

Proposed § 251.123(a) (§ 251.124(a) in the final rule) set out a procedure for the solicitation and issuance of special use authorizations that would effectuate the rights of preferred operators under section 1307(b) of ANILCA. The proposed rule provided that an authorized officer must publicly solicit offers to provide visitor services by issuing a prospectus, when the Forest Service determines that:

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

In all other situations, except as provided in proposed § 251.122 for historical operators, special use authorizations would be issued noncompetitively on a first-come, first-served basis upon application to the authorized officer in accordance with the provisions at 36 CFR part 251, subpart B.

The following is an analysis of and response to a comment received on § 251.123(a) of the proposed rule (now § 251.124(a) of the final rule).

*Comment:* One respondent was concerned about the process the Forest Service would use to determine when authorized use needs to be restricted. The respondent stated that determination to restrict use should be made only as part of the public planning process, with adequate opportunity for notice and comment prior to implementation of restrictions.

*Response:* The Department agrees with this respondent. Existing Forest Service policy provides that decisions to limit use be made in accordance with the National Environmental Policy Act of 1969, its implementing regulations, and Forest Service Manual (FSM) 1950, which provides for public notice and comment. Additionally, land use allocations are made through the forest planning process and delineated in Forest land and resource management plans. Therefore, no changes were made in the final rule in response to this comment.

The Department has made the following changes to proposed § 251.123(a), which has been redesignated as § 251.124(a) in the final rule. The requirement for public solicitation through issuance of a prospectus has been moved to § 251.124(b) in the final rule. The remaining provisions in § 251.123(a) of

the proposed rule have been removed in their entirety since they duplicate agency policy in Forest Service Manual (FSM) 2712 and 2343 and in Forest Service Handbook (FSH) 2709.11, chapter 40, that applies to a competitive selection process and establishment of limitations on use. Section 251.124(a) of the final rule is similar to § 13.85 of the final National Park Service rule, which provides that a preference shall be given to a preferred operator when a competitive selection process is used to select a provider for visitor services.

Proposed § 251.123(b) (§ 251.124(b) in the final rule) specified the evaluation criteria that would be used to select an applicant. There were no comments on proposed § 251.123(b). However, the Department has made the following changes in the final § 251.124(b). The provisions contained in § 251.123(b) of the proposed rule have been removed in their entirety since they duplicate policy in the FSM 2712 and 2344 that establishes evaluation criteria used in a competitive evaluation process. Section 251.124(b) of the final rule includes a requirement for public solicitation through issuance of a prospectus when the opportunity to issue authorizations is limited. This section also provides that when authorizations, including priority use permits, expire they shall not be reissued if there is a need to limit use and when there is competitive interest by preferred operators.

Proposed § 251.123(c) (§ 251.124(c) in the final rule) specified that in order to be a preferred operator under subpart E, an applicant responding to a prospectus must be a local resident or a most directly affected Native Corporation. There were no comments on this provision, and no substantive changes have been made in § 251.124(c) of the final rule.

Proposed § 251.123(d) (§ 251.124(f) in the final rule) specified that a qualified preferred operator would be given preference over all other operators, except historical operators. The following is an analysis and response to comments received on § 251.123(d) of the proposed rule.

*Comment:* One respondent stated that the proposed regulations do not make clear the impacts of a Forest Service decision to restrict access, solicit applications, and grant a preference on other commercial operators in the affected area and questioned whether existing permits, including priority use outfitter-guide permits, would be revoked.

*Response:* Existing special use authorizations in CSUs in Alaska will be revoked only for cause, such as for noncompliance with their terms and

conditions. Except for permits held by historical operators, authorizations will not be reissued when there is a need to limit use and there is competitive interest by preferred operators. The business opportunities previously authorized by these permits will be allocated through issuance of a prospectus, as provided in § 251.124 of the final rule.

This section of the final rule will preempt the Forest Service's national outfitting and guiding policy in FSH 2709.11, chapter 40 (60 FR 30830), that authorizations providing for priority use are subject to renewal. To make the preemptive effect of this rule clearer, the Department has added the following sentence at the end of § 251.124(b): "Notwithstanding Forest Service outfitting and guiding policy in Forest Service Handbook (FSH) 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." Preemption of agency policy authorizing reissuance of priority use outfitting and guiding permits without competition is required to effectuate the preferences granted to Native Corporations and local residents under section 1307(b) of ANILCA.

Additionally, to make clear that priority use permits shall not be reissued without competition if the criteria under 36 CFR 251.124(b) are met, the Forest Service is issuing Amendment 2709.11-2003-2 to FSH 2709.11, chapter 40, to revise direction at sections 41.53c and 41.54f regarding priority use by adding a reference to 36 CFR part 251, subpart E. This amendment is available via the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>.

*Comment:* One respondent questioned if the Forest Service intended that preferred operators would have exclusive rights to provide visitor services in a specific area. The respondent further stated that if this were so, it would be clearly contrary to the intent of Congress that the preference is not a license to create a monopoly, and that public policy favors diversity in the provision of visitor services.

*Response:* Section 1307(b) of ANILCA grants a preference, rather than exclusive rights or a monopoly, to Native Corporations and local residents in the issuance of a visitor service authorization. Where the need exists, and where use limits allow, the prospectus may provide for more than