

used, or capable of being used, as a means of transportation on water other than a public vessel.

(c) *Applicability.* This section applies to all vessels of 100 gross tons (GT) or more, including tug and barge combinations of 100 GT or more (combined), operating within the RNA, with the exception of public vessels, vessels not intending to cross the COLREGS Demarcation Line and enter San Diego Bay or Mission Bay, and any vessels exercising rights under principles of international law, including innocent passage or force majeure, within the area of this RNA. Vessels operating properly installed, operational, type approved automatic identification system (AIS) as denoted in 33 CFR 164.46 are exempted from making requests as required in this regulation.

(d) *Regulations.* (1) No vessel to which this rule applies may enter, depart or move within San Diego Bay or Mission Bay unless it complies with the following requirements:

(i) Obtain permission to enter San Diego Bay or Mission Bay from the Captain of the Port or designated representative immediately upon entering the RNA. However, to avoid potential delays, we recommend seeking permission 30 minutes prior to entering the RNA.

(ii) Follow all instructions issued by the Captain of the Port or designated representative.

(iii) Obtain permission for any departure from or movement within the RNA from the Captain of the Port or designated representative prior to getting underway.

(iv) Follow all instructions issued by the Captain of the Port or designated representative.

(v) Requests may be made by telephone at 619-278-7033 (select option 2) or via VHF-FM radiotelephone on channel 16 (156.800 Mhz). The call sign for radiotelephone requests to the Captain of the Port or designated representative is "Coast Guard Sector San Diego."

(2) For purposes of the requirements in paragraph (d)(1) of this section, the Captain of the Port or designated representative means any official designated by the Captain of the Port, including but not limited to commissioned, warrant, and petty officers of the U.S. Coast Guard, and any U.S. Coast Guard patrol vessel. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(e) *Waivers.* The Captain of the Port or designated representative may, upon

request, waive any regulation in this section.

Dated: November 9, 2005.

**K.J. Eldridge,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Eleventh Coast Guard District.*

[FR Doc. 05-23030 Filed 11-21-05; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Parts 251, 261, and 291

**RIN 0596-AC35**

#### Recreation Fees

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule is making minor, purely technical changes to implement the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801-6814). The Federal Lands Recreation Enhancement Act repealed and supplanted section 4 of the Land and Water Conservation Fund Act (16 U.S.C. 460l-6a) as the authority for special recreation permits issued by federal land management agencies and for recreation fees charged by federal land management agencies, including the Forest Service. Consequently, in 36 CFR part 251, subpart B, the final rule is replacing the citation to section 4(c) of the Land and Water Conservation Fund Act for special recreation permits (16 U.S.C. 460l-6a(c)) with a citation to section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)). The final rule also is adding a definition for recreation fee and revising the prohibition for failure to pay recreation fees in 36 CFR part 261, subpart A, to conform with the Federal Lands Recreation Enhancement Act. In addition, the final rule is removing 36 CFR part 291 governing recreation fees authorized under section 4 of the Land and Water Conservation Fund Act. Because these changes are minor, purely technical, and nondiscretionary, the Department finds that good cause exists to exempt this rulemaking from public notice and comment under 5 U.S.C. 553(b)(B).

**DATES:** This rule is effective November 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Eberlien, Program Leader, Recreation and Heritage Resources Staff, (202) 205-1169.

**SUPPLEMENTARY INFORMATION:** The Federal Lands Recreation Enhancement

Act (REA) (16 U.S.C. 6801-6814) was enacted December 8, 2004. REA provides the sole authority for the Forest Service to issue and collect fees for special recreation permits for use and occupancy of National Forest System lands and to establish, modify, charge, and collect recreation fees on National Forest System lands. Section 813 of REA (16 U.S.C. 6812) repeals the agency's other authorities for issuing these permits and charging these fees, including section 4 of the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. 460l-6a).

Forest Service regulations at 36 CFR part 251, subpart B, govern special use authorizations for use and occupancy of National Forest System lands. In the list of authorities for part 251, subpart B, the final rule is replacing the citation to section 4(c) of the LWCFA (16 U.S.C. 460l-6a(c)) with a citation to section 803(h) of REA (16 U.S.C. 6802(h)) for special recreation permits. In addition, in § 251.53(k), which enumerates the authority for special recreation permits, the final rule is replacing the citation to section 4(c) of the LWCFA with a citation to section 803(h) of REA.

The regulations at 36 CFR part 261, subpart A, establish prohibitions relating to acts or omissions relating to National Forest System lands. The final rule is adding a definition for recreation fee in § 261.2 to track the definition for that term in section 802(8) of REA (16 U.S.C. 6801(8)) to the extent it applies to the Forest Service and revising the prohibition for failure to pay recreation fees in § 261.15 to conform precisely to the enforcement provisions in section 812(d) of REA (16 U.S.C. 6811(d)).

The Department also is removing 36 CFR part 291 governing recreation fees authorized by section 4 of the LWCFA. The Department is not replacing part 291, because the Department believes that REA is sufficiently prescriptive that it does not require interpretation in a regulation. The Forest Service intends to issue directives that provide specific direction on implementation of REA.

#### Good Cause Statement

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

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

The Department finds that good cause exists to exempt this rulemaking from public notice and comment pursuant to 5 U.S.C. 553(b)(B). This rulemaking merely updates citations, revises a prohibition to conform precisely to a newly enacted statute, and removes obsolete provisions. These minor and purely technical changes are dictated by enactment of REA. Since the Department has no discretion in implementing these changes, public notice and comment are unnecessary pursuant to 5 U.S.C. 553(b)(B).

### Regulatory Certifications

#### *Environmental Impact*

This final rule makes purely minor, technical changes to the Forest Service's regulations. Section 31.1b of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes 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 Department's conclusion is that this final rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

#### *Regulatory Impact*

This final rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant rule. This final rule will not have an annual effect of \$100

million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this final rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

#### *Regulatory Flexibility Act*

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The final rule makes purely minor, technical changes to the Forest Service's regulations. This final rule will not have a significant economic impact on a substantial number of small entities as defined by the act because the final rule will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

#### *No Takings Implications*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the final rule will not pose the risk of a taking of private property.

#### *Civil Justice Reform*

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

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

The Department has considered this final rule under the requirements of Executive Order 13132 on federalism, and has determined that the final rule conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal

government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

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

#### *Energy Effects*

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

#### *Unfunded Mandates*

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

#### *Controlling Paperwork Burdens on the Public*

This final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

### Text of the Final Rule

#### List of Subjects

##### *36 CFR Part 251*

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

##### *36 CFR Part 261*

Law enforcement, National forests.

##### *36 CFR Part 291*

Recreation and recreation areas.

■ Therefore, for the reasons set out in the preamble, amend the authority citation for part 251, amend subpart A of part 261, and remove part 291 of title 36 of the Code of Federal Regulations as follows:

## PART 251—LAND USES

■ 1. Revise the authority citation for part 251 to read as follows:

**Authority:** 7 U.S.C. 1011(f), 16 460l–6d, 472, 497b, 497c, 551, 580d, 1134, 3210, 6802(h); 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

### Subpart B—Special Uses

■ 2. Amend § 251.53 to revise paragraph (k) to read as follows:

#### § 251.53 Authorities.

\* \* \* \* \*

(k) Special recreation permits issued under section 803(h) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6802(h)), for specialized recreation uses of National Forest System lands, such as group activities, recreation events, and motorized recreational vehicle use.

\* \* \* \* \*

## PART 261—PROHIBITIONS

■ 3. The authority citation for part 261 continues to read as follows:

**Authority:** 7 U.S.C. 1011(f); 16 U.S.C. 460l–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

### Subpart A—General Prohibitions

■ 4. Amend § 261.2 to add in alphabetical order a definition for “recreation fee” to read as follows:

#### § 261.2 Definitions

\* \* \* \* \*

*Recreation fee* means a standard amenity recreation fee, an expanded amenity recreation fee, or a special recreation permit fee as defined in section 802(8) of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801(8)).

\* \* \* \* \*

■ 5. Revise § 261.15 to read as follows:

#### § 261.15 Recreation fees

Failure to pay any recreation fee is prohibited. Notwithstanding 18 U.S.C. 3571(e), the fine imposed for the first offense of nonpayment shall not exceed \$100.

## PART 291—OCCUPANCY AND USE OF DEVELOPED SITES AND AREAS OF CONCENTRATED PUBLIC USE

### PART 291—[REMOVED]

■ 6. Remove the entire part 291.

Dated: November 7, 2005.

David P. Tenny,

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. 05–23111 Filed 11–21–05; 8:45 am]

BILLING CODE 3410–11–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[OAR–2005–0153; FRL–7996–9]

RIN 2060–AJ71

### Control of Air Pollution From New Motor Vehicles; Revisions to Motor Vehicle Diesel Fuel Sulfur Transition Provisions; and Technical Amendments to the Highway Diesel, Nonroad Diesel, and Tier 2 Gasoline Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The highway diesel fuel sulfur program, finalized in 2001, is resulting in the nationwide transition in 2006 of most diesel fuel from low-sulfur diesel (LSD) to ultra-low sulfur diesel (ULSD). Some in the diesel fuel production and distribution industries indicated that they may be unable to complete the transition to ULSD by the current deadlines at the very furthest reaches of the distribution system. In response, today’s action makes limited changes to the transition provisions for entities in the highway diesel distribution system. These changes finely balance the concerns of the fuel industry and the critical need for ULSD to be available for 2007 diesel vehicles and engines. The impacts of the recent hurricanes along the Gulf Coast of the U.S. are not a contributing factor in taking today’s action, and there is no change in the June 1, 2006 start date for refiners to be producing ULSD (15 ppm sulfur).

In today’s action, we extend the ULSD implementation dates for terminals and retail outlets by 45 days. Thus, terminals will have until September 1, 2006 (vs. July 15) and retailers will have until October 15, 2006 (vs. September 1) to complete their transitions to ULSD. We also provide that downstream of the refinery fuel with a sulfur content

slightly higher than 15 ppm may temporarily be sold as ULSD. In addition, we extend the beginning of the restriction on how much ULSD can be downgraded to higher sulfur fuel by 15 days, to October 15, 2006 to be consistent with the end of the new transition dates. The rule also includes corrections to the recordkeeping and reporting requirements under the highway diesel program and also includes several minor amendments to the highway diesel sulfur, nonroad diesel sulfur, and gasoline sulfur programs to correct errors or omissions in the regulations.

**DATES:** This direct final rule is effective on January 6, 2006 without further notice, unless we receive adverse comments by December 22, 2005 or receive a request for a public hearing by December 7, 2005.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. OAR–2005–0153. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Tad Wisor, Assessment and Standards Division, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4332, fax (734) 214–4816, e-mail [wisor.tad@epa.gov](mailto:wisor.tad@epa.gov).

**SUPPLEMENTARY INFORMATION:** We do not expect to hold a public hearing, however, if we receive such request we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments. If we receive adverse comment or a request for a hearing, we will withdraw the amendment, paragraph or section of the direct final rule receiving such comment or hearing request, and such withdrawn amendment, paragraph or section will