Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563). Consistent with Executive Order (EO) 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether proposed, interim, and final directives that impose, eliminate, or modify requirements on non-Forest Service parties are significant and will review any proposed, interim, or final directives that OIRA has designated as significant. OIRA has determined that this proposed directive is significant. EO 13563 reaffirms the principles of EO 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Forest Service has developed the proposed directive consistent with EO 13563.

Congressional Review Act. Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 et seq.), OIRA has designated this proposed directive as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act. The proposed directive would require an outfitting and guiding permit for strictly point-to-point commercial transportation to, from, and within the Mendenhall Glacier Visitor Center subunit of the Mendenhall Glacier Recreation Area (Visitor Center subunit) in the Alaska Region of the Forest Service. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment (EA) or environmental impact statement (EIS) “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Forest Service has concluded that this proposed directive falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or EIS.

Regulatory Flexibility Act Analysis. The Forest Service has conducted an economic analysis of the proposed directive pursuant to the Regulatory Flexibility Act, 5 U.S.C. 602 et seq., and has determined that the proposed directive would not have a significant economic impact on a substantial number of small entities. The Juneau Economic Development Council (JEDC) reported that in 2019 there were just over 1.7 million visitors to Juneau. The Visitor Center subunit attracted approximately 540,000 of these visitors during cruise season. This means that in 2019 about 1.16 million visitors engaged in tourism activities other than Visitor Center subunit visitation while in Juneau. Nonpermitted operators may still deliver clients to a location on the border of the Visitor Center subunit or provide service to the 1.16 million visitors engaged in Juneau tourism activities other than Visitor Center subunit visitation. The JEDC reported $103,225,389 in leisure, hospitality, and transportation industry earnings (i.e., tourism revenue) for Juneau during 2019. Figures have not yet been published for the 2020 calendar year. Thus, not doing business in the Visitor Center subunit does not equate to not doing business in Juneau, either for large or small entities.

June 24, 2021
In 2015, all commercial capacity in the Visitor Center subunit was allocated by means of a prospectus, consistent with existing Forest Service regulations. Due to overwhelming demand, current permit holders could not be granted the level of use they had requested, and only five new operators could be issued a permit. The 2015 prospectus resulted in distribution of 157,179 Visitor Center subunit service days (1 service day = 1 client) to 15 permit holders, all of which were small businesses. Of these 15 small businesses, 10 were allocated new use that was added to existing permits, while 5 of the small businesses became first-time permit holders through this prospectus. There were 3 small businesses that applied but were not selected. There are currently 26 permits issued to tourism businesses operating in the Visitor Center subunit. One is a large business (affiliated with Princess-Holland-America Cruises); the other 25 are small businesses. Thus, most of the businesses currently operating in the Visitor Center subunit are small. There are 5 to 10 businesses that attempt to operate at the Visitor Center subunit without a permit each year. Some of these companies are known nationally (like Uber and Lyft), and some are local small businesses.

The 25 small businesses would continue to operate in the Visitor Center subunit. Companies without a permit would be invited to submit an application in response to a prospectus once the infrastructure improvements have been completed and recreation capacity in the Visitor Center subunit has increased. Like the 2015 prospectus, this prospectus is expected to help existing permit holders expand their operations, if desired, and allow new operators to enter the market. Companies issued a permit would be authorized to provide transportation to, from, and within the Visitor Center subunit. Companies that apply for but do not obtain a permit could continue to drop off and pick up passengers at the border of the Visitor Center subunit and could still deliver clients to a location on the border of the Visitor Center subunit or provide service to the 1.16 million visitors engaged in Juneau tourism activities other than Visitor Center subunit visitation.

Based on the foregoing, the Forest Service has determined that the proposed directive would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism. The Forest Service has considered the proposed directive under the requirements of EO 13132, Federalism. The Forest Service has determined that the proposed directive conforms with the federalism principles set out in this EO; would not impose any compliance costs on the states; and would not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Forest Service has concluded that the proposed directive does not have Federalism implications.

Consultation with Tribal Governments. The Forest Service has determined that national tribal consultation is not necessary for the proposed directive. The proposed directive is programmatic and does not have any direct effects on tribes.

Environmental Justice. The Forest Service has considered the proposed directive under the requirements of EO 12898, Federal Actions to Address Environmental Justice in Minority
Populations and Low-Income Populations. The Forest Service has determined that the proposed directive is consistent with EO 12898.

No Takings Implications. The Forest Service has analyzed the proposed directive in accordance with the principles and criteria in EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Forest Service has determined that the proposed directive would not pose the risk of a taking of private property.

Energy Effects. The Forest Service has reviewed the proposed directive under EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Forest Service has determined that the proposed directive would not constitute a significant energy action as defined in EO 13211, and OIRA has not otherwise designated the proposed directive as a significant energy action.

Civil Justice Reform. The Forest Service has analyzed the proposed directive in accordance with the principles and criteria in EO 12988, Civil Justice Reform. Upon issuance of the proposed directive, (1) all state and local laws and regulations that conflict with the proposed directive or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed directive; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates. Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), signed into law on March 22, 1995, the Forest Service has assessed the effects of the proposed directive on state, local, and tribal governments and the private sector. The proposed directive would 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. The proposed directive contains information collection requirements as defined in 5 CFR Part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR Part 1320 apply, and a request for public comment on those information collection requirements is included in this notice.

June 24, 2021