

one operator to be allocated a portion of the available use.

*Comment:* One respondent questioned how the Forest Service would allocate permits if all available use were not allocated to a preferred operator. The respondent noted that the preamble to the proposed rule suggested that remaining use be allocated by permits on a first-come, first-served basis, which would be highly unfair to operators who have provided quality, reliable services for a number of years and who have made a substantial investment in the continuation of these services.

The respondent further stated that in all instances where use is restricted but some commercial operators, other than those with a statutory preference, will be permitted to operate in the area, priority should be given to those seeking reissuance of a special use authorization, in order of the date their authorization was first issued (assuming continuous service).

*Response:* If there is a limit on the number of special use authorizations for a CSU and all available use is not allocated to a preferred operator, the Forest Service will allocate the remaining use according to the competitive process set forth in § 251.124 of the final rule. The commentary about first-come, first-served in the preamble of the proposed rule discussing § 251.123 refers to situations where there are no limitations on the number of special use authorizations being issued and therefore no competitive issuance of special use authorizations.

In CSUs where there are limits on the number of special use authorizations, all authorizations, other than those for historic operators under § 251.122, will be issued competitively in accordance with § 251.124 of the final rule. However, commercial operators without a statutory preference who have performed satisfactorily under a special use authorization likely will be more competitive than other operators without a statutory preference who either do not have satisfactory evaluations or who have not had an authorization. No change from the proposed rule is warranted based on this comment.

The Department has added a new § 251.124(d) to the final rule to clarify and describe factors that demonstrate local residency for applicants seeking preferred operator status. This new paragraph incorporates the factors previously set out in the definition of *local resident* at § 251.121 of the proposed rule.

Proposed § 251.123(e) (§ 251.124(g) in the final rule) specified that if the best

offer to a prospectus is made by a non-preferred operator, the preferred operator with the best offer would be given an opportunity to amend its offer to meet the offer of the non-preferred operator. No comments were received on this provision. However, the Department has made minor changes in the final rule. The word "offer" has been changed to "application" for consistency with the definitions and Forest Service policy, and the provisions governing application of the preference have been modified for clarity and consistency with the final rules promulgated by the National Park Service and the U.S. Fish and Wildlife Service.

Proposed § 251.123(f) (§ 251.124(e) in the final rule) required a preferred operator to document that it holds the controlling interest in a joint venture submitting an application. No comments were received on this provision of the proposed rule. The Department has, however, modified and clarified this section by adding examples of the types of entities for which documentation of a controlling interest might be required.

#### *Section 251.125 Preferred Operator Privileges and Limitations*

Proposed § 251.125 contained a number of provisions enumerating preferred operator privileges and limitations.

No comments were received on § 251.125, and no substantive changes were made to this section in the final rule; only minor changes have been made in this section for consistency with existing Forest Service policy. In addition, the order of the paragraphs in this section has been changed for clarity. Paragraph (a) in the proposed rule has been removed because it repeats a provision in § 251.124(f) in the final rule, and paragraph (d) in the proposed rule has been removed because it repeats a provision in § 251.124(e) in the final rule; the remaining paragraphs have been redesignated (a) through (e) in the final rule.

#### *Section 251.126 Appeals*

Proposed § 251.126 provided that 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.

No comments were received on § 251.126, and no substantive changes were made from the proposed rule.

## **Regulatory Certifications**

### *Environmental Impact*

An environmental assessment (EA) was prepared for the proposed rule. Notice of the availability of this EA was published in the **Federal Register** notice of the proposed rule (62 FR 20143). No comments were received on the EA. The Department has determined that there are no significant environmental impacts associated with adoption of this final rule. A copy of the EA and Finding of No Significant Impact may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** earlier in this document.

### *Regulatory Impact*

This final 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 will this rule adversely affect productivity, competition, jobs, the environment, public health and safety, or State and local governments. This rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. Finally, this rule will not alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients under such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

### *Proper Consideration of Small Entities*

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the act. Section 1307 of ANILCA provides a competitive advantage for Native Corporations and local residents that qualify as small entities. This rule merely implements section 1307 and does not increase or decrease any preference granted by the statute. This final rule will not impose record-keeping requirements; will not affect the competitive position of small entities in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market.