

rulings have created a gap in regulatory coverage in the special uses program.

The requirement for a special use authorization should be triggered whenever a special use is conducted on National Forest System lands, including on a road or trail. Therefore, the Forest Service proposes to clarify that activities requiring a special use authorization on National Forest System lands are also subject to the requirement for a special use authorization when they are conducted on National Forest System roads and trails (formerly known as forest development roads and trails). The Forest Service has identified four types of special uses that occur on National Forest System roads and trails: noncommercial group uses, outfitting and guiding, recreation events, and commercial filming. The agency is proposing to narrow the exemption for the authorization requirement in section 251.50(d) to exclude special uses occurring on National Forest System roads, and to eliminate the exemption for the authorization requirement for special uses occurring on National Forest System trails. The Forest Service is proposing to eliminate the exemption for special uses conducted on National Forest System trails because there is great potential for resource damage on trails that may not be designed or constructed for the level or type of use that occurs. Furthermore, it is unlikely that there is commercial use of National Forest System trails that should be exempted from the special use authorization requirement.

Under these proposed revisions to the rule, the Forest Service would require special use authorizations and the fees for those authorizations under statutes governing use and occupancy of National Forest System lands. Specifically, for occupancy and use of National Forest System lands, the Forest Service would require commercial filming and still photography permits and permit fees under Public Law 106–206; outfitting and guiding permits and recreation event permits, and permit fees under the Land and Water Conservation Fund Act, 16 U.S.C. 460l–6a(c); and noncommercial group use permits (no fee is charged for noncommercial group use permits) under the agency's Organic Act, 16 U.S.C. 551. Further authority for these permit fees is found in the Independent Offices Appropriations Act, 31 U.S.C. 9701, Office of Management and Budget Circular No. A–25, and 36 CFR 251.57(a). These fees would be charged annually for commercial special uses of National Forest System lands, and would be based on the fair market value of the authorized uses of those lands.

The agency has several reasons for proposing that these types of activities set out at section 251.50 require a special use authorization when conducted on National Forest System roads and trails.

First, a growing number of parties engaged in commercial recreation events and outfitting and guiding use this regulatory gap in the current rule to conduct these activities without a special use authorization. They do so by confining their use and occupancy of National Forest System lands only to National Forest System roads and trails. While the organizers or commercial operators of these types of uses may assert that their activities are confined only to a road or trail, sometimes their activities include the use and occupancy of National Forest System lands adjacent to the road or trail. Determining whether a use is confined to a road or trail requires intensive, case-specific monitoring. The proposed rule would eliminate the need for this monitoring by requiring an authorization for all types of special uses that involve the use of National Forest System lands, regardless of whether they occur on or off National Forest System roads and trails.

Second, some commercial operators design their services to fit the regulatory gap, potentially compromising the quality of the recreation experience, public safety, and the interests of the United States. For example, some operators may stop on a road to unload people and equipment to avoid getting off the road. Requiring a special use authorization would eliminate this practice when a safer alternative is available and would require that necessary safety procedures be followed when no such alternative is available. In addition, conducting a special use without an authorization exposes the United States to potential liability. Special use authorizations contain indemnification, insurance, and other provisions that protect the United States from liability arising in connection with the holder's use and occupancy.

Third, the regulatory gap creates an uneven playing field among businesses, some of which operate under a special use authorization and pay a land use fee, while others do not. The Forest Service is required to obtain fair market value for the commercial use of National Forest System lands. The value of these uses of National Forest System roads and trails is directly attributable to the presence of National Forest System lands and resources located outside the confines of the roads and trails. The public should realize a fair market value return for these commercial uses of

Federal lands and resources, which can be achieved only by requiring a special use authorization for these uses and charging a land use fee for the authorization.

Fourth, the agency needs to regulate these uses of National Forest System roads and trails to accomplish management objectives and reduce impacts to National Forest System lands and resources. The demand for uses of National Forest System lands and resources has increased in recent years. Along with the growth in demand, there are more conflicts among users and increased pressure on limited land and resources. In some cases, the demand is so great that it is necessary to limit use. When an area becomes popular, uncontrolled use can result in land and resource impacts, user conflicts, or increased vehicular and pedestrian traffic with associated traffic safety concerns on National Forest System roads and trails. The agency attempts to balance the needs of individuals, private groups, and commercial operators when managing uses. The agency proposes to address these concerns and conflicts through special use authorizations for special uses that occur on National Forest System roads and trails.

Additionally, this rule would replace the term “forest development roads” with “National Forest System roads” to conform to recent regulatory changes made to 36 CFR part 212.

The authority in the proposed rule to regulate special uses occurring on National Forest System roads would not supplant Forest Service authority to regulate road use within the National Forest System under applicable law, including the National Forest Roads and Trails Act. Rather, these authorities would be complementary. For example, a separate road use permit could be issued under Forest Service Manual 7731.16 and Forest Service Handbook 7709.59, section 24, in conjunction with a special use authorization issued under the proposed rule, or road use issues could be addressed within the context of a special use authorization issued under the proposed rule.

Clarification of Special Uses Not Requiring an Authorization

The agency prefers not to regulate uses when it is unnecessary to establish terms and conditions to protect National Forest System lands and resources or to avoid conflict with agency programs or operations. In April 1997, the Forest Service completed a reengineering study of its special uses program that recommended managing special uses in a more businesslike and customer service-oriented manner. The study