

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses; Noncommercial Group Use Permit Approval

AGENCY: Forest Service, USDA.

ACTION: Interpretive rule.

SUMMARY: The Department is adopting this interpretive rule to make explicit the intended interpretation and application of the term "public interest" in 36 CFR Sec. 251.56 as it relates to noncommercial group uses of National Forest System Lands.

EFFECTIVE DATE: This interpretive rule is effective September 9, 1999.

ADDRESSES: Written queries about this interpretive rule may be addressed to Director Recreation, Heritage, and Wilderness Resources Staff, 2720, 4th Floor-Central, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, or via e-mail to dbschor/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT:

Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, 202-205-1399.

SUPPLEMENTARY INFORMATION:

In August 1995, the Secretary of Agriculture adopted a final rule at 36 CFR part 251, subpart B, governing issuance and administration of permits for groups of 75 or more people who wish to use National Forest System lands for noncommercial activities (60 FR 45258; August 30, 1995). The intent in promulgating the rule was to ensure that authorization procedures for these activities comply with First Amendment requirements of freedom of speech, assembly, and religion, while simultaneously providing a reasonable administrative system for allocating space among scheduled and existing uses of National forests and Grasslands, for addressing concerns for public health and safety, and for controlling or preventing adverse impacts on forest resources.

The regulation as written is constitutional. It is a content-neutral, narrowly tailored time, place, and manner restriction. In particular, the rule sufficiently limits the discretion of authorized officers to place terms and conditions in noncommercial group use permits. The imposition of term and conditions in noncommercial group use permits is limited to those designed to further the three public interests identified by the Forest Service in promulgating the noncommercial group use rule, i.e., the need to address concerns of public health and safety, to minimize damage to National Forest System resources, and

to allocate space among actual or potential uses and activities.

Despite the clarity of the existing regulation, some confusion has persisted with respect to the amount of discretion allowed an authorized officer by 36 CFR 251.56(a)(1)(ii)(G) with regard to placing terms and conditions on noncommercial group uses. Under paragraph (a)(1)(ii) of Sec. 251.56, the authorized officer may place into a special use authorization such terms and conditions as the officer deems necessary for seven purposes. Paragraph (a)(1)(ii)(G) authorizes terms and conditions deemed necessary by the authorized officer that "otherwise protect the public interest." Out of an abundance of caution, the Department is issuing this interpretive rule to make explicit preexisting law and the agency's intent regarding Sec. 251.56(a)(1)(ii)(G) as applied to noncommercial group uses. Therefore, in the context of noncommercial group uses, the reference to "public interest" in Sec. 251.56(a)(1)(ii)(G) will be interpreted and applied as allowing only those terms and conditions furthering the three public interests served by the noncommercial group use rule.

This rule qualifies as an interpretive rule under the Administrative Procedure Act because it is a rule or statement issued by an agency to advise the public of the agency's preexisting construction of one of the rules it administers, i.e., 36 CFR 251.56(a)(1)(ii)(G) in the context of noncommercial group uses. See, e.g., *Shalala, Secretary of Health and Human Service v. Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995). Under 5 U.S.C.

[[Page 48960]]

553(b)(A), this interpretive rule is exempt from the notice and comment requirements in the Administrative Procedure Act. Under 5 U.S.C. 553(d)(2), this interpretive rule is effective immediately upon publication in the Federal Register.

Environmental Impact

This interpretive rule has no direct or indirect effect on the environment, as it merely makes explicit preexisting law regarding a provision related to terms and conditions of special use permits as applied to noncommercial group uses. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. Based on the nature and scope of this rulemaking, the agency has determined that this interpretive rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

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

Order 12866.

Moreover, this interpretive rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It has been determined that this interpretive rule will not have a significant economic impact on a substantial number of small entities as defined by the Act. This interpretive rule will not impose record keeping requirements; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This interpretive rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the interpretive rule will not pose the risk of a taking of private property, as the rule is limited to approval and administration of noncommercial group uses on Federal lands.

Civil Justice Reform

This interpretive rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this interpretive rule, (1) All State and local laws and Regulations that conflict with this interpretive rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this interpretive rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this interpretive rule on State, local, and tribal governments and the private sector. This interpretive rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This interpretive rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

Therefore, for the reasons set forth in the preamble, part 251, of Title 36 of the Code of Federal Regulations is amended as follows:

PART 251--LAND USES

Subpart B--Special Uses

1. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

2. In Sec. 251.56, add a note following paragraph (a)(1)(ii)(G) to read as follows:

Sec. 251.56 Terms and conditions

(a) * * *
(1) * * *
(ii) * * *
(G) * * *

Note to paragraph (a)(1)(ii)(G): The Department is making explicit its preexisting understanding of Sec. 251.56(a)(1)(ii)(G) of this subpart in the context of authorizing noncommercial group uses of National Forest System lands. Section 251.56(a)(1)(ii)(G) provides that each special use authorization shall contain such terms and conditions as the authorized officer deems necessary to otherwise protect the public interest. In the context of noncommercial group uses, the Forest Service interprets the term "public interest" found in Sec. 251.56(a)(1)(ii)(G) to refer to the three public interests identified by the Forest Service on August 30, 1995. These public interests include the protection of resources and improvements on National Forest System lands, the allocation of space among potential or existing uses and activities, and public health and safety concerns. Under this construction, Sec. 251.56(a)(1)(ii)(G) allows the Forest Service to impose terms and conditions that are not specifically addressed in Sec. 251.56(a)(1)(ii)(A)-(F) but only those that further these public interests. The Forest Service shall implement and enforce Sec. 251.56(a)(1)(ii)(G) in accordance with this interpretation.

Dated: September 2, 1999.

Dennis E. Bschor,

Acting Deputy Under Secretary, Natural Resources and the Environment.

[FR Doc. 99-23339 Filed 9-8-99; 8:45 am]

BILLING CODE 3410-11-M