska residents." This revision clarifies the intent of the proposed rule that persons otherwise qualifying as local area residents must be Alaska residents. Additionally, the other entities in which a controlling interest may be held that are referenced

in the definition for *controlling interest* have been added to paragraph (2) of the definition for *local resident*. Finally, the following sentence was removed from the definition for *local resident* and inserted at § 251.124(d) to improve the organization and clarity of the rule: "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."

In the definition for *preferred operator*, the reference to § 251.124 has been changed to § 251.123, and the reference to § 251.123 has been changed to § 251.124, in accordance with the renumbering of those sections in the final rule, as discussed in the following descriptions of those sections.

Responsive offer has been changed to *responsive application* in the final rule for consistency with nomenclature in the agency's competitive application process. The phrase "terms and conditions" was replaced with "requirements" because "terms and conditions" are contained in a permit, not a prospectus.

Section 251.122 Historical Operator Special Use Authorizations

Section 251.122 of the proposed rule provided that persons who were adequately providing visitor services within CSUs on National Forest System lands in Alaska prior to January 1, 1979, would be permitted to continue to provide those services and similar types of services under appropriate terms and conditions, if these services are consistent with the purposes for which the CSUs were established or expanded. Consequently, persons who, on or before January 1, 1979, were engaged in adequately providing any type of visitor service within a CSU in Alaska, have continued to provide that visitor service and have retained the controlling interest in the business providing the visitor service, would be considered "historical operators" under these regulations and would be entitled to the rights conferred by section 1307(a) of ANILCA. However, a right to continue to provide visitor services under section 1307(a) is not unlimited; rather, it 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.

This section of the proposed rule also specified under what circumstances the rights of a historical operator would be lost. These included revocation due to failure to comply with special use