

has determined that this action does not contain collection information requirements for purposes of the PRA.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action would not concern an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 650**

Bridges, Grant programs—Transportation, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: December 15, 2009.

**Victor M. Mendez,**  
*Administrator.*

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations part 650 as follows:

**PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS**

■ 1. The authority citation for part 650 continues to read as follows:

**Authority:** 23 U.S.C. 109(a) and (h), 144, 151, 315, and 319; 33 U.S.C. 401, 491 *et seq.*; 511 *et seq.*; sec. 4(b) of Pub. L. 97–134, 95 Stat. 1699 (1981); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, at 3135 (1983); sec. 1311 of Pub. L. 105–178, as added by Pub. L. 105–206, 112 Stat. 842 (1998); 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988 (3 CFR, 1977 Comp., p. 117); Department of Transportation Order 5650.2, dated April 23, 1979 (44 FR 24678).

**Subpart C—National Bridge Inspection Standards**

■ 2. Amend § 650.305 by revising the definition of “American Association of State Highway and Transportation Officials (AASHTO) Manual” to read as follows:

**§ 650.305 Definitions.**

\* \* \* \* \*

*American Association of State Highway and Transportation Officials (AASHTO) Manual.* “The Manual for Bridge Evaluation,” First Edition, 2008, published by the American Association of State Highway and Transportation Officials (incorporated by reference, *see* § 650.317).

\* \* \* \* \*

■ 3. Revise § 650.317 to read as follows:

**§ 650.317 Reference manuals.**

(a) The materials listed in this subpart are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these documents will be published in the **Federal Register**. The materials are available for purchase at the address listed below, and are available for inspection at the National Archives and Records Administration (NARA). These materials may also be reviewed at the Department of Transportation Library, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–0761. For information on the availability of these materials at NARA call (202) 741–6030, or go to the following URL: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.htm](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm). In the event there is a conflict between the standards in this subpart and any of these materials, the standards in this subpart will apply.

(b) The following materials are available for purchase from the

American Association of State Highway and Transportation Officials, Suite 249, 444 N. Capitol Street, NW., Washington, DC 20001, (202) 624–5800. The materials may also be ordered via the AASHTO bookstore located at the following URL: <http://www.transportation.org>.

(1) The Manual for Bridge Evaluation, First Edition, 2008, AASHTO, incorporation by reference approved for §§ 650.305 and 650.313.

(2) [Reserved]

[FR Doc. E9–30469 Filed 12–23–09; 8:45 am]

BILLING CODE 4910–22–P

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 251**

**RIN 0596–AC81**

**Special Uses**

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This final rule is making minor, purely technical changes to the Forest Service’s special use regulations. The Agency is clarifying a definition of a term in which a phrase was inadvertently omitted from previous versions of the rule and which properly reflect the Forest Service’s authority to issue special use authorizations. The rule also corrects inaccurate citations and terms and removes obsolete requirements.

**DATES:** *Effective Date:* This rule is effective December 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Julett Denton, Special Uses Program Manager, Lands Staff, 202–205–1256.

**SUPPLEMENTARY INFORMATION:** Forest Service regulations at 36 CFR part 251, subpart B, govern special use authorizations for use and occupancy of National Forest System lands. Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized uses include road rights-of-way, apiaries, water storage and transmission facilities, telephone and electric transmission line rights-of-way, ski areas, resorts, marinas, outfitting and guiding, and campgrounds. The Department is making minor, purely technical changes to the regulations governing special use authorizations.

### Good Cause Statement

The Administrative Procedure Act (APA) exempts certain rulemaking from its public notice and comment requirements, including rulemaking involving “public property” (5 U.S.C. 553(a)(2)), such as Federal lands managed by the Forest Service. Furthermore, the APA allows agencies to promulgate rules without public notice and comment when an agency for good cause finds that public notice and comment are “impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. 553(b)(B)).

In 1971, Secretary of Agriculture Hardin announced a voluntary waiver of the public property exemption from public notice and comment rulemaking under the APA (36 FR 13804, July 24, 1971). Thus, agencies in the U. S. Department of Agriculture (USDA) generally provide public notice and comment in promulgating rules. However, the Hardin policy permits USDA agencies to promulgate final rules without public notice and comment when the agencies find for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest, consistent with 5 U.S.C. 553(b)(B). The courts have recognized this good cause exception to the Hardin policy and have indicated that since the public notice and comment requirement was adopted voluntarily, the Secretary should be afforded “more latitude” in making a good cause determination. *See Alcaraz v. Block*, 746 F.2d 593, 612 (9th Cir. 1984).

The Department finds that good cause exists to exempt this rulemaking from public notice and comment pursuant to 5 U.S.C. 553(b)(B). This rulemaking merely clarifies the definition of “applicant” to make it consistent with agency practice and authority regarding who may apply for a special use authorization; inserts the words “or a permit” after “easement” and “or permits” after “easements,” which were inadvertently omitted in several paragraphs of this chapter and which are needed to reflect the scope of the Forest Service’s authority; corrects inaccurate citations and terms; and removes obsolete provisions. Public comment on these minor and purely technical changes is unnecessary pursuant to 5 U.S.C. 553(b)(B).

### Section-by-Section Analysis of the Final Rule

*Section 251.51 Definitions.* The Department is clarifying the definition for “applicant” to include any entity, not just a business or governmental

entity, consistent with the Forest Service’s practice and authority regarding who may apply for a special use authorization.

*Section 251.53(e) Authorities.* Consistent with applicable law and directives, the Department is inserting the words “or permits” after the word “easements” in the two places where that word appears in § 251.53(e). Direction in Forest Service Manual (FSM) 2701.1, paragraph 4, and 2710.11a, paragraph 4, and Forest Service Handbook (FSH) 2709.11, section 19, exhibit 03, uses the term “permit” as well as the term “easement” to refer to a special use authorization for a pipeline issued under the Mineral Leasing Act (MLA). Additionally, section 28 of the MLA (30 U.S.C. 185) uses the term “right-of-way or permit” throughout. It has always been the Forest Service’s practice to issue a permit or an easement for a pipeline authorized under the MLA.

*Section 251.54 Proposal and application requirements and procedures.* The Department is removing the requirement in § 251.54(f)(1)(ii) to wait 60 days before issuing a right-of-way for a pipeline 24 inches or more in diameter, after notifying Congress. Public Law 101–475, enacted in 1990, repealed the 60-day waiting period in section 28(w)(2) of the MLA (30 U.S.C. 185(w)(2)).

In addition, the Department is deleting the unnecessary requirement in § 251.54(f)(2) to refer proposals for electric transmission lines that would carry 66 kilovolts or more of energy to the Secretary of Energy for coordination. There is no statutory requirement for this referral, nor does the U. S. Department of Energy require the referral. In addition, provisions on interagency cooperation and coordination in the Energy Policy Act of 2005 have made this requirement obsolete.

*Section 251.60 Termination, revocation, and suspension.* In § 251.60(a)(1)(a)(i)(A), the Department is replacing the citation to § 251.54(h)(1) with § 251.54(g)(3)(ii), which is the correct citation for the provision governing evaluation criteria for noncommercial group use applications.

Consistent with applicable law and Forest Service directives, in § 251.60(a)(2)(i), (a)(2)(ii), and (g), the Department is inserting the words “a permit or” in front of the words “an easement” and “permits or” in front of the word “easements” in these sections. FSM 2701.1, paragraph 4, and 2710.11a, paragraph 4, and FSH 2709.11, section 19, exhibit 03, use the term “permit” as well as the term “easement” to refer to

a pipeline authorized under the MLA. Additionally, section 28 of the MLA (30 U.S.C. 185) uses the term “right-of-way or permit” throughout. It has always been the Forest Service’s practice to issue either a permit or an easement for a pipeline authorized under the MLA.

*Section 251.65 Information collection requirements.* The Department is adding the words “proposals and” before “applications,” since requirements for proposals as well as applications entail information collection requirements. In addition, the Department is removing the citation to § 251.59 in reference to special use applications, since § 251.59 governs transfer of authorized improvements. With respect to terms and conditions, the Department is replacing the citation to § 251.54 with § 251.56, which is the correct citation for the provision governing terms and conditions in special use authorizations. Finally, the Department is inserting the word “collection” between “information” and “requirements” in the text, consistent with the heading of this section and applicable law.

### Regulatory Certifications

#### *Environmental Impact*

This final rule makes purely minor, technical changes to the Forest Service’s regulations. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions.” The Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

#### *Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget (OMB) has determined that this is not a significant rule. This final 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 and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights

and obligations of beneficiaries of such programs. Accordingly, this final rule is not subject to OMB review under E.O. 12866.

#### *Regulatory Flexibility Act*

The Department has considered this final rule in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The final rule makes purely minor, technical changes to the Forest Service's regulations. This final rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule will not impose recordkeeping requirements on them; 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*

The Department has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12630. The Department has determined that the final rule will not pose the risk of a taking of private property.

#### *Civil Justice Reform*

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) All State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

#### *Federalism and Consultation and Coordination With Indian Tribal Governments*

The Department has considered this final rule under the requirements of E.O. 13132 on federalism and has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this final rule does not have Tribal implications as defined by E.O. 13175, Consultation and Coordination With Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

#### *Energy Effects*

The Department has reviewed this final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

#### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final 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 final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

#### **List of Subjects in 36 CFR Part 251**

Administrative practice and procedure, Electric power, National forests, Public lands—rights-of-way, Reporting and recordkeeping requirements, Water resources.

■ Therefore, for the reasons set forth in the preamble, the Forest Service is amending subpart B of part 251 of Title 36 of the Code of Federal Regulations as follows:

#### **PART 251—LAND USES**

■ 1. The authority citation for part 251 continues to read as follows:

**Authority:** 7 U.S.C. 1011; 16 U.S.C. 518, 551, 678a; Pub. L. 76–867, 54 Stat. 1197.

#### **Subpart B—Special Uses**

■ 2. In § 251.51 revise the definition of “applicant” to read as follows:

#### **§ 251.51 Definitions.**

*Applicant*—any individual or entity that applies for a special use authorization.

\* \* \* \* \*

■ 3. Revise § 251.53(e) to read as follows:

#### **§ 251.53 Authorities.**

\* \* \* \* \*

(e) Permits or easements for a right-of-way for a pipeline for the transportation of oil, gas, or oil or gas products, where no Federal land besides National Forest System lands is required, and permits for the temporary use of additional National Forest System lands necessary for construction, operation, maintenance, or termination of a pipeline or to protect the natural environment or public safety under section 28 of the Mineral Leasing Act, 41 Stat. 449, as amended (30 U.S.C 185);

\* \* \* \* \*

■ 4. Revise § 251.54(f)(1)(ii) and remove paragraph (f)(2) and redesignate paragraph (f)(3) as (f)(2).

The revision reads as follows:

#### **§ 251.54 Proposal and application requirements and procedures.**

\* \* \* \* \*

(f) *Special requirements for certain proposals*—(1) *Oil and gas pipeline rights-of-way.* \* \* \*

(ii) The authorized officer shall promptly notify the House Committee on Resources and the Senate Committee on Energy and Natural Resources upon receipt of a proposal for a right-of-way for a pipeline 24 inches or more in diameter, and no right-of-way for that pipeline shall be granted until notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to the term and conditions the authorized officer proposes to impose, have been submitted to the committees.

\* \* \* \* \*

■ 5. Revise § 251.60(a)(1)(i)(A), (a)(2)(i), (a)(2)(ii), and (g) to read as follows:

#### **§ 251.60 Termination, revocation, and suspension.**

(a) *Grounds for termination, revocation, and suspension*—(1) *Noncommercial group uses.* (i) *Revocation or suspension.* \* \* \*

(A) Under the criteria for which an application for a special use authorization may be denied under § 251.54(g)(3)(ii);

\* \* \* \* \*

(2) *All other special uses.* (i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except a permit or an easement issued pursuant to § 251.53(e) or (l) of this subpart: \* \* \*

(ii) *Administrative review.* Except for revocation or suspension of a permit or an easement issued pursuant to § 251.53(e) or (l) of this subpart, suspension or revocation of a special

use authorization under this paragraph is subject to administrative appeal in accordance with 36 CFR part 251, subpart C, of this chapter.

\* \* \* \* \*

(g) The authorized officer may suspend or revoke permits or easements issued under § 251.53(e) or (l) of this subpart under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the permit or easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

\* \* \* \* \*

■ 6. Revise § 251.65 to read as follows:

**§ 251.65 Information collection requirements.**

The rules of this subpart governing special use proposals and applications (§ 251.54), terms and conditions (§ 251.56), rental fees (§ 251.57), and modifications (§ 251.61) specify the information that proponents or applicants for special use authorizations or holders of existing authorizations must provide to allow an authorized officer to act on a request or administer the authorization. Therefore, these rules contain information collection requirements as defined in 5 CFR part 1320. These information collection requirements are assigned OMB Control Number 0596-0082.

Dated: December 16, 2009.

**Hank Kashdan,**  
*Associate Chief.*

[FR Doc. E9-30510 Filed 12-23-09; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 231**

RIN 0750-AF85

**Defense Federal Acquisition Regulation Supplement; Allowability of Costs To Lease Government Equipment for Display or Demonstration (DFARS Case 2007-D004)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal

Acquisition Regulation Supplement (DFARS) to address limitations on the allowability of contractor costs associated with the leasing of Government equipment for display or demonstration. The rule specifies that monies paid to the Government for the leasing of Government equipment are unallowable, except in the case of foreign military sales contracts.

**DATES:** *Effective Date:* December 24, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian Thrash, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0310; facsimile 703-602-0350. Please cite DFARS Case 2007-D004.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD Instruction 7230.08, Leases and Demonstrations of DoD Equipment, contains policy on the leasing of DoD equipment to defense contractors for demonstration to foreign governments or for display or demonstration at international trade shows and exhibitions. In addition to the leasing of equipment, contractors may obtain related support services from DoD. The Instruction provides that the contractor leasing the equipment may not recover the DoD charges associated with the lease, directly or indirectly through any U.S. Government contract, except to the extent chargeable to contracts for foreign military sales. For consistency with the policy in DoD Instruction 7230.08, this final rule adds DFARS text to address the limitations on the allowability of costs associated with the leasing of Government equipment.

DoD published a proposed rule at 72 FR 69176 on December 7, 2007. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is consistent with existing DoD policy, and applies only in those situations where a contractor chooses to lease military equipment for display or demonstration purposes.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 225 and 231**

Government procurement.

**Amy G. Williams,**  
*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 225 and 231 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 231 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 225—FOREIGN ACQUISITION**

■ 2. Section 225.7303-2 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

**225.7303-2 Cost of doing business with a foreign government or an international organization.**

\* \* \* \* \*

(b) Costs not allowable under FAR Part 31 are not allowable in pricing FMS contracts, except as noted in paragraphs (c) and (e) of this subsection.

\* \* \* \* \*

(e) The limitations in 231.205-1 on allowability of costs associated with leasing Government equipment do not apply to FMS contracts.

**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

■ 3. Section 231.205-1 is added to read as follows:

**231.205-1 Public relations and advertising costs.**

(e) *See* 225.7303-2(e) for allowability provisions affecting foreign military sales contracts.

(f) Unallowable public relations and advertising costs also include monies paid to the Government associated with the leasing of Government equipment, including lease payments and reimbursement for support services, except for foreign military sales contracts as provided for at 225.7303-2.

[FR Doc. E9-30295 Filed 12-23-09; 8:45 am]

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