

Paragraph (e)(2) would be added to exempt proposed uses that are regulated by another 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. An example would be the taking of game or other animals, which is regulated by States. Another example is the delegation of authority by the Forest Service to a different agency to serve as lead agency for regulating certain uses, such as in connection with administration of an oil or gas pipeline special use authorization under the Mineral Leasing Act. This provision would serve to reduce the dual regulation of uses by the Forest Service and other agencies, where another agency's regulatory jurisdiction is satisfactory to meet Forest Service management objectives.

Paragraph (e)(3) would be added to clarify that no special use authorization is required for activities already authorized within the scope of a valid reserved, granted, or outstanding property right, such as a right-of-way, easement, or reservation. Paragraph (e)(3) also would provide that no special use authorization is required for conducting routine operation and maintenance activities within the scope of an outstanding statutory right for certain highways, ditches, or canals. Conversely, under this proposed provision, any activities (including operation, maintenance, construction, or reconstruction) that are outside the scope of an outstanding statutory right would require a special use authorization. In addition, any activities other than routine operation or maintenance, such as construction or reconstruction, that are within the scope of an outstanding statutory right would require a special use authorization. The proposed regulation would require holders of any of these rights to propose on-the-ground activities to the authorized officer before conducting them. The authorized officer would then have the opportunity to determine whether all or some of the proposed activities qualify for the waiver provided under proposed paragraph (e)(3) and can be conducted without a special use authorization.

Waiving the requirement for a special use authorization under the circumstances identified in proposed paragraphs (e)(1) through (e)(3) would improve management efficiency and allow the agency to focus its limited appropriations on management of special uses that have a greater potential impact on National Forest System lands, resources, or programs.

Section 251.51

Section 251.51 of the current regulations defines the more significant and commonly used terms and phrases in part 251, subpart B. The proposed section 251.51 would add definitions for the following terms: "Commercial filming," "forest road or trail," "guiding," "National Forest System road," "outfitting," "recreation event," and "still photography." Providing a definition for these terms would improve public and agency understanding and interpretation of the proposed revisions to section 251.50 provided in this notice.

Section 261.2

The definitions of "National Forest System road" and "National Forest System trail" in proposed section 261.2 would be revised and a new definition for "forest road or trail" would be added for consistency with 23 U.S.C. 101 and this part.

Section 261.55

The term "forest development trails" would be changed to "National Forest System trails" in the heading and introductory text of proposed section 261.55.

Part 295

The term "forest Service road" in the current title of the part 295 heading would be changed to "National Forest System road" in the proposed title of this part for consistency with the terminology in parts 251 and 261.

Regulatory Certifications

Environmental Impact

The proposed changes to the rule at 36 CFR 251.50 and 251.51 would provide more consistent procedures for processing special use proposals and applications and administering special use authorizations for use and occupancy of National Forest System lands. The proposed rule also would make terminology consistent in parts 251, 261, and 295. The changes are intended to improve administrative efficiencies and would have no environmental effects. Section 31.1b of Forest Service Handbook 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 agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist as

currently defined that would require preparation of an environmental assessment or environmental impact statement. A final determination will be made for the final rule.

Regulatory Impact

This proposed 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 proposed rule would not have an annual effect of \$100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This proposed rule would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed rule would 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 proposed rule is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). It has been determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the act because the proposed rule would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market. To the contrary, the efficiencies and consistency to be achieved by this rule should benefit small businesses that seek to use and occupy National Forest System lands by ensuring consistency in procedures across forests and regions and by eliminating costly, time-consuming, and unnecessary processing of certain special use applications and administration of certain special use authorizations. The benefits, most of which cannot be quantified, are not likely substantially to alter costs to small businesses.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule would not pose the risk of a taking of private property.