



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and entities on substantive revisions of a currently approved information collection, Special Use Administration.

DATES: Comments must be received in writing by [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Send comments to USDA Forest Service, Attn: Lands, 1400 Independence Avenue, SW, Stop 1124, Washington, DC 20250-1124. Comments also may be submitted via facsimile to 202-644-4700 or by e-mail to reply_lands_staff@usda.gov. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may review comments on the Forest Service forms *webpage at <https://www.fs.usda.gov/managing-land/lands-and-realty-management/forms>*. Comments will be summarized in the Forest Service's request for Office of Management and Budget approval of the information collection for special uses and will be addressed in a Federal Register Notice of the final revisions to the approved information collection.

FOR FURTHER INFORMATION CONTACT: Mark Chandler, Realty Specialist, Lands, National Forest Systems can be reached by phone at 202-205-1117, or by email at mark.chandler@usda.gov. Individuals who use telecommunication devices for the deaf may call the Federal Relay Service at 800-877-8339 between 8 a.m. and 8 p.m. eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Special Use Administration.

OMB Number: 0596-0082.

Expiration Date of Approval: August 31, 2020.

Type of Request: Substantive Revision of Approved Forms and Creation of New Forms.

Type of Respondents: Individuals, businesses, and non-federal governmental entities.

Abstract: The Forest Service manages approximately 193 million acres of federal lands, known as National Forest System (NFS) lands. Several statutes authorize the Forest Service to issue and administer authorizations for use and occupancy of NFS lands and collect information from the public for those purposes, including but not limited to the Organic Administration Act (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1772); the National Forest Roads and Trails Act (16 U.S.C. 532-538); section 28 of the Mineral Leasing Act (30 U.S.C. 185); the Act of March 4, 1915 (16 U.S.C. 497); the Term Permit Act (16 U.S.C. 497); the National Forest Ski Area Permit Act (16 U.S.C. 497b); section 7 of the Granger-Thye Act (16 U.S.C. 480d); the Act of May 26, 2000 (16 U.S.C. 460l–6d); the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814); the Archaeological Resources Protection Act (16 U.S.C. 470aa *et seq.*); and section 111 of the National Historic Preservation Act (54 U.S.C. 306121).

Forest Service regulations implementing these authorities, found at 36 CFR part 251, subpart B, contain information collection requirements, including submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements. The uses authorized cover a variety of activities and improvements, including recreation residences, apiaries, domestic water supply conveyance systems, electric transmission lines, communications uses, outfitting and guiding, campground concessions, resorts, and marinas. Standard special use permit, easement, and lease forms (authorization forms) are used to authorize these activities and improvements.

Forest Service regulations require each special use authorization to contain terms and conditions that will carry out the purposes of applicable statutes and their implementing regulations; minimize damage to scenic and aesthetic values, fish and wildlife habitat, and otherwise protect the environment; require compliance with applicable air and water quality standards; and require compliance with state standards that are more stringent than federal standards for public safety, environmental protection, and siting, construction, operation, and maintenance (36 CFR 251.56(a)(1)(i)). In addition, Forest Service regulations require each special use authorization to contain such terms and conditions deemed necessary by the Forest Service to protect federal property and economic interests; efficiently manage the authorized lands and adjacent lands; protect other lawful users of the authorized lands and adjacent lands; protect lives and property; protect the interests of those living in the vicinity of the authorized use who rely on the fish, wildlife, and other biotic resources of the area for subsistence; require siting to cause the least environmental damage, taking into consideration feasibility and other relevant factors; and otherwise protect the public interest (36 CFR 251.56(a)(1)(ii)).

The information collection requirements are necessary for the Forest Service to issue and administer special use authorizations that allow the public to use and occupy NFS lands under these authorities. The information collected is used by Forest Service officials (unless otherwise noted) to ensure that uses of NFS lands are authorized, in the public interest, and compatible with the agency's mission or record authorization of use granted by appropriate Forest Service officials.

In conjunction with its Paperwork Reduction Act compliance for its special uses program, the Forest Service is seeking public comment on substantive revisions to the information collection for that program. In particular, the Forest Service is seeking public comment on a proposed update of the Communications Use Lease, FS-2700-10b; proposed updates to Holder Initiated Revocation of Existing Authorization/Request for a New Special-Use Permit or Term Special-Use Permit, FS-2700-3a; and proposed updates of the following road permit and easement forms:

- FS-2700-4b, FLPMA Forest Road Special Use Permit;
- FS-2700-4c, FLPMA Private Road Special Use Permit;
- FS-2700-9f, FRTA Public Road Easement;
- FS-2700-9g, FRTA Forest Road Easement;
- FS-2700-9h, FRTA Private Road Easement;
- FS-2700-9i, FLPMA Forest Road Easement; and
- FS-2700-9j, FLPMA Private Road Easement.

The proposed updates to the communications use lease and road easement and permit forms would make those forms consistent with current standard language in other authorization forms.

The proposed updates to FS-2700-3a would make it consistent with standard terms in special use

authorization forms that provide for termination of the authorization upon a change in ownership of the authorized improvements or upon a change in ownership or control of the business entity that holds the authorization.

The Forest Service is also seeking public comment on proposed revision or addition of standard clauses in the following 12 authorization forms:

- FS-2700-4, Special Use Permit, the form used by the Forest Service to authorize a variety of uses on NFS lands not covered by another form;
- FS-2700-4h, Special Use Permit for Campground and Related Granger-Thye Concessions, the form used by the Forest Service to authorize operation and maintenance of a federally owned recreation site on NFS lands, including Appendix B, Annual Granger-Thye Fee Offset Agreement, and Appendix G, Granger-Thye Fee Offset Claim Form;
- FS-2700-4i, Special Use Permit for Outfitting and Guiding, the form used by the Forest Service to authorize the use and occupancy of NFS lands to provide outfitting and guiding services;
- FS-2700-4j, Powerline Facility Permit for Non-Federal Entities, the form used by the Forest Service to authorize the use and occupancy of NFS lands by a non-federal entity for operation and maintenance of powerline facilities;
- FS-2700-4k, Powerline Facility Permit for Federal Entities, the form used by the Forest Service to authorize the use and occupancy of NFS lands by a federal entity for operation and maintenance of powerline facilities;

- FS-2700-31, Powerline Facility Easement, the form used by the Forest Service to authorize the use and occupancy of NFS lands by a non-federal entity for operation and maintenance of powerline facilities;
- FS-2700-5, Term Special Use Permit, the form used by the Forest Service to authorize long-term use of NFS lands involving privately owned facilities;
- FS-2700-5a, Term Special Use Permit for Recreation Residences, the form used by the Forest Service to authorize a privately owned recreation residence on NFS lands;
- Grand Island FS-2700-5a, Term Special Use Permit for Recreation Residences in the Grand Island Recreation Area, the form used by the Forest Service to authorize a privately owned recreation residence on NFS lands in the Grand Island Recreation Area;
- FS-2700-5b, Ski Area Term Special Use Permit, the form used by the Forest Service to authorize ski areas on NFS lands;
- FS-2700-5c, Resort/Marina Term Special Use Permit, the form used by the Forest Service to authorize a resort/marina on NFS lands; and
- FS-2700-10c, Communications Use Permit for Federal Agencies, the form used by the Forest Service to authorize communications facilities under the jurisdiction of another federal agency on NFS lands.

Although the proposed revisions to the FS-2700-4k and FS-2700-10c are not subject to public notice and comment as information collections under the Paperwork Reduction Act, the proposed revisions are subject to public notice and comment under 16 U.S.C. 1612a.

The Forest Service is not seeking comment on any other provisions in these 12 authorization forms.

The Forest Service is also seeking public comment on several new forms:

- A proposed lease form for historic properties under the National Historic Preservation Act (NHPA), including the information collection associated with that form;
- Proposed forms for leasing Forest Service administrative sites, including the information collection associated with those forms; and
- A proposed waiver of liability and assumption of risk form for implementation of the search and recovery provisions in Section 9002 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act.

The following is a description of the proposed historic property lease form; the proposed forms for leasing Forest Service administrative sites; the proposed waiver of liability and assumption of risk form; and the proposed revision or addition of standard clauses in the 12 authorization forms.

Proposed Historic Property Lease Form, FS-2700-13

Section 111 of the NHPA authorizes federal agencies to lease historic properties if the lease will adequately ensure the preservation of the historic property. 54 U.S.C. 306121. The Forest Service intends to use this authority to develop new uses for certain qualifying historic properties that it maintains. This practice will help ensure that historic properties do not fall into disrepair or lose their physical integrity due to continued neglect.

The Forest Service manages over 10,000 historic buildings, and many of them could benefit from some form of alternative reuse. Some of the agency's buildings could also serve communities better if the agency authorized them for more active adaptive reuse while still ensuring their protection. Use of this authority in the NHPA would offer uses and flexibility

designed specifically for historic properties. The new historic property lease largely contains the standard term permit clauses in form FS-2700-5, with the following important differences:

- Authority. These leases would be issued under section 111 of the NHPA, codified at 54 U.S.C. 306121, which allows leasing of qualifying historic properties as described above. This authority allows for the leasing of historic properties, provided the agency determines that the lease will adequately ensure the preservation of the historic property. Qualifying historic properties include those eligible or listed on the National Register of Historic Places.
- Duration. Section 111 of the NHPA does not limit a lease's duration, given the unique nature of historic properties and the investment often needed to adapt these structures to a new use. The flexibility in the lease term facilitates the preservation of these historic properties by attracting rehabilitation support and financing.
- Rent Retention. Section 111 of the NHPA provides that rent for the lease may be retained by the agency to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to that property or other properties listed on the National Register of Historic Places that are owned or controlled by the agency. Thus, rent obtained under a section 111 lease can assist the agency in meeting its requirements to plan for and responsibly steward these historic properties.
- Property Insurance. Property insurance is generally required for historic property leasing, given the requirement to ensure continued preservation of historic properties. The requirements for property insurance are laid out in the lease and will vary depending upon the historic property being leased.

Estimated Annual Burden: 2 burden hours per response.

Type of Respondents: Individuals, businesses, non-profit organizations, and non-federal governmental entities.

Estimated Annual Number of Respondents: 2 respondents.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2 hours.

Comment is invited on (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Forms for Leasing Forest Service Administrative Sites

The Forest Service Facilities Realignment and Enhancement Act of 2005 (FSFREA) and section 8623 of the Agriculture Improvement Act of 2018 (Farm Bill) authorize the Forest Service to lease administrative sites on NFS lands. The following forms are needed to implement the Forest Service's authority to lease administrative sites under those statutes:

- Lease for Forest Service Administrative Sites, FS-2700-14;
- Prospectus for Leasing Administrative Sites, FS-2700-14a;
- In-Kind Consideration Agreement, FS-2700-14b; and
- Claim for In-Kind Consideration Costs, FS-2700-14c.

These information collections correspond to a proposed directive published for public comment (85 FR 34171; June 3, 2020) that would implement the Forest Service's authority to lease administrative sites under FSFREA and section 8623 of the Farm Bill. The information collected would be submitted by parties interested in leasing or leasing a Forest Service administrative site. In particular, those interested in leasing a Forest Service administrative site under either statute could be submitting an application in response to a standard prospectus, and those leasing a Forest Service administrative site under either statute would be executing a standard lease. Those leasing a Forest Service administrative site under section 8623 of the Farm Bill also could be executing forms for recording acceptance and valuation of in-kind consideration as partial or full payment of rent for the lease.

Estimated Annual Burden: 14 burden hours per response.

Type of Respondents: Individuals, businesses, and other non-federal organizations and entities.

Estimated Annual Number of Respondents: 14 respondents.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 196 hours.

Comment is invited on (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents,

including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Waiver of Liability and Assumption of Risk Form, FS-2700-40

Section 9002 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (section 9002 of the Dingell Act), Pub. L. No. 116-9, 43 U.S.C. 1742a, establishes criteria for accepting a waiver of liability in lieu of insurance for search and recovery missions conducted by good Samaritans on federal lands. A waiver of liability form is needed to implement section 9002 of the Dingell Act.

Estimated Annual Burden: .25 burden hour per response.

Type of Respondents: Organizations and individuals acting for private purposes.

Estimated Annual Number of Respondents: 1 respondent.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: .25 hour.

Comment is invited on (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Revision or Addition of Standard Clauses in the 12 Authorization Forms

The proposed revision or addition of standard clauses in the 12 authorization forms, as applicable, would make those forms consistent with current standard language in authorization forms. Corresponding standard clauses in Forest Service Handbook 2709.11, Chapter 50, would be revised to conform with revisions to standard clauses in the 12 authorization forms. The following describes the proposed clause revisions and additions.

No Warranty of Access, Site Suitability, or Services. The services not provided clause would be revised to address access and site suitability as well as services.

Risk of Loss. The risk of loss clause would be clarified to address risk of loss to the authorized improvements as well as risk of loss to the use and occupancy of NFS lands due to public health and safety or environmental hazards. In addition, revisions to the risk of loss clause would clarify that termination under that clause would not give rise to any claim for damages against the Forest Service.

Pesticide Use. The pesticide use clause would be revised to include a requirement for a safety plan and a requirement to report pesticide applications to the Forest Service.

Consent to Store Hazardous Materials. The consent to store hazardous materials clause would be revised to provide that hazardous material transportation and disposal manifests must clearly identify the authorization holder as the generator of the hazardous waste. In addition, the consent to store hazardous materials clause would be revised for authorizations issued to non-federal entities to provide that the Forest Service may require a surety bond if hazardous materials are used or stored on NFS lands under the authorization.

Revocation for Specific and Compelling Reasons in the Public Interest. This clause is included in term permits and communications use leases and specifies the compensation that the Forest Service will pay for revocation of a term permit for specific and compelling reasons in the public interest. The valuation standard in this clause would be updated consistent with input from the U.S. Department of Justice, Land Acquisition Section, Environment and Natural Resources Division.

Proposed Revision or Addition of Standard Clauses in Specific Authorization Forms

FS-2700-4, Special Use Permit. The standard clauses addressing water pollution, scenic values, and continuation of obligations and liabilities beyond permit expiration or revocation, which are included in other authorization forms, would be added to FS-2700-4. In addition, a standard clause providing for termination for development of hydroelectric power or reclamation purposes is included in permits when the authorized NFS lands are withdrawn for hydroelectric power or reclamation purposes. This clause would be added to FS-2700-4 for inclusion as applicable.

FS-2700-4h, Special Use Permit for Campground and Related Granger-Thye Concessions. The Forest Service is proposing to add a clause to form FS-2700-4h to clarify that concession site names, facility names, and expressions used by the holder to identify goods and services provided under the permit are a trademark that is the property of the Forest Service, the use of which is subject to Forest Service supervision and control. The Forest Service is also proposing clarifications to Appendix B, the Annual Granger-Thye Fee Offset Agreement form, and Appendix G, the Granger-Thye Fee Offset Claim form, to FS-2700-4h.

FS-2700-4i, Special Use Permit for Outfitting and Guiding. The standard clause addressing liabilities beyond permit expiration or revocation, which is included in other authorization forms, would be added to FS-2700-4i.

FS-2700-4j, Powerline Facility Permit for Non-Federal Entities; FS-2700-4k, Powerline Facility Permit for Federal Entities; and FS-2700-31, Powerline Facility Easement. The renewal clause in FS-2700-4j, Powerline Facility Permit for Non-Federal Entities, would be revised to provide for issuance of a new permit at the discretion of the authorized officer, rather than renewal of the permit subject to conditions. The Forest Service believes issuance of a new permit should be discretionary, since a permit does not convey an interest in real property. In contrast, the renewal clause in FS-2700-31, Powerline Facility Easement, would be revised to provide for renewal subject to conditions, since an easement conveys an interest in real property.

The change of control clause in FS-2700-4j would also be revised to provide an exception to termination due to a change in control of the business entity that holds the permit when the change of control occurs through a merger or through the acquisition of stock or an ownership interest if the holder's corporate structure and operational management remain unchanged and the holder continues to have sufficient financial and technical capability to meet its obligations under the permit. The Forest Service believes that for this type of use and under these circumstances there is no legal or programmatic need to issue a new permit.

The leasing of powerline facilities clause in FS-2700-4j and FS-2700-31 would be revised to provide for submission of an annual certification of leases for the authorization holder's fiber optic cable that contains the information needed by the authorized officer to charge the requisite land use fee, rather than a facility use map displaying specified information. The Forest Service believes an annual certification would be simpler for both the agency and the

authorization holder to implement than a facility use map. A clause would be added to provide for Forest Service approval for leasing of the holder's fiber optic cable. Additionally, a clause would be added to provide for the issuance of an appropriate special use authorization for leases involving communications uses and other third-party uses involving the authorized powerline facilities.

Clauses would be added to FS-2700-4j and FS-2700-31 to provide for preparation of an environmental site assessment prior to use and occupancy and prior to termination or upon revocation of the authorization. The purpose of the initial and follow-up environmental site assessments would be to identify Recognized Environmental Conditions in the authorized area, that is, the presence or likely presence of any hazardous substances or petroleum products in, on, or at the authorized area: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. A comparison of the initial and follow-up environmental site assessments would assist the Forest Service in determining whether any environmental cleanup or restoration is required as a result of the use and occupancy.

An optional insurance clause would be added to FS-2700-4j and FS-2700-31 that would provide for self-insurance only if the holder or grantee is unable to provide coverage for the United States under a commercial general liability insurance policy and the holder or grantee meets all the insurance requirements in the optional self-insurance clause. Given the risks involved, owners and operators of powerline facilities typically obtain commercial general liability insurance only for excess coverage, e.g., for liability of \$10 million or more. In addition, the revised insurance clause would provide for \$2 million of coverage per occurrence and \$5 million of coverage in the aggregate per authorized powerline facility.

The rights and responsibilities upon revocation or termination without issuance of a new easement clause in FS-2700-31 would be revised to remove the reference to consultation with affected agencies, which is unnecessary in this context.

A clause would be added to FS-2700-4j to provide for permit termination if the holder fails to pay the land use fee, interest, or other charges within 90 calendar days of the due date, consistent with other special use authorization forms. The nonpayment clause in FS-2700-31 would be revised to provide for permit termination if the grantee fails to pay the land user fee, interest, or other charges within 90 calendar days of the due date, consistent with other special use authorization forms.

In addition, a standard clause providing for termination for development of hydroelectric power or reclamation purposes is included in permits when the authorized NFS lands are withdrawn for hydroelectric power or reclamation purposes. This clause would be added to FS-2700-4j, FS-2700-4k, and FS-2700-31 for inclusion as applicable.

FS-2700-5, Term Special Use Permit, and FS-2700-5c, Resort/Marina Term Special Use Permit. The nonpayment clause in both forms would be revised to provide for permit termination if the holder fails to pay the land user fee, interest, or other charges within 90 calendar days of the due date, consistent with other special use authorization forms.

FS-2700-5a, Term Special Use Permit for Recreation Residences, and Grand Island FS-2700-5a Grand Island, Term Special Use Permit for Recreation Residences in the Grand Island National Recreation Area. The maintenance of improvements clause in both forms would be revised to conform to the wording for that clause in other authorization forms. In particular, the revisions would provide for consistency with other permit terms and for changes to maintenance standards when deemed necessary to meet statutory, regulatory, or policy requirements or to

protect national forest resources. The standard bonding clause in special use authorization forms, which gives the authorized officer discretion to require a bond, would be added to both forms.

The nonpayment clause in both forms would be revised to provide for permit termination if the holder fails to pay the cabin user fee, interest, or other charges within 90 calendar days of the due date, consistent with other special use authorization forms.

The standard clause addressing continuation of obligations and liabilities beyond permit expiration or revocation would be added to FS-2700-5a and Grand Island FS-2700-5a. In addition, a standard clause providing for termination of the permit for development of hydroelectric power or reclamation purposes is included in the permit when the authorized NFS lands are withdrawn for hydroelectric power or reclamation purposes. This clause would be added to FS-2700-5a and Grand Island FS-2700-5a for inclusion as applicable.

FS-2700-10c, Communications Use Permit for Federal Agencies. The risk of loss clause in this form would be revised to track the risk of loss clause for federal entities in FS-2700-4 with regard to conducting an analysis to determine whether the authorized facilities can be safely occupied in the future and whether rebuilding should be allowed. In addition, the standard clause providing for termination of the permit for development of hydroelectric power or reclamation purposes would be added to FS-2700-10c for inclusion in the permit when the authorized NFS lands are withdrawn for hydroelectric power or reclamation purposes.

Access to Proposed Forms and Proposed Revision or Addition of Standard Clauses

The proposed updated communications use lease and updated road easement and permit forms; the proposed historic property lease, proposed forms for leasing Forest Service administrative sites; and the proposed revision or addition of standard clauses in the 12

authorization forms can be found at <https://www.fs.usda.gov/managing-land/lands-and-realty-management/forms>.

Gregory C. Smith,

Director,

Lands and Realty Management, National Forest System.

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September 9, 2020

Date