



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AD13

Additional Seasonal and Year-Round Recreation Activities at Ski Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of final directives.

SUMMARY: The Forest Service is revising its directives for ski areas authorized under the National Forest Ski Area Permit Act of 1986 (Ski Area Permit Act) (16 U.S.C. 497b) to provide additional guidance for implementing the 2011 amendment to this Act, known as the Ski Area Recreational Opportunity Enhancement Act (SAROE) (Pub. L. 112-46, 125 Stat. 538). Current directives limit the criteria for determining whether additional seasonal and year-round recreation activities may be approved at ski areas to those listed in SAROE. The final directives add criteria to help authorized officers determine whether proposals for these activities are consistent with SAROE. The final directives also provide guidance on non-exclusive use at ski areas, that is, recreational use at ski areas, such as snowshoeing or cross-country skiing, by the non-paying public.

EFFECTIVE DATES: These directives are effective [insert date of publication in the **FEDERAL REGISTER**].

ADDRESSES: These final directives will be available for inspection at the office of the Director, Recreation, Heritage, and Volunteer Resources Staff, USDA, Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, S.W., Washington, D.C., during regular business hours (8:30 a.m. to 4:00 p.m.), Monday

through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead at 202-205-1227 to facilitate access to the building. Copies of documents in the record may be requested under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Chris Hartman, Acting National Winter Sports Program Manager, 202-697-1051 or via email at *chartman01@fs.fed.us*.

Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Final Directives

Most of the 122 ski areas operating on National Forest System (NFS) lands in the United States are authorized under a special use permit issued per the Ski Area Permit Act. As originally enacted, the Ski Area Permit Act authorized Nordic and alpine skiing at ski areas on NFS lands. On November 7, 2011, Congress enacted SAROEA, which amended the Ski Area Permit Act to authorize additional seasonal and year-round recreation activities and associated facilities that may be approved at ski areas. SAROEA contains a non-exhaustive list of additional seasonal and year-round recreation activities and associated facilities that may, if certain criteria are met, be approved and a non-exhaustive list of additional seasonal and year-round recreation activities and associated facilities that may not be approved at ski areas. On August 5, 2013, the Forest Service amended FSM 2340 to incorporate the self-executing portions of SAROEA, that is, the list of additional seasonal and year-round activities and associated facilities that may be authorized at ski areas

Summer uses at ski areas, both on private and NFS lands, have been increasing in recent years. This increase has been driven in part by new technologies and by the growing number of people seeking recreation activities in more managed settings. Some of these summer uses, such as zip lines, canopy tours (often a combination of zip lines, suspension bridges, and belay points), and mountain bike parks, can be natural resource-based, encourage outdoor recreation and enjoyment of nature, and harmonize with the natural environment, consistent with SAROE A. Other summer uses involving facilities that are common at amusement parks, such as merry-go-rounds, Ferris wheels, miniature train rides, and roller coasters, do not meet the criteria in SAROE A and thus would not be approved at ski areas.

Given recent trends in use at ski areas, the Agency believes that it will be helpful to ski area permit holders and permit administrators to add criteria to the directives for determining whether proposals for additional seasonal and year-round recreation activities and associated facilities are consistent with SAROE A. The Agency also believes that it will be helpful to include the list of additional seasonal and year-round recreation activities and associated facilities that are prohibited at ski areas under SAROE A.

The Agency recognizes that additional seasonal and year-round recreation activities and associated facilities are important to the long-term viability of ski areas, and that the more managed outdoor recreation settings at ski areas could introduce urban-

based population segments, especially youth, to outdoor recreation. This exposure could build a deeper appreciation for nature that could lead to exploration of NFS lands beyond ski areas. Further guidance on authorization of additional seasonal and year-round recreation activities and associated facilities at ski areas will help permit administrators review proposals for these activities consistent with these objectives and SAROEAs.

Forest Service regulations and ski area permits provide that authorized uses of NFS lands are not exclusive, and that the Forest Service may require common use of the lands or use by others in any way that is not inconsistent with the permit holder's rights and privileges, after consultation with all affected parties. Several ski areas on NFS lands have experienced a significant increase in the number of recreationists using snowshoes or cross-country skis or simply traveling on foot on slopes within ski areas. The Agency has identified a need to address how this type of public use may be conducted efficiently and safely. Consequently, the final directives provide guidance on recreational use at ski areas by the non-paying public.

2. Response to Comments on the Proposed Directives

Overview of Comments

The proposed directives were published in the **Federal Register** for public notice and comment on October 2, 2013 (78 FR 60820). The comment period closed on December 2, 2013. The Forest Service received 305 letters on the proposed directives providing approximately 1200 comments: 66 percent of comments were from nonaffiliated individuals; 5 percent were from government entities; 27 percent were from the recreation industry; and 2 percent were from nongovernmental organizations such as environmental, conservation, or preservation groups.

General Comments

Comment: One respondent suggested that it is not clear whether there is a rulemaking requirement as part of SAROE A.

Response: SAROE A specifically requires the Secretary to promulgate implementing regulations no later than 2 years after November 7, 2011. An initial revision to FSM 2340 was published in August 2013 implementing the nondiscretionary components of the statute. This is the final amendment to those directives. Additionally, the Forest Service published an interim final rule on June 28, 2013, revising 36 CFR 251.51, the definition of a ski area, to conform to SAROE A.

Specific Comments

FSM 2343.05 - Definitions

Amusement Park

Comment: Many respondents commented on the proposed definition of “amusement park,” which prohibits more than two rides together. These respondents stated that there is a need to create a critical mass for efficient operations, which may involve more than two rides in one location; that the proposed definition is inconsistent; that the definition should not conflict with SAROE A and congressional intent to locate additional seasonal and year-round recreation activities in developed portions of the ski area; that the definition should not limit the use of ski equipment like chairlifts and gondolas; that a widely accepted dictionary definition is preferable to the American Society for Testing and Materials definition; and that it is unnecessary to define this term, which is the only one of the listed activities in SAROE A that are prohibited at ski areas.

Response: This definition generated many of the comments received. SAROE A

expressly prohibits amusement parks at ski areas. The Agency chose to define amusement park because the Agency anticipates different interpretations of what is and what is not allowed under SAROE A. One recommendation was to use a dictionary definition of amusement park. Existing published definitions for amusement parks vary widely and do not all lend themselves to the context of SAROE A. The Random House Dictionary defines “amusement park” as “a park equipped with such recreational devices as a Ferris wheel, roller coaster, and so forth and usually having vendors of toys, food, and beverages.” This dictionary definition is problematic because zip lines, which are included in the list of recreation activities in SAROE A that may be allowed at ski areas, subject to certain conditions, are “recreational devices,” and food and beverage services are often provided at ski areas.

Instead, we have revised the definition of “amusement park” to characterize what is not appropriate on NFS lands, i.e., developed recreation areas consisting primarily of facilities or activities that are not natural resource-based; do not encourage outdoor recreation and enjoyment of nature; do not harmonize with the natural environment; and contain rides and other amusements that are not typically found in a natural resource-based environment, such as water slides and water parks, Ferris wheels, bumper cars, and miniature golf courses.

Amusement Park Ride

Comment: Some respondents suggested that the definition not be so broad as to include ski lifts and gondolas, which should be exempted, along with zip lines and ropes courses. Some respondents believed that the definition should not include mountain bikes, which are considered mechanized equipment. One respondent suggested the

following definition: “A mechanized device or combination of devices that carry persons along, around, or on a course defined by rails, tracks, or other fixed guidance system for the purpose of giving passengers thrills or other types of amusement, other than a zip line, ropes course, or terrain park.” One respondent stated that the definition for “amusement park ride” could be eliminated if a dictionary definition for “amusement park” were adopted. Another respondent noted that a more appropriate term would be “mountain recreation feature,” which could be defined as “a zip line, ropes course, Frisbee golf, mountain bike trail or park, climbing wall, alpine slide, or other similar recreation feature that is participatory in nature or relies on gravity or the mountain contour for propulsion.” This respondent stated that additional attributes like terrain, gravity, and mountain contour should be added to the definition, as they provide a natural thrill.

Response: The definition for “amusement park ride” has been removed from the final directives, and the definition for “amusement park” has been revised in a way that does not encompass chair lifts or other facilities associated with snow sports at ski areas.

Natural Resource-Based Recreation (NRBR)

Comment: Several respondents said that NRBR is a filter for activities other than skiing and snow sports, and that any recreational activity requiring unique facilities not associated with skiing and other snow sports must pass through that filter.

Response: NRBR is one of the screens required by SAROEA for evaluating proposals for additional seasonal or year-round recreation activities and associated facilities at ski areas.

Comment: NRBR is the Forest Service brand of recreation.

Response: The Agency agrees that NRBR describes the type of recreation that is appropriate on NFS lands.

Comment: A respondent suggested that NRBR activities are not dependent on facilities and that NRBR activities may utilize facilities developed for resource management purposes, such as roads or trails.

Response: The Forest Service disagrees that NRBR is never dependent on facilities. SAROEIA expressly provides that NRBR is one of the screens for evaluating proposals for non-snow sport activities and associated facilities at ski areas.

Comment: Some respondents stated that NRBR activities may be characterized by active physical effort; some level of acquired knowledge or skill; ability to control the activity; some level of physical risk; and lack of specialized facilities. These respondents noted that while some passive activities such as viewing scenery and wildlife are NRBR, they either do not require facilities or may be accommodated utilizing facilities developed for other purposes, such as roads and ski lifts.

Response: The Agency disagrees that these attributes are always necessary to qualify an activity as NRBR. NRBR should be viewed in terms of what participants may learn, rather than what knowledge or skill they already have, and should not preclude opportunities for novices. Ski areas are an opportunity to introduce people to different types of NRBR by providing transportation into relatively undeveloped areas. The Agency agrees that viewing scenery and watching wildlife are good examples of NRBR that may appeal to participants who are not seeking physical exertion or risk and associated thrill. SAROEIA expressly provides for facilities associated with NRBR activities.

Comment: Some respondents suggested that terrain, gravity, and contour, which provide a natural thrill, be considered attributes of NRBR. These respondents noted that speed is an inherent characteristic of many snow sports and should not disqualify them from being considered NRBR.

Response: SAROEIA establishes NRBR as a criterion for evaluating proposals for non-snow sports and associated facilities. Therefore, speed as a characteristic of snow sports is not relevant to the application of the NRBR requirement in SAROEIA. The proposed **FEDERAL REGISTER** notice (FRN) used speed to illustrate lack of engagement with the natural setting. We are clarifying in the final FRN that utilizing mountain terrain and gravity which result in speed would not rule out an activity from qualifying as NRBR. The Agency agrees that terrain, gravity, and contour are characteristics of mountain terrain that present opportunities for natural thrills and that the mountain terrain at most ski areas presents an opportunity for activities that involve speed, such as zip lines, which were specifically authorized by SAROEIA. However, it is unnecessary to modify the definition of NRBR with respect to speed because speed is not used as a criterion in the definition or elsewhere in the directives.

Comment: One respondent stated that the emphasis on speed and the need for permanent metal structures disqualifies some facilities as NRBR, as they do not harmonize with the natural environment.

Response: NRBR and harmonizing with the natural environment are separate requirements in SAROEIA. Recreation activities that involve speed and permanent metal structures may or may not harmonize with the natural environment, depending on the type of activity and the location and design of the structures. Because mountain slopes

have high visibility, construction of structures that deviate in form, line, color, and texture and materials that contrast with the natural setting would be a concern. Whether proposed additional seasonal or year-round recreation facilities at ski areas harmonize with the natural environment and are-natural resource-based will be determined site specifically at the project level.

Comment: Several respondents commented that the proposed definition for NRBR is unnecessarily limiting and encourages argument over how attributes of the national forest setting are essential to the visitor's experience. These respondents suggested stating that the visitor's experience must be significantly enhanced by the national forest setting.

Response: The Agency agrees that it could be difficult to determine whether attributes of the national forest setting are essential to the visitor's experience. However, stating that the visitor's experience must be significantly enhanced by the national forest setting is inadequate. To qualify as NRBR, the visitor's experience should be interdependent with attributes of national forest settings. The Agency has revised the definition for NRBR in the final directives accordingly.

Comment: Some respondents stated that the definition of NRBR should not prohibit activities such as mountain biking that would attract people to ski areas in the off season. Other respondents stated that the definition of NRBR should not preclude mechanized facilities.

Response: SAROEAs specifically lists mountain bike terrain parks and trails and zip lines, a type of mechanized facility, as additional or year-round recreation activities and associated facilities that may, in appropriate circumstances, be authorized at ski

areas. SAROEAE requires all additional or year-round recreation activities at ski areas to be natural resource-based. Therefore, the Agency has included a definition for NRBR in the directives. The definition for NRBR in the final directives is “a proposed or existing recreation activity that occurs in a natural setting where the visitor’s experience is interdependent with attributes such as mountains, forests, geology, grasslands, water bodies, flora, fauna, and natural scenery.” The Agency does not believe that this definition will preclude mechanized facilities or activities such as mountain biking that will attract visitors to ski areas in the off season.

Comment: Some respondents stated that the proposed definition for NRBR would allow activities that are not natural resource-based, such as concerts and weddings.

Response: SAROEAE does not allow construction of new facilities for non-NRBR activities such as concerts and weddings. However, SAROEAE does not prohibit efficient utilization of existing improvements. The Forest Service has authority to allow these activities when they utilize existing facilities. This authority is captured in FSM 2343.14, paragraph 6, which precludes construction of new, permanent facilities solely for temporary activities such as concerts or weddings, but provides that these temporary activities may be allowed if they rely on existing facilities, even if they are not necessarily interdependent with a national forest setting, provided they could be enhanced by it. The word “infrastructure” in the proposed directives was replaced with “facilities” in the final directives to be more consistent with the language in SAROEAE.

Terrain Park

Comment: Some respondents stated that the definition of “terrain park” should reference mountain bikes and cyclists and reflect the design and location of mountain

bike terrain parks. These respondents suggested that the definition be edited to read as follows: “An area or trail with natural and/or manmade features designed to add challenge to the riding experience. This may include jumps, rails, boxes, quarter- and half-pipes, and other obstacles used by skiers and snowboarders during the snow season. It may also include berms, drops, jumps and rock, wooden, or earthen structures used by bicycles.”

Response: The Agency agrees that the definition for “terrain park” should reference bicycles and has revised the definition in the final directives accordingly.

FSM 2343.03 - Policy

Paragraph 11d - Advertising That Includes the Holder Name and Logo

Comment: Several respondents expressed support for allowing holders and their business partners, as well as their contractors and service partners, to display their name and logo as provided in the directive. These respondents noted that without business partners and sponsors, ski areas would not be able to provide as many services as they do and that unduly limiting the display of names and logos would hurt small ski areas. Some respondents also noted that it was appropriate for holders and holders’ business partners to display their name and logos on vehicles in common parking areas. Others commented that the proposed policy acknowledges the incidental nature of advertising in the form of names and logos on parked vehicles.

Response: The Forest Service agrees and has clarified in the final directives that holders and their contractors, other service providers, and business partners may display their name and logo on personal and company vehicles operated on roads and in parking areas within the permit boundary.

Comment: Some respondents stated that there should be no advertising on maps, lifts, or trail signage and that advertising should be limited to temporary events and temporary structures, like course fencing.

Response: The proposed directives did not include any revisions to the policy on advertising on maps, lifts, or trails. With respect to advertising, the proposed directives included revisions only to the policy on display of names and logos on vehicles in FSM 2343.03, paragraph 11d, and to the policy on locations where support for snow sport race courses and terrain parks may be recognized in FSM 2343.03, paragraph 11g. The comments regarding other aspects of the Agency's advertising policy are beyond the scope of the proposed directives. Therefore, the Agency is not making changes in response to these comments.

Paragraph f - Short-Term Competitive or Recreation Events

Comment: Some respondents stated that the term "recreation event" is not defined and that allowing outdoor advertising at short-term recreation events, as well as competitive events, could expand advertising at ski areas beyond what anyone would deem appropriate. These respondents also noted that the 21-day limit for posting outdoor advertising at competitive or recreation events is not short term and should be decreased. Other respondents commented that expanding the policy to include recreation events is an improvement and would allow for equipment manufacturer demonstration days and similar events.

Response: The term "recreation event" is defined in the Code of Federal Regulations at 36 CFR 251.51 as "a recreational activity conducted on National Forest System lands for which an entry or participation fee is charged, such as animal, vehicle,

or boat races; dog trials; fishing contests; rodeos; adventure games; and fairs.” The Agency believes this definition is narrow enough to address the respondents’ concern regarding expansion of outdoor advertising at ski areas. The directives limit advertising during temporary events commensurate with the length of the event. The 21-day limit is appropriate, given that some temporary winter events common at ski areas, such as major national and international skiing and snowboarding competitions, last that long.

Paragraph g - Designated Ski and Snowboard Race Courses and Terrain Parks

Comment: One respondent expressed concern that allowing advertising on race gates, as well as at start and finish lines, would be excessive and would turn national forest ski slopes and terrain parks into billboards.

Response: The amount of space available for advertising on typical race gates limits the size and scope of the advertising. Advertising on race gates must be approved case by case by the authorized officer.

Paragraph 12 - Sponsorships

Comment: Several respondents suggested that the policy on sponsorship in FSM 2343.03, paragraph 12, should be broadened to reflect more accurately accepted standards in the ski industry. Other respondents asserted that sponsorship is a right of the landowner, namely the United States, and that the landowner alone should benefit from sponsorship.

Response: The proposed directives did not include any revisions to the policy on sponsorship. The comments regarding this policy are beyond the scope of the proposed directives. Therefore, the Agency is not making changes in response to these comments.

FSM 2343.11, Paragraph 3 - Visitor Connection to the Natural Environment

Comment: A few respondents affirmed that ski areas are a good way to introduce people who might be intimidated by the backcountry to the natural environment.

Response: The Forest Service agrees that ski areas offer some unique forms of visitor access to the natural environment.

Comment: Several respondents wanted to connect visitors to the natural environment outside a commercial context. They were concerned that increasing the size, scope, and intensity of commercial uses at ski areas would decrease the choices for experiencing natural settings and recommended that the proposed directive prohibit facilities that detract from the natural environment.

Response: SAROEA expressly provides for authorization of additional seasonal and year-round recreation activities and associated facilities at ski areas that meet certain criteria. Among other things, these activities and associated facilities must be natural resource-based; encourage outdoor recreation and enjoyment of nature; be situated in the developed portions of the ski area; and, to the extent practicable, harmonize with the natural environment of the NFS lands on which they are located. The final directives incorporate these criteria. SAROEA does not prohibit additional seasonal and year-round recreation activities and associated facilities that detract from the natural environment.

Comment: Some respondents believed that only human-powered winter recreation achieves the goal of connecting visitors to the natural environment.

Response: While it is true that human-powered winter recreation meets the goal of connecting people with the natural environment, SAROEA allows the Forest Service to authorize non-snow sport recreation activities at ski areas, subject to certain conditions, and does not limit these non-snow sport activities to human-powered recreation. To

clarify that additional seasonal and year-round recreation activities at ski areas may be non-mechanized, the Agency has revised FSM 2343.11, paragraph 3, to state that these activities may range from passive to active.

Paragraphs 4 and 5 - Fees Charged by Ski Area Permit Holders

Proposed paragraph 4 would allow fees for the use of improvements and services in which ski area permit holders have invested. Proposed paragraph 5 would allow fees for facilities and services offered at ski areas, such as lifts, plowed parking lots, groomed slopes and trails, and manmade snow. In commenting on these proposed paragraphs, many respondents stated that charging fees for services at ski areas is reasonable. One respondent noted that ski areas incur expenses in grooming trails and snowmaking and that a moderate fee is appropriate for users who benefit from those services.

Some respondents commented that paragraph 5 would allow ski areas to impose an entry fee. One respondent stated that income taxes pay for the management of federal lands and that no further fees should be allowed. One respondent stated that ski areas should not be allowed to charge for parking, and that charging for parking would be tantamount to charging an entrance fee. One respondent observed that public money pays for access roads to ski areas and snow removal on those roads and that ski areas should allow use of their parking lots by the non-paying public for recreational purposes.

Response: Paragraph 4 recognizes that ski areas may charge a fee if they provide services, such as grooming and snowmaking, or improvements in areas where access is provided. Proposed paragraph 5 would not allow ski areas to impose an entry fee. Rather, like proposed paragraph 5, paragraph 5 in the final directives precludes entrance fees at ski areas. This paragraph clarifies that holders of ski area permits are authorized

to charge for services and facilities they provide, rather than for general access. This direction is not intended to encourage or discourage fees. Rather, the direction simply clarifies when fees may be charged at ski areas.

Paragraphs 4, 5, and 6 - Access by the Non-Paying Public

Comment: Several respondents observed that traditional snow-based recreation on NFS lands predates the establishment of ski areas and has been displaced by ski runs. These respondents stated that it is increasingly difficult to find opportunities to climb up and ski down at ski areas because they often control the only reasonable access to desirable terrain, which requires those who want to ski without using lifts to travel to increasingly remote areas. These respondents advocated allowing access to ski areas by the non-paying public to continue.

Several respondents agreed with providing guidance on recreational use at ski areas by the non-paying public to address management of the increasing number of skiers or snowshoers who climb uphill before lifts start running or while they are running. Many respondents believed that ski areas should not be able to limit the non-paying public from accessing NFS lands at ski areas and should be discouraged or prohibited from charging fees to those not using their facilities. These respondents believed that the directive should more strongly discourage ski areas from charging for uphill access by those who do not use lifts and that ski areas should not be able to preclude non-paying users from accessing NFS lands for appropriate recreation activities.

Other respondents requested free public access when ski areas are open as well as closed. These respondents observed that ski areas should not be allowed to charge when they are not incurring additional operating costs and that ski areas should be required,

rather than encouraged, to provide for uphill access at ski areas, even during hours of operation. These respondents noted that there is no additional danger to uphill skiers outside of regular operating hours; that grooming machines are slow and noisy and easy to avoid; and that snowmobiles are sometimes used at ski areas while they are in operation, even though they are more dangerous than grooming machines. Some respondents stated that ski areas should not have control over the timing and location of use by the non-paying public in summer or winter. These respondents believed that the authorized officer should have discretion to make determinations regarding the safety of access by the non-paying public. One respondent suggested that restrictions on access by the non-paying public be subject to public notice and comment.

One respondent observed that parties on both sides of the access issue are sometimes unreasonable and that in some instances ski areas have tried to prohibit uphill access when there is no safety issue, while uphill skiers have unreasonably asserted that they can do as they like. This respondent noted that there should be compromise and mutual recognition of the need to balance free uphill access provided by ski areas with holder responsibility to follow safety procedures. The respondent added that access for human-powered recreation should not be denied when there is no real safety issue and improvements are not being used. One respondent observed that the authority of law enforcement officers to prevent people from hurting themselves is sufficient to address public safety concerns associated with use of ski areas by the non-paying public. Several respondents believed that uphill routes could be designated and modest uphill trail fees could be charged, just as cross-country trails are designated and cross-country trail fees are charged.

Several respondents observed that uphill access is not a right and is limited by safety, operational, and resource needs unique to each ski area. These respondents noted that a ski area's ability to manage the compatibility of uphill traffic with downhill use is an important factor in meeting customer expectations and in the cost of liability insurance, and that ski areas need the ability to control use within ski area boundaries to maximize safety for the public and resort employees and to protect resources and investments. These respondents stated that there is a need to protect the health and safety of all users and ski area employees; that the goal of providing access should be subordinate to safety; and that restrictions on access by the non-paying public may need to be imposed for safety reasons. These respondents believed that access by the non-paying public cannot always be provided because of safety concerns and that access should be allowed only when it does not conflict with public safety and does not seriously disrupt ski area operations.

These respondents stated that downhill skiing and uphill access are not compatible and that ski areas should be able to establish some limitations on when and where uphill skiing and snowshoeing can occur at ski areas to promote safety. Specifically, these respondents stated that ski areas need to be able to limit uphill access to hours when a resort is not operational and to preclude uphill access when it impedes snow management activities such as avalanche control and grooming; when the ski area is preparing for a special event; when uphill access cannot otherwise be safely accommodated, such as during construction or adverse weather conditions; and when uphill access would cause resource damage or would pose an unacceptable risk to downhill skiers. Some respondents commented that the proposed directives should

generally require that all ski area users obtain a lift ticket, even if it is complimentary, during hours of operation so that all users are made aware of the skier responsibility code and sign an acknowledgment of risk and waiver of liability.

Two respondents recommended that signs be posted at ski areas regarding access by the non-paying public. One respondent stated that these signs should be easily accessible and updated regularly to increase awareness of the availability of access by the non-paying public. Other respondents recommended requiring that ski areas' policy on access by the non-paying public be posted on their website, rather than on site.

Response: The Agency recognizes that access opportunities for traditional use in and around ski areas, including use of public trails and mountain passes, skiing, and mountaineering, may have been displaced by ski areas. Paragraph 4 of the final directives provides that holders may not charge for the use of NFS lands in which they have made limited or no investments or for use of nonmotorized or motorized trails that are constructed and maintained by the Forest Service. Paragraph 5 of the final directives precludes entrance fees at ski areas and states that authorized officers should strive to ensure that, to the extent possible based on public safety considerations, some portions of the permit area remain open to the public without charge, so that the holder's charges do not constitute de facto entrance fees. Consistent with Forest Service regulations and the terms and conditions of the standard ski area permit, paragraph 6 of the final directives provides that ski areas must remain open to the non-paying public for all lawful uses that are not inconsistent with the holder's rights and privileges and public safety, and that in most cases it would not be appropriate for restrictions to preclude all public use during the ski season other than by those purchasing a lift ticket or paying for other services.

These paragraphs encourage authorized officers to maintain access opportunities for the non-paying public.

The Agency agrees that access by the non-paying public must be balanced with safety. Therefore, paragraphs 5 and 6 have been revised in the final directives to add public safety as a consideration in direction on access by the non-paying public at ski areas.

The Agency does not believe that the final directives should require uphill users to obtain a lift ticket. Paragraph 6 of the final directives provides that authorized restrictions on use by the non-paying public must be documented in the operating plan. The mechanics of how uphill access is managed, including whether or not a pass is required so that users are aware of the skier responsibility code and sign an acknowledgment of risk and waiver, should be addressed in the operating plan. The Agency believes that it is appropriate to state that uphill access information must be posted at locations where it would be accessible to the public, but that it is not appropriate to prescribe how that information is posted. Each ski area and its visitors are unique. The authorized officer and ski area permit holders are best suited to determine how and where to make this information available. Ski area permit holders are encouraged to work with their visitors to determine the most effective way to communicate this information.

FSM 2343.14

Comment: Many respondents stated that this section includes excerpts from existing management frameworks, e.g., the Scenery Management System (SMS), Recreation Opportunity Spectrum (ROS), and Built Environment Image Guide (BEIG)

that do not need to be repeated.

Response: The inclusion of components of these management frameworks as initial screening criteria for proposals for additional seasonal and year-round recreation activities and associated facilities at ski areas does not replace or diminish application of these frameworks during project planning. As stated in FSM 2343.14, paragraph 9, inclusion of these components in initial screening of these proposals assists with the determination of whether they would harmonize with the surrounding natural environment, as required by SAROEA.

Comment: One respondent stated that this section establishes a different standard for evaluating proposals for summer uses at ski areas.

Response: SAROEA establishes requirements for additional seasonal and year-around use, not snow sports.

Comment: Some respondents suggested that the Forest Service better articulate the reasons for the new policy providing for authorization of additional development at ski areas. These respondents stated that ski resorts should not be allowed to develop facilities for summer activities simply for the financial benefit; that amusement parks and other amenities have no place in mountainous areas and will ruin the mountain experience; that zip lines, roller coasters, and downhill bike parks are incompatible with these natural areas, which should be kept wild and pristine and should not be developed; and that the Agency should encourage quiet, nature-based activities at ski areas.

Response: SAROEA expressly provides for the Forest Service to authorize development at ski areas, subject to certain conditions, to accommodate additional seasonal and year-round recreation activities and requires the Forest Service to

promulgate regulations to implement that authority. These conditions do not include financial benefit. Rather, these additional activities and associated facilities must, for example, be natural resource-based, encourage outdoor recreation and enjoyment of nature, and, to the extent practicable, harmonize with the natural environment of the NFS lands on which they are located. Zip lines and mountain bike terrain park and trails are listed in SAROEA as activities and associated facilities that may be authorized at ski areas, subject to certain conditions. Amusement parks are prohibited at ski areas under SAROEA. The Agency has revised FSM 2343.11, paragraph 3, to state that additional seasonal and year-round recreation activities at ski areas may include a range of passive to active recreation activities. Site-specific review of proposals for additional seasonal and year-round recreation at ski areas will be conducted in compliance with the National Environmental Policy Act and other laws and regulations to determine whether the proposed uses are appropriate at the proposed location. During that public process, the Agency will consider public and other agency input and trade-offs related to the proposed development.

FSM 2343.14, Paragraph 1 - Additional Screening Criteria

Comment: Some respondents believed that the level of development for facilities associated with additional seasonal and year-round recreation activities at ski areas should not have to be consistent with the level of development for snow sports.

Response: SAROEA requires that additional seasonal and year-round recreation activities at ski areas be located in the developed portions of the ski area and not change the primary recreational purpose of the ski area to other than snow sports. Evaluation of specific proposals may result in a determination that a substantially lower level of

development is required.

Comment: Several respondents believed that requiring summer facilities to be visually subordinate to the ski area's existing facilities, vegetation, and landscape holds summer facilities to a higher standard than winter facilities.

Response: Consistent with SAROEA, the final directives require that facilities for additional seasonal and year-round recreation at ski areas harmonize, to the extent practicable, with the natural environment of the site where they would be located. To assist authorized officers in applying this requirement, the final directives include two relevant factors to consider: (1) being visually consistent with or subordinate to the ski area's existing facilities, vegetation, and landscape; and (2) not requiring significant modifications to topography to facilitate construction or operations. The first factor does not require the proposed facilities to be visually subordinate to the ski area's existing facilities. Rather, the proposed facilities meet the harmonizing criterion if they are visually consistent with or subordinate to the ski area's existing facilities. Moreover, Agency directives and guidelines such as SMS, BEIG, and ROS are also applied to proposals involving snow sports facilities.

Comment: Several respondents were concerned that the proposed definition of "amusement park ride" and "amusement park," which was defined as "two or more amusement park rides in close proximity," would be construed to prevent any additional development adjacent to a chairlift, which would conflict with the requirement in SAROEA that additional seasonal and year-round recreation activities at ski areas be located, to the extent practicable, in the developed portions of the ski area.

Response: The Forest Service does not consider chairlifts to be amusement park

rides. Furthermore, chairlifts support snow sports and would therefore not be subject to any of the prohibitions in SAROEA on authorizing specific types of additional seasonal and year-round recreation activities at ski areas. In addition, the Agency has removed the definition of “amusement park ride” from the final directive and revised the definition for “amusement park” to characterize what is not appropriate on NFS lands, i.e., developed recreation areas consisting primarily of facilities or activities that are not natural resource-based; do not encourage outdoor recreation and enjoyment of nature; do not harmonize with the natural environment; and contain rides and other amusements that are not typically found in a natural resource-based environment, such as water slides and water parks, Ferris wheels, bumper cars, and miniature golf courses.

Comment: Numerous respondents commented that the criteria in paragraphs 1a through 1e seem to supplement those in SAROEA and that the Forest Service should use the criteria in SAROEA.

Response: Paragraphs 1a through 1e require that (a) additional seasonal and year-round recreation activities at ski areas not change the primary purpose of the ski area to other than snow sports; (b) encourage outdoor recreation and enjoyment of nature and provide natural resource-based recreation opportunities; (c) to the extent practicable, be located within the portions of the ski area that are developed or that will be developed pursuant to the master development plan (MDP); (d) not exceed the level of development for snow sports and be consistent with the zoning established in the MDP; and (e) to the extent practicable, harmonize with the natural environment of the site where they would be located by (1) being visually consistent with or subordinate to the ski area’s existing facilities, vegetation, and landscape; and (2) not requiring significant modifications to

topography to facilitate construction or operations. Most of these criteria are stated in SAROEA. The remaining criteria, locating the facilities within portions of the ski area will be developed pursuant to the MDP; being consistent with the zoning established in the applicable MDP; and the factors for applying the harmonizing requirement, are consistent with the criteria in SAROEA and assist with their application.

Comment: Several respondents suggested requiring that facilities for additional seasonal and year-round recreation activities at ski areas have a limited impact on viewsheds and watersheds. These respondents stated that these facilities must be visually subordinate to the natural setting and that new mountain bike trails are creating scars that take a very long time to diminish.

Response: The Agency believes that the existing criterion in paragraph 1(e) provides for consideration of potential impacts on viewsheds and watersheds. In particular, paragraph 1e provides that, to the extent practicable, facilities for additional seasonal and year-round recreation activities at ski areas must harmonize with the natural environment of the site where they would be located by (1) being visually consistent with or subordinate to the ski area's existing facilities, vegetation, and landscape; and (2) not requiring significant modifications to topography to facilitate construction or operations. SAROEA requires that these facilities harmonize, to the extent practicable, with the natural environment of the NFS lands where they would be located. Therefore, the Agency believes it is appropriate to require that these facilities be either visually consistent with or subordinate to the ski area's existing facilities, vegetation, and landscape. Potential resource concerns associated with proposed facilities can be addressed during environmental analysis.

Comment: Several respondents suggested that rather than base zone designations on existing natural settings, the Agency should rely on concepts in existing systems such as BEIG, ROS, and SMS and provisions of the MDP.

Response: The Agency believes that the MDP, existing natural setting, and level of development to support snow sports are all relevant to zoning designations for development of facilities to support additional seasonal and year-round recreation activities at ski areas. Paragraph 1c provides that these facilities be located, to the extent practicable, within the portions of the ski area that are developed or that will be developed pursuant to the MDP. Paragraph 1d provides that these activities and associated facilities must be consistent with the zoning in the MDP. Paragraph 8 requires use of MDPs to guide the placement and design of these facilities and requires as a first step in this process the establishment of zones to guide placement and design of the facilities based on the existing natural setting and level of development to support snow sports.

Comment: One respondent requested that the Forest Service clarify that non-snow sport infrastructure is appropriate if it is consistent with the MDP.

Response: Consistency with the MDP in terms of location and level of development per paragraphs 1c and 1d is only one screening criterion for proposals for non-snow sport facilities. Forest Service regulations and directives, consistent with SAROE, apply several other screening criteria to these proposals. In addition to meeting all the requirements in FSM 2343.14, including consistency with the MDP, proposals for additional seasonal and year-round recreation activities and associated facilities at ski areas are subject to review under the National Environmental Policy Act

and other applicable authorities.

Comment: Some respondents commented that ski areas should not be required to revise or develop an MDP simply to add a zip line. Small ski areas may not have and may not need an MDP.

Response: An MDP is required by the ski area permit. The Forest Service recognizes that there is a significant range in the complexity of ski areas and that not all ski areas have an MDP. For ski areas that do not have an MDP, the Agency expects the holder to prepare a site plan for proposed additional seasonal or year-round recreation activities and associated facilities that illustrates how the proposed project would fit within the context of existing resources and facilities. The process need not be burdensome and can be concurrent with screening of the proposal. Upon implementation, the holder should provide an as-built site plan.

FSM 2343.14, Paragraph 2 – List of Activities and Associated Facilities That May Be Authorized

Comment: Some respondents stated that mountain biking and disc golf should be included because they are beneficial to public health and well-being. Some respondents suggested renaming Frisbee golf as disc golf. Several respondents suggested adding activities and associated facilities to the list, including Segway rentals and tours; geocaching, and climbing walls. Others suggested removing the activities listed, since mountain settings are not essential to conduct them and since some, like Frisbee golf and zip lines, are more suited to playgrounds and city parks than ski areas and do not contribute to the enjoyment of nature. One respondent noted that wet trails should be closed to mountain bikers to prevent resource damage.

Response: The activities and associated facilities listed in paragraph 2 are specifically listed in SAROEA as activities that may be authorized at ski areas, subject to certain conditions. The Agency does not believe it is appropriate to expand the list in SAROEA of additional seasonal and year-round recreation activities and associated facilities that may be authorized at ski areas, subject to certain conditions. Instead, the Agency has included the criteria in SAROEA for evaluating proposals for these activities and facilities, along with criteria that are consistent with the criteria in the statute and that assist with their application. The activities and associated facilities listed in paragraph 2 and other additional seasonal and year-round recreation activities and associated facilities that are not listed in paragraph 3 will be evaluated case by case based on applicable regulations and directives, including FSM 2343.14. This approach provides more flexibility to address changes in activities, associated facilities, and public preferences. If a proposal is accepted, the potential for resource damage can be addressed by appropriate mitigation during environmental analysis.

FSM 2343.14, Paragraph 3 – List of Activities and Associated Facilities That May Not Be Authorized

Comment: Some respondents suggested that all the activities in this paragraph seem appropriate at ski areas.

Response: The activities and associated facilities listed in paragraph 3 are expressly prohibited at ski areas by SAROEA.

Comment: One respondent requested that off-road vehicle use be added to the list of activities and associated facilities that may not be authorized at ski areas.

Response: The Agency does not believe it is appropriate to expand the list in

SAROEAs of additional seasonal and year-round recreation activities and associated facilities that may not be authorized at ski areas. Instead, the Agency has included the criteria in SAROEAs for evaluating proposals for additional seasonal and year-round recreation activities and facilities, along with criteria that are consistent with the criteria in the statute and that assist with their application. Activities and associated facilities that are not listed in paragraph 3 will be evaluated case by case based on applicable regulations and directives, including FSM 2343.14. This approach provides more flexibility to address changes in activities, associated facilities, and public preferences.

Comment: Several respondents requested that a definition of “amusement park” be added to paragraph 3.

Response: The definition for “amusement park” is appropriately contained in FSM 2340.5.

FSM 2343.14, Paragraph 4 – Factors

Comment: Several respondents stated that the proposed directive should specifically address whether mountain coasters are allowed in paragraph 4 and noted that mountain coasters emulate natural terrain, thereby allowing gravity to provide the thrill.

Response: The Agency does not believe it is appropriate to expand the list in SAROEAs of additional seasonal and year-round recreation activities and associated facilities that may be authorized at ski areas, subject to certain conditions. Instead, the Agency has included the criteria in SAROEAs for evaluating proposals for these activities and facilities, along with criteria that are consistent with the criteria in the statute and that assist with their application. Additional seasonal and year-round recreation activities and associated facilities that are not listed in paragraph 3, including mountain coasters, will

be evaluated case by case based on applicable regulations and directives, including FSM 2343.14. This approach provides more flexibility to address changes in activities, associated facilities, and public preferences.

Comment: Some respondents objected to including excessive use of synthetic materials as a factor in determining whether to grant proposals for additional seasonal and year-round recreation activities at ski areas.

Response: The Agency agrees that the use of synthetic materials may be consistent with the requirements of the desired visual character and that synthetic materials can be used in such a way as to harmonize with the natural environment. Many synthetic materials are more sustainable and safer than natural materials. The Agency has therefore removed the reference to excessive use of synthetic materials in paragraph 4 of the final directives.

Comment: Some respondents suggested that proposals for activities and associated facilities that are not listed in paragraph 2 or 3 should be evaluated based on their similarity to the activities and associated facilities in those paragraphs.

Response: The Agency agrees and has retained that factor in paragraph 4.

Comment: Some respondents suggested including noise and light as screening criteria for additional seasonal and year-round recreation activities and associated facilities at ski areas; that the effects of noise and light should be limited to daylight hours; that lights should always be faced down to reduce impact; and that wildlife and non-ski area users should have the opportunity to experience dark and quiet in the national forests.

Response: The Forest Service does not believe that noise and light should be

added in paragraph 4 as factors for evaluating proposals because they are primarily related to environmental consequences. Whether a proposed activity and associated facility will have these effects, their relative level of impact, and whether mitigation is necessary or appropriate are best determined during site-specific environmental analysis after a proposal is accepted.

FSM 2343.14, Paragraph 5 – Nonessential Activities

Comment: Some respondents believed that the requirement in paragraph 5 that the natural forest setting be essential to the visitor experience should be changed to the requirement that the natural forest setting significantly enhance the visitor experience.

Response: The requirement in paragraph 5 tracks the requirement in SAROEA that additional seasonal and year-round recreation activities and associated facilities at ski areas be natural resource-based. Therefore, the requirement in paragraph 5 must track the definition for NRBR in the directives. Many activities that are enhanced by the natural environment do not constitute NRBR. However, the Agency agrees that it could be difficult to determine whether attributes of the national forest setting are essential to the visitor's experience. To qualify as NRBR, the visitor's experience should be interdependent with attributes of national forest settings. The Agency has revised paragraph 5 in the final directives accordingly.

FSM 2343.14, Paragraph 6 – Temporary Activities

Comment: Several respondents suggested that the Agency consider allowing temporary activities that rely on temporary facilities. Other respondents stated that concerts and weddings are inappropriate at ski areas.

Response: The Agency believes that it is appropriate to authorize some

temporary activities at ski areas, such as weddings and concerts, that may not be natural resource-based if they utilize existing facilities. However, paragraph 6 provides that new facilities will not be authorized solely to support these types of activities. The Agency agrees that these activities may reasonably involve temporary facilities, such as stages, event tents, shelters, and fencing, if they conform to other requirements in FSM 2343.14. The intent of paragraph 6 is not to preclude these temporary facilities, but to preclude permanent facilities solely for these types of activities. Temporary facilities supporting these types of activities should not be set up for a season and should be removed promptly following the event to avoid resulting in de facto permanent facilities.

FSM 2343.14, Paragraph 7 – Existing Facilities

Comment: Some respondents believed that the language in this paragraph, which encourages holders to utilize existing facilities for seasonal and year-round recreation activities at ski areas, is no longer appropriate and should be removed from the directives because of SAROEA. Other respondents noted that new lifts and roads should not be authorized solely for the benefit of summer use.

Response: The Agency does not believe that paragraph 7, which encourages efficient use of existing facilities for additional seasonal and year-round recreation activities at ski areas, should be removed. The use of existing facilities minimizes costs and resource impacts and should be encouraged. SAROEA does not establish any limitations on the use of existing facilities for additional seasonal and year-round recreation activities at ski areas.

FSM 2343.14, Paragraph 8 – MDPs

Comment: Some respondents commented that MDPs are conceptual in nature and

provide a basis for project proposals for additional seasonal and year-round recreation activities and associated facilities at ski areas. These respondents noted that the location of these facilities and the timelines for construction should be general in nature.

Response: The Agency agrees that MDPs are conceptual. As proposals progress through evaluation, more specificity is typically required. Paragraph 8a requires establishment of zones to guide placement and design of additional seasonal or year-round recreation facilities based on the existing natural setting and level of development to support snow sports. Paragraph 8b requires depiction of the general location of proposed facilities as part of the MDP process. Paragraph 8c requires establishment of an estimated timeframe for construction as part of the MDP process.

Comment: Several respondents requested that state wildlife managers be involved in implementation of SAROEAs and that wildlife values be a factor in MDPs.

Response: The Forest Service has authority under SAROEAs to authorize additional seasonal and year-round recreation activities at ski areas. Consistent with SAROEAs and other applicable law, the Forest Service has provided an opportunity for public input, including input from state wildlife managers, in development of directives implementing SAROEAs.

MDPs are conceptual documents that illustrate potential development based on known information and assumptions about future demand and visitor preferences and needs. MDPs are not decision documents that approve development. Potential impacts on wildlife and other resources and any appropriate mitigation are identified and evaluated during project-level environmental analysis.

FSM 2343.14, Paragraph 9 – SMS, ROS, and BEIG

Comment: The proposed policy should rely on all appropriate direction and not just excerpts from SMS, ROS, and BEIG.

Response: All three management frameworks remain valid guidance for planning, design, and analysis of project proposals and will be followed as appropriate. The citations in paragraph 9 reference each framework in its entirety.

FSM 2343.14, Paragraph 10 – Additional Terms and Conditions

Comment: Respondents requested that this paragraph be modified to provide that the authorized officer may include terms and conditions in permits authorizing additional seasonal and year-round recreation activities at ski areas subject only to the extent they are consistent with SAROE A.

Response: SAROE A expressly provides that the Forest Service may authorize additional seasonal and year-round recreation activities and associated facilities at ski areas subject to any terms and conditions deemed appropriate by the Forest Service. Therefore, it is not appropriate to qualify the authority in paragraph 10 to impose terms and conditions in permits authorizing these activities and associated facilities. Decisions to authorize activities and associated facilities under SAROE A must be consistent with other applicable laws, regulations, and policies, as well as site-specific constraints unique to each project.

FSM 2343.14, Paragraph 11 – Permit Area Expansions

Comment: One respondent believed that a ski area could obtain approval for an expansion based on snow sports and develop the expanded area for summer use, such as off-road vehicle use. This respondent stated that this practice could lead to mass land expansions for summer uses that undercut the requirement that snow sports remain the

primary purpose of ski areas.

Response: While it is possible that a snow sports expansion might lead to additional development for summer use, SAROEAs requires that summer activities and associated facilities be located, to the extent practicable, in the developed portion of the ski area. SAROEAs requires that authorization of summer uses not change the primary purpose of the ski area to other than snow sports. SAROEAs also precludes consideration of the acreage needed for summer activities and associated activities in determining the ski area permit boundary. Paragraph 11 of the final directives provides that permit expansions have to be based on needs related to snow sports rather than additional seasonal or year-round recreation. Approved uses must be implemented in accordance with their authorizing decision and supporting environmental analysis.

FSM 2343.14, Paragraph 12 - Existing Non-Conforming Facilities

No comments were received on paragraph 12.

FSM 2343.14, Paragraph 13 - Approval Notwithstanding Other Provisions

To conform with SAROEAs, the Agency is adding a citation to FSM 2703.2, paragraph 2b, to the notwithstanding language in this paragraph. Like the other provisions cited in the notwithstanding language, FSM 2703.2, paragraph 2b, provides, in pertinent part, that a proposed use may be authorized only if it cannot reasonably be accommodated on non-NFS lands. Adding the citation to FSM 2703.2, paragraph 2b, to the notwithstanding language in paragraph 13 will exempt proposals for additional seasonal and year-round recreation activities and associated facilities at ski areas from FSM 2703.2, paragraph 2b. Applying this paragraph to those activities and associated facilities could conflict with SAROEAs.

FSM 2711.32 - Ski Area Term Permit

No comments were received on this section.

FSH 2709.14, Section 13.2 - Organizational Camp

No comments were received on this section.

FSH 2709.14, Section 61.1 - Ski Areas

Comment: Respondents commented that authorizing additional seasonal and year-round recreation activities within existing ski area boundaries is a good idea and that development supporting these activities should be confined to existing boundaries.

Response: Paragraph 1c of the final directives requires additional seasonal and year-round recreation activities and associated facilities at ski areas to be located, to the extent practicable, within the portions of the ski area that are developed or that will be developed pursuant to the MDP. Proposals for development supporting additional seasonal and year-round recreation activities at ski areas will be evaluated case by case.

3. Section-by-Section Description of Changes to FSM 2340, Publicly Provided Recreation Opportunities

2340.5 – Definitions

The Agency added definitions for “amusement park” and “natural resource-based recreation” because they are used throughout the directives to determine what types of additional seasonal or year-round recreation activities and associated facilities are appropriate at ski areas. The Agency revised the definition of “terrain park.”

2343.11 – Policy

Paragraph 3

The Agency relocated the list of additional seasonal and year-round recreation activities and associated facilities that may be authorized, subject to certain conditions, to FSM 2343.14. The relocated paragraph 3 provides direction to encourage additional seasonal or year-round recreation opportunities at ski areas that connect visitors to the natural environment and that support the Forest Service's mission. This paragraph establishes a broad framework to guide evaluation of proposals for additional seasonal or year-round recreation activities and associated facilities at ski areas.

Paragraph 4

The Agency has relocated the list of factors governing additional seasonal or year-round recreation activities and associated facilities that was included in this paragraph to FSM 2343.14. Relocated paragraph 4 clarifies that ski area permit holders may be allowed to charge fees for use of improvements and services in which they have made capital investments, such as ski trails or other facilities they constructed, groom, or otherwise maintain, and that ski area permit holders may not be allowed to charge for use of nonmotorized or motorized trails that are constructed and maintained by the Forest Service.

Paragraph 5

The Agency has relocated text included in this paragraph regarding utilization of existing facilities to FSM 2343.14. Relocated paragraph 5 would preclude authorization of an entrance fee at ski areas and would allow authorization of fees for facilities and services holders provide, such as lifts, parking lots, and slopes and trails that have been cleared, graded, groomed, or covered with manmade snow. Additionally, this paragraph would encourage authorized officers to ensure that some portions of the permit area

remain open to the public without charge, so that the holder's charges do not constitute de facto entrance fees.

Paragraph 6

The Agency has relocated text that was included in this paragraph regarding the basis for modifying acreage under a ski area permit to FSM 2343.14. Relocated paragraph 6 directs authorized officers to ensure that ski area operations comply with Forest Service regulations and permit requirements for non-exclusive use and that ski areas remain open to the non-paying public for all lawful uses that are not inconsistent with the holder's rights and privileges. Additionally, this paragraph requires documentation in the operating plan of authorized restrictions on use by the non-paying public and posting of those restrictions in locations where they would be effective in informing the public. This paragraph also provides that in most cases it would not be appropriate for restrictions to preclude all public use during the ski season other than by those purchasing a lift ticket or paying for other services.

2343.14 – Additional Seasonal or Year-Round Recreation Activities and Associated Facilities at Ski Areas

Paragraph 1

Paragraph 1 includes criteria in addition to those enumerated at 36 CFR 251.54(e)(1) to be applied during initial screening of proposals involving additional seasonal or year-round recreation activities and associated facilities at ski areas. These additional initial screening criteria include all the requirements in SAROEA that must be met for authorization of additional seasonal and year-round recreation activities and associated facilities at ski areas, except for consistency with applicable law and the

applicable land management plan. These additional criteria include not changing the primary purpose of the ski area to other than snow sports; encouraging outdoor recreation and enjoyment of nature and providing natural resource-based recreation opportunities; to the extent practicable, being located within the developed portions of the ski area or areas that will be developed pursuant to an MDP; and, to the extent practicable, harmonizing with the natural environment of the site where they would be located. Including consistency with applicable law and the applicable land management plan in paragraph 1 would be redundant, as this criterion is already included in initial screening of special use proposals under 36 CFR 251.54(e)(1)(i) and (e)(1)(ii). The requirement “to the extent practicable, to be located within the developed portions of the ski area” was modified to require, to the extent practicable, location within the portions of the ski area that are developed or that will be developed pursuant to the MDP. Locations in a ski area that are zoned for development pursuant to an MDP may become developed portions of the ski area.

This paragraph clarifies what is meant by harmonizing with the natural environment of the site where the proposed activities would be located by providing that they must:

- (1) Be visually consistent with or subordinate to the ski area’s existing facilities, vegetation, and landscape; and
- (2) Not require significant modifications to topography to facilitate construction or operations.

The Agency is also adding that seasonal or year-round recreation activities and associated facilities must:

(1) Not exceed the level of development for snow sports and must be consistent with the zoning established in the ski area's MDP;

(2) Not compromise snow sports operations or functions; and

(3) Increase utilization of snow sports infrastructure and not require extensive new support facilities, such as parking lots, restaurants, and lifts.

These additional criteria are consistent with the criteria in SAROEA. Consistency with the MDP is akin to consistency with the applicable land management plan. Since SAROEA provides that snow sports must remain paramount at ski areas on NFS lands, additional seasonal and year-round recreation activities and associated facilities must not compromise snow sports operations or functions. Requiring that proposals for these activities increase utilization of snow sports infrastructure and not require extensive new support facilities is consistent with the requirements not to change the primary purpose of the ski area to other than snow sports and to be located in the developed portions of the ski area. Thus, these additional criteria will assist ski area permit holders in developing proposals for these activities that meet the requirements of SAROEA and will assist authorized officers in evaluating these proposals consistent with SAROEA.

Paragraph 2

This paragraph lists the four additional seasonal or year-round recreation activities and associated facilities enumerated in SAROEA (zip lines, mountain bike terrain parks and trails, disc golf courses, and ropes courses) that may be approved if they meet the criteria in proposed paragraph 1. This list is not exhaustive. Other additional seasonal or year-round recreation activities and associated facilities may meet the criteria in proposed paragraph 1.

Paragraph 3

This paragraph lists the five additional seasonal or year-round recreation activities and associated facilities enumerated in SAROE (tennis courts, water slides and water parks, swimming pools, golf courses, and amusement parks) that may not be approved at ski areas on NFS lands. This list is not exhaustive. Other additional seasonal or year-round recreation activities and associated facilities may not meet the criteria in proposed paragraph 1.

Paragraph 4

This paragraph enumerates a non-exhaustive list of factors that may affect whether other additional seasonal or year-round recreation activities and associated facilities besides those listed in paragraph 2 may be approved, including the degree to which visitors are able to engage with the natural setting, the extent to which the activities and associated facilities could be expected to lead to exploration and enjoyment of other NFS lands, and the similarity of the activities and associated facilities to those enumerated in paragraph 2 or paragraph 3. These factors will assist in application of the criteria in paragraph 1 and will help establish similarity to activities and associated facilities listed in paragraph 2 or paragraph 3. For example, the extent to which an activity and associated facilities could be expected to lead to exploration and enjoyment of other NFS lands may affect whether a proposed activity and associated facilities would encourage outdoor recreation and enjoyment of nature, provide natural resource-based recreation opportunities, and harmonize with the natural environment.

Paragraph 5

Consistent with the requirement in SAROEA that additional seasonal and year-round recreation activities and associated facilities provide natural resource-based recreation opportunities, paragraph 5 provides that the visitor's experience must be interdependent with attributes common in national forest settings.

Paragraph 6

This paragraph allows temporary activities at ski areas that rely on existing facilities, such as concerts and weddings, even if they are not necessarily dependent on a national forest setting, but could be enhanced by it. This paragraph also precludes authorizing new facilities solely for these temporary activities.

Paragraph 7

Paragraph 7 encourages holders to utilize existing facilities to provide additional seasonal or year-round recreation activities at ski areas. This paragraph was previously codified at FSM 2343.11, paragraph 5.

Paragraph 8

This paragraph provides for utilization of MDPs to guide the placement and design of additional seasonal or year-round recreation facilities at ski areas. Additionally, this paragraph requires the following three steps to be followed as part of the MPD process, in this sequence: (1) establishment of zones to guide placement and design of additional seasonal or year-round recreation facilities based on the existing natural setting, desired visitor experience, and the level of development to support snow sports; (2) depiction of the general location of the facilities; and (3) establishment of an estimated timeframe for their construction. These requirements will provide a consistent

planning framework for the development of additional seasonal or year-round recreation facilities, thereby avoiding piecemeal development, and will ensure that the level of development supporting snow sports is not exceeded by the level of development supporting facilities for additional seasonal or year-round recreation activities.

Paragraph 9

Paragraph 9 provides for use of the Forest Service's SMS (FSM 2380), BEIG (Publication FS-710), and ROS (FSM 2310) to ensure that additional seasonal or year-round recreation activities and associated facilities are located and constructed to harmonize with the surrounding natural environment.

Paragraph 10

Consistent with SAROEA, this paragraph provides that authorization of additional seasonal or year-round recreation activities and associated facilities is subject to terms and conditions deemed appropriate by the authorized officer. This provision was previously codified at FSM 2343.11, paragraph 4c.

Paragraph 11

Consistent with SAROEA, paragraph 11 provides that the acreage necessary for additional seasonal or year-round recreation activities and associated facilities may not be considered in determining the acreage encompassed by a ski area permit and that permit area expansions must be based on needs related to snow sports rather than additional seasonal or year-round recreation. This provision was previously codified at FSM 2343.11, paragraph 6.

Paragraph 12

Consistent with SAROEA, this paragraph provides that additional seasonal or

year-round recreation activities and associated facilities that were authorized before enactment of SAROEA and that do not meet the criteria in the preceding paragraphs of FSM 2343.14 may continue to be authorized during the term of the current permit. Also consistent with SAROEA, this paragraph provides that when the current permit terminates or is revoked, these non-conforming activities and associated facilities will not be reauthorized.

Paragraph 13

Consistent with SAROEA, this paragraph provides that proposals for additional seasonal and year-round recreation activities and associated facilities at ski areas that comply with paragraphs 1 through 12 may be approved notwithstanding FSM 2340.3, paragraph 3, and 2343.03, paragraph 1, which preclude authorization of development on NFS lands if it could be provided on non-NFS lands in the vicinity. The Agency has added a citation to FSM 2703.2, paragraph 2b to the notwithstanding language, as FSM 2703.2, paragraph 2b, also precludes authorization of development on NFS lands if it could be provided on non-NFS lands in the vicinity.

4. Section-by-Section Analysis of Changes to FSM 2710, Special Uses

2711.3 – Term Permits

The Agency added a new subsection 2711.32, entitled “Ski Area Term Permit.” This subsection cross-references FSM 2721.61e for more information on these types of permits.

5. Section-by-Section Analysis of Changes to FSH 2709.14, Recreation Special Uses

Handbook

Chapter 10 – Organizational Camps and Other Privately Owned Improvements

Section 13.2 – Policy

The Agency added paragraph 9 to provide for the proposal, authorization, construction, operation, and maintenance of zip lines and ropes courses at organizational camps. This paragraph requires a site plan showing the placement of facilities and addressing how access will be restricted; requires that design and construction conform to standards in FSM 7330; and requires an operating plan that conforms to FSM 7330 and restricts access to these facilities to times of supervised operation. Additionally, this paragraph cross-references FSM 2340 and 7330 for further guidance.

Chapter 60 – Winter Recreation Resorts and Other Concessions Involving Winter Sports

Section 61.1 – Ski Area Term Permit

The Agency changed the heading for section 61.1 to “Ski Area Term Permit” to clarify that ski area permits are term permits and to be consistent with the wording in FSM 2711.3. Consistent with SAROEA, the Agency added paragraph 12 to provide that the acreage necessary for additional seasonal or year-round recreation activities and associated facilities may not be considered in determining the acreage encompassed by a ski area term permit. This paragraph also provides that permit expansions have to be based on needs related to snow sports rather than additional seasonal or year-round recreation.

6. Regulatory Certifications

Environmental Impact

These final directives revise national Forest Service policy governing ski area permits issued under the Ski Area Permit Act. 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 Service-wide

administrative procedures, program processes, or instructions.” The Agency has concluded that these final directives fall 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

These final directives have been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. The Office of Management and Budget has determined that these final directives are not significant. These final directives will increase opportunities for recreation activities at ski areas consistent with SAROEAs. These final directives will not have an annual effect of \$100 million or more on the economy, nor will they adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. These final directives will not interfere with an action taken or planned by another agency, nor will they raise new legal or policy issues. Finally, these final directives will not alter the budgetary impact of entitlement, grant, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, these final directives are not subject to the Office of Management and Budget review under E.O. 12866.

Moreover, the Agency has considered these final directives in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). Pursuant to a threshold Regulatory Flexibility Act analysis, the Agency has determined that these final directives will not have a significant economic impact on a substantial number of small entities as defined by the Act because these final directives will not impose new record-keeping requirements on them; affect their competitive position in relation to large entities; or significantly affect their cash flow, liquidity, or ability to remain in the market.

To the contrary, these final directives likely will have a positive economic effect on ski areas and local communities because these directives will enhance opportunities for recreation activities at ski areas. These benefits are not likely to alter costs to small businesses.

No Takings Implications

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

Civil Justice Reform

The Agency has reviewed these final directives under E.O. 12988 on civil justice reform. Upon adoption of these final directives, (1) all State and local laws and regulations that conflict with these final directives or that will impede their full implementation will be preempted; (2) no retroactive effect will be given to these final directives; and (3) they will not require administrative proceedings before parties may file suit in court challenging their provisions.

Federalism and Consultation and Coordination with Indian Tribal Governments

The Agency has considered these final directives under the requirements of E.O. 13132 on federalism and has concluded that these final directives conform 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 Agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, these final directives do not have tribal implications as defined by E.O. 13175, entitled “Consultation and Coordination With Indian Tribal Governments,” and therefore advance consultation with Tribes is not required.

Energy Effects

The Agency has reviewed these final directives under E.O. 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” The Agency has determined that these final directives do 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 Agency has assessed the effects of these final directives on State, local, and Tribal governments and the private sector. These final directives 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

These final directives do not contain any new record-keeping 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. Any information collected from the public that will be required by these final directives has been approved by the Office of Management and Budget and assigned control number 0596-0082. 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.

7. Access to the Final Directives

The Forest Service organizes its Directive System by alphanumeric codes and subject headings. The intended audience for this direction is Forest Service employees charged with issuing and administering ski area permits. To view these final directives, visit the Forest Service's website at http://www.fs.fed.us/special_uses. Only the sections of the FSM that are the subject of this notice have been posted, that is, FSM 2340.5, Definitions; FSM 2343.11, Policy; 2343.14, Additional Seasonal or Year-Round Recreation Activities and Associated Facilities at Ski Areas; FSM 2711.32, Ski Area Term Permit; FSH 2709.14, chapter 10, section 13.2; and FSH 2709.14, chapter 60, section 61.1.

Robert Bonnie,
Under Secretary,
Natural Resources and Environment.

April 15, 2014

Date

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