

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add § 165.1312 to read as follows:

### § 165.1312 Security Zone; Portland, OR Rose Festival on Willamette River.

(a) *Location.* The following area is a security zone: All waters of the Willamette River, from surface to bottom, encompassed by the Hawthorne and Steel Bridges.

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Portland or his designated representatives. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port on VHF channel 16 (156.8 MHz) or VHF channel 22A (157.1 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section will be effective generally from the first full Wednesday of June to the next Monday in June. A notice of implementation of regulation will be published in the **Federal Register** 30 days prior to the beginning of the event.

Dated: December 24, 2002.

**P.D. Jewell,**

*Captain, Coast Guard, Captain of the Port, Portland.*

[FR Doc. 03–1286 Filed 1–21–03; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Parts 251, 261, and 295

RIN 0596–AB74

### Land Uses; Special Uses Requiring Authorization

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Forest Service proposes to amend the regulations at part 251 that govern special uses of National Forest

System lands to address management issues related to the special uses program and to clarify categories of activities for which a special use authorization is required. The proposed rule would promote consistent treatment of special uses requiring an authorization; improve the agency's ability to resolve management issues by requiring permits; and reduce the agency's administrative cost by eliminating the need for issuing an order to require a special use permit and not requiring special use authorizations where they serve no management purpose. The proposed rule clarifies requirements regarding authorizations for special uses involving National Forest System roads and trails. The proposed rule also would add definitions to part 251, would revise definitions in part 261, and would revise a term in the heading of part 295, to ensure use of consistent terminology in these parts. Public comment is invited and will be considered in development of the final rule.

**DATES:** Comments must be received in writing by March 24, 2003.

**ADDRESSES:** Send written comments to Forest Service, USDA, Attn: Director, Recreation, Heritage and Wilderness Resources (RHWR) Staff, (2720), Mail Stop 1125, Washington, DC 20250–1125 or to [rhwr\\_rule@fs.fed.us](mailto:rhwr_rule@fs.fed.us).

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the Office of the Director, RHWR Staff, 4th Floor Central, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC, on business days between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1706 or (202) 205–1399 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Holbrook, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1399, or Randy Karstaedt, Lands Staff, (202) 205–1256.

#### SUPPLEMENTARY INFORMATION:

##### Background and Need for Rule

Forest Service regulations at 36 CFR part 251, subpart B, govern authorizations for occupancy and use of National Forest System lands. Section 251.50 of this subpart characterizes as “special uses” all uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing the disposal of

timber (part 223) and minerals (part 228) and the grazing of livestock (part 222). The regulation requires an authorization for all “special uses,” with certain exceptions.

Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities ranging from individual private uses to large-scale commercial facilities and public services. Examples of authorized land uses include road rights-of-way accessing private residences, apiaries, domestic water supplies and water conveyance systems, telephone and electric service rights-of-way, ski areas, resorts, marinas, outfitter and guide services, and public parks and campgrounds. About 6,000 special use proposals are submitted annually by various entities wanting to use and occupy National Forest System lands. This proposed rule would clarify which activities require a special use authorization. The rule also would revise the term “National Forest System road” (formerly, “forest development road”) to conform to changes in the road management rule at part 212.

In addition, the proposed rule would make the following technical amendments: (1) Revising the definitions for “National Forest System road” and “National Forest System trail” in section 261.2 to make them consistent with 23 U.S.C. 101; (2) in section 261.55, changing the term “forest development trail” to “National Forest System trail,” in conformance with the terminology used in part 212 and this proposed rule; and (3) changing the term “Forest Service Roads” to “National Forest System Roads” in the title of the heading for part 295.

##### Clarification of Special Uses Requiring an Authorization

Revision of sections 251.50 and 251.51 is needed to address management issues related to the special uses program and to special use authorizations involving National Forest System roads and trails.

The current regulation at 36 CFR 251.50(d) provides that a special use authorization is not required for use of National Forest System roads and trails, unless required by an order issued pursuant to section 261.50 or a regulation issued pursuant to section 261.70. Courts have construed this provision as not requiring an authorization for special uses that occur on National Forest System roads and trails and have invalidated orders issued pursuant to section 261.50 that required a permit for special uses occurring on National Forest System roads. These

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. 460/6a(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

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.

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.

## Civil Justice Reform

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

## Federalism and Consultation and Coordination With Indian Tribal Governments

The agency has considered this proposed rule under the requirements of Executive Order 13132 on federalism, and has made an assessment that the proposed rule conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, 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 agency has determined that no further assessment of federalism implications is necessary at this time.

Moreover, this proposed 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 proposed rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed 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 agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule 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 forms for special use applications and authorizations have been approved for use by the Office of Management and Budget (OMB) and assigned OMB control number 0596–0082. Therefore, this proposed rule does not contain any record-keeping 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. Moreover, the proposed rule will reduce the number of applicants for special use authorizations by clarifying those circumstances when special use authorizations are not required. 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.

### List of Subjects

#### 36 CFR Part 251

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

#### 36 CFR Part 261

Law Enforcement, National forests.

#### 36 CFR Part 295

National forests, Traffic regulations.

Therefore, for the reasons set out in the preamble, the Forest Service proposes to amend subpart B of part 251, subpart A of part 261, and part 295 of Title 36 of the Code of Federal Regulations as follows:

## PART 251—LAND USES

### Subpart B—Special Uses

1. The authority citation for subpart B continues to read as follows:

**Authority:** 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. Revise § 251.50 to read as follows:

#### § 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except those authorized by the regulations governing disposal of timber and special forest products, such as greens, mushrooms, and medicinal plants (part 223), minerals (part 228), and grazing of livestock (part 222), are designated “special uses.” Before conducting a special use, individuals or entities must submit a proposal to the authorized officer and must obtain a

special use authorization from the authorized officer, unless that requirement is waived by paragraphs (c) through (e) of this section.

(b) Nothing in this section prohibits the temporary occupancy of National Forest System lands without a special use authorization for the protection of life and property in emergencies, if a special use authorization for that occupancy is obtained at the earliest opportunity, unless waived pursuant to paragraphs (c) through (e) of this section. 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.

(c) A special use authorization is not required for noncommercial recreational activities, such as camping, picnicking, hiking, fishing, boating, hunting, and horseback riding, or for noncommercial activities involving the expression of views, such as assemblies, meetings, demonstrations, and parades, unless:

(1) The proposed use is a noncommercial group use as defined in § 251.51; or

(2) Authorization of that use is required by an order issued pursuant to § 261.50 or by a regulation issued pursuant to § 261.70 of this chapter.

(d) Travel on any National Forest System road must comply with all Federal and State law governing the road to be used. Travel on any National Forest System road does not require a special use authorization, unless:

(1) The travel is for the purpose of engaging in a noncommercial group use, outfitting or guiding, a recreation event, commercial filming, or still photography, as defined in § 251.51; or

(2) Authorization of that use is required by an order issued under § 261.50 of this chapter or by a regulation issued under § 261.70 of this chapter.

(e) For proposed uses other than a noncommercial group use, a special use authorization is not 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 agency 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 an activity within the scope of a valid reserved, granted, or outstanding property right, such as a right-of-way, easement, or reservation, or is a routine operation or maintenance activity within the scope of an outstanding statutory right for a highway pursuant to R.S. 2477 (43 U.S.C. 932, repealed Oct. 21, 1976) or for ditches and canals pursuant to R.S. 2339 (43 U.S.C. 661, as amended).

3. Add the following definitions in alphabetical order to § 251.51:

#### § 251.51 Definitions.

\* \* \* \* \*

*Commercial filming*—use of motion picture, videotaping, sound recording, or any other moving image or audio recording equipment on National Forest System lands that involves the advertisement of a product or service, the creation of a product for sale, or the use of models, actors, sets, or props, but not including activities associated with broadcasting breaking news.

\* \* \* \* \*

*Forest road or trail*—a road or trail wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

\* \* \* \* \*

*Guiding*—providing services or assistance (such as supervision, protection, education, training, packing, touring, subsistence, transporting people, or interpretation) for pecuniary remuneration or other gain to individuals or groups in pursuit of a natural resource-based outdoor activity on National Forest System lands.

\* \* \* \* \*

*National Forest System road*—a forest road under the jurisdiction of the Forest Service.

\* \* \* \* \*

*Outfitting*—renting on or delivering to National Forest System lands for pecuniary remuneration or other gain any saddle or pack animal, vehicle, boat, camping gear, or similar supplies or equipment for the pursuit of a natural resource-based outdoor activity.

\* \* \* \* \*

*Recreation event*—a recreational activity conducted on National Forest System lands for which an entry or participation fee is charged, such as animal, vehicle, or boat races; dog trials;

fishing contests; rodeos; adventure games; and fairs.

\* \* \* \* \*

*Still photography*—use of still photographic equipment on National Forest System lands that (1) takes place at a location where members of the public are generally not allowed or where additional administrative costs are likely, or (2) uses models or props that are not a part of the site's natural or cultural resources or administrative facilities.

\* \* \* \* \*

## PART 261—PROHIBITIONS

### Subpart A—General Prohibitions

4. The authority citation for subpart A continues to read as follows:

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

5. Revise § 261.2 to add a definition for “Forest road or trail” in alphabetical order and to revise the definitions for “National Forest System road” and “National Forest System trail” to read as follows:

#### § 261.2 Definitions.

\* \* \* \* \*

*Forest road or trail*—a road or trail wholly or partly within or adjacent to and serving the National Forest System, and which is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources.

\* \* \* \* \*

*National Forest System road*—a forest road under the jurisdiction of the Forest Service.

*National Forest System trail*—a forest trail under the jurisdiction of the Forest Service.

\* \* \* \* \*

6. Revise the heading and introductory text of § 261.55, to read as follows:

#### § 261.55 National Forest System trails.

When pursuant to an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail: \* \* \*

\* \* \* \* \*

7. Revise the heading for part 295 to read as follows:

## PART 295—USE OF MOTOR VEHICLES OFF NATIONAL FOREST SYSTEM ROADS

8. The authority citation for part 295 continues to read as follows:

**Authority:** 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 525, as amended (7

U.S.C. 1011); E.O. 11644, 11989 (42 FR 26959).

Dated: January 8, 2003.

**Dale N. Bosworth,**  
*Chief.*

[FR Doc. 03–1291 Filed 1–21–03; 8:45 am]

BILLING CODE 3410–11–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[OR–01–003; FRL–7429–6]

### Approval and Promulgation of Implementation Plans; Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) approves numerous revisions to the State of Oregon Implementation Plan submitted to EPA by the Director of the Oregon Department of Environmental Quality (ODEQ) on November 5, 1999, March 7, 2000, June 26, 2001, and November 4, 2002. The revisions were submitted in accordance with the requirements of section 110 and parts C and D of title I of the Clean Air Act (hereinafter CAA or Act).

**DATES:** Written comments must be received on or before February 21, 2003.

**ADDRESSES:** Written comments should be addressed to: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Oregon, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Senior Air Pollution Scientist, EPA, Office of Air Quality (OAQ–107), Seattle, Washington 98101, (206) 553–4253.

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.