

found that many special use authorizations are issued for (1) minor uses of National Forest System lands that have nominal effects on National Forest System lands, resources, and programs, (2) uses that are regulated by other agencies in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with Forest Service programs and operations, and (3) routine operation or maintenance within the scope of a valid reserved or outstanding property right. The reengineering study recommended that the agency not require a special use authorization in these cases, as it is unnecessary for purposes of National Forest System land and resource management.

Accordingly, under the proposed rule, for uses other than a noncommercial group use, a special use authorization would not be required if the authorized officer determines that the proposed use has one or more of the following characteristics: (1) the proposed use will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations; (2) the proposed use is regulated by a State or another Federal agency in a manner that is adequate to protect National Forest System lands and resources and to avoid conflict with National Forest System programs or operations; or (3) the proposed use is a routine operation or maintenance activity within the scope of a valid reserved or outstanding property right, such as a right-of-way, easement, or reservation.

Proposed Rule Changes

Section 251.50

Current paragraph (a) of section 251.50 requires an authorization for all special uses, unless that requirement is waived as provided in paragraph (c). Proposed paragraph (a) would be revised to identify two additional exceptions, which would be enumerated in proposed paragraphs (d) and (e).

Furthermore, the reference in paragraph (a) concerning the disposal of timber would be expanded to include special forest products, such as greens, mushrooms, medicinal plants, and other plant material collected or gathered for commercial or noncommercial use. Proposed paragraph (a) would state that the disposal of these materials is regulated by part 223. Many forest

managers have mistakenly administered these activities as special uses. Adding a reference to special forest products would distinguish the disposal of forest products as an activity authorized by other than a special use authorization.

Current paragraph (b) of section 251.50 provides for the temporary occupancy of National Forest System lands in an emergency for the protection of life and property, as long as a special use authorization is obtained at the earliest opportunity, unless the requirement for a special use authorization is waived. Proposed paragraph (b) would be expanded to clarify that those temporarily occupying National Forest System lands without a special use authorization assume liability, and must indemnify the United States, for all injury, loss, or damage arising in connection with the temporary occupancy. This added provision is necessary to protect the public interest should injury, loss, or damage occur as a result of the temporary occupancy prompted by an emergency.

With limited exceptions, current paragraph (c) states that noncommercial recreational activities, other than noncommercial group use, do not require a special use authorization, and gives examples of these activities. The agency is proposing no change to this list. Paragraphs (c)(1) and (c)(2) would be combined and redesignated as proposed paragraph (c)(2). Paragraph (c)(3) would be redesignated as proposed paragraph (c)(1).

Paragraph (d) would be revised. The existing paragraph provides that, unless otherwise required by order issued pursuant to section 261.50 or by regulation issued pursuant to section 261.70, any use of existing forest development roads or trails does not require a special use authorization. The agency proposes to revise paragraph (d) by changing "forest development road" to "National Forest System road" to conform to changes made to parts 212, 261, and 295 regarding roads, and by removing the word "trail." In addition, the agency proposes to change "use of" to "travel on" a road or trail.

Proposed paragraphs (d) and (d)(1) also would clarify that noncommercial group uses, outfitting and guiding, recreation events, and commercial filming conducted on National Forest System roads require a special use authorization. For example, a special use authorization would be required for an outfitter who charges a customer for the delivery of livestock or recreation equipment on a National Forest System road for the customers to use on adjacent National Forest System lands.

A second example is a guide who conducts commercial, vehicular tours on National Forest System roads, regardless of whether the guide's customers are confined to the vehicle. A third example is the use of motion picture equipment on a National Forest System road that involves the advertisement of a product or service. A final example is an endurance ride involving hundreds of participants, for which no entry fee is charged, conducted on a National Forest System road.

The proposed paragraph (d)(2) would include the authority currently in paragraph (d) for Regional Foresters and Forest Supervisors to issue orders (section 261.50) and regulations (section 261.70) to prohibit or regulate other uses of National Forest System roads, on a case-specific basis.

Proposed paragraph (e) would be added to specify instances where the requirement to obtain a special use authorization may be waived for certain uses other than a noncommercial group use. Under this proposed paragraph, the special use authorization requirement would be waived only after a proposal for a special use is submitted and the authorized officer determines that the proposed use meets the criteria for waiver.

Proposed paragraph (e)(1) would be added to allow the authorized officer to waive the special use authorization requirement for minor, incidental uses that will have such nominal effects on National Forest System lands, resources, or programs that it is not necessary to establish terms and conditions in a special use authorization to protect National Forest System lands and resources or to avoid conflict with National Forest System programs or operations. Examples of minor, incidental uses could include mailboxes on approved mounts or small identification signs for property. This proposed rule would not relieve a party from requesting advance approval from an authorized officer for such uses or occupancies. Rather, the proposed rule would provide the authorized officer with the ability to waive the requirement for a special use authorization when, based upon professional judgment and experience with comparable uses, the authorized officer determines that no forest management objectives would be achieved through issuance of an authorization. Generally, experience has demonstrated that the cost to the agency to issue and administer authorizations for these types of minor, incidental uses far exceeds any public benefit in terms of land and resource protection.