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DEPARTMENT OF AGRICULTURE

Forest Service

AGENCY: Forest Service, USDA.

36 CFR Parts 251 and 261

Special Uses; Prohibitions

49 FR 25447

June 21, 1984

ACTION: Final rule.

SUMMARY: This rule revises parts of the existing 36 CFR 251 and 261 by more clearly defining who is required to have a special-use authorization for recreation use of National Forest System lands. It also makes technical and editorial changes to clarify other parts of the existing rules.

EFFECTIVE DATE: June 21, 1984.

ADDRESS: Comments or questions on these final rules may be addressed to: R. Max Peterson, Chief, (2340), Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.
FOR FURTHER INFORMATION CONTACT:

David A. Hammond, Recreation Staff, Room 4247 -- South Building, 12th and Independence Avenue SW., Washington, D.C. 20013, (202) 447-2311.

TEXT: SUPPLEMENTARY INFORMATION:

Background

The Forest Service, USDA, has the responsibility for management of recreation resources on 190 million acres of National Forest, National Grassland and other lands known collectively as the National Forest System. Present regulations governing use of these lands do not adequately explain when advanced permission is required for certain recreation activities and assemblies.

Ambiguous language in the present regulations sometimes leads to confusion by the public and could result in lack of uniform application by Forest Officers. Changes in terminology and conflicting wording in the existing rule have necessitated technical and editorial updating of other parts of 36 CFR Part 251 and of 36 CFR Part 261.

Analysis of Public Comment

Analysis of the present regulation through administrative appeals and court challenges has indicated the need to clarify certain parts relating to what types of recreation uses of National Forest lands require a written authorization and who is required to have such authorization.

A proposed revision of the present regulation was published August 4, 1983, at 48 FR 35465.

The proposed rule generated little public interest. A total of eleven (11) responses were received on the proposal, distributed as follows:

Type of respondent	Number of comments received	Percent of the total
Citizens	2	18
Environmental Organization	1	9
Forest Service Units	7	64
Government, excluding U.S.D.A.	1	9
Total	11	100

The majority of comments were very specific in nature and contained recommendations applicable to particular sections of the rule. Most of the comments were of a technical nature regarding rewording certain sections to provide additional clarity. The public comments were from two individuals belonging to an organization which objects to the permitting process on the basis of constitutional rights.

All suggestions and comments were reviewed and considered in preparation of this final rule. Responses are available for review at the office of the Director of Recreation, Forest Service, USDA, Room 4241 South Agriculture Building, 12th & Independence Avenue SW., Washington, D.C.

Section 261.16(b) National Forest Wilderness.

Comment: The proposed rule would revise paragraph (b) to exclude the word "bicycle" from the provision prohibiting "(b) Possessing or using a hang glider or bicycle". It was pointed out that there is a conflict between this section and 261.57(h) which states that bicycles are prohibited from wildernesses when provided by an order.

Response: The reference to bicycle was supposed to be retained in 261.16(b) and eliminated from 261.57(h). Section 261.16(b) will not be changed in this revision. The final rule revises 36 CFR 261.57(h) to exclude the word "bicycle".

With incorporation of the changes noted above, the final rule establishes uniform guidelines for requiring a special-use authorization for recreational activities and special events on National Forest System lands while allowing flexibility needed to meet special conditions of particular areas. This uniformity will assure better understanding by the public of the circumstances under which they are required to have an authorization for use of National Forest land. This will, in turn, reduce the amount of time required to administer National Forest units and reduce instances where law enforcement action is required.

This action has been reviewed pursuant to Executive Order 12291. It has been determined that this action is not a major rule and does not require a regulatory impact analysis. The rule will have no impact on the economy and will result in no increase in cost or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. The rule will have no effect on competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary for Natural Resources and Environment has determined that this action does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), because the action will not have a significant economic impact on a substantial number of small entities; it imposes no paperwork or recordkeeping requirements on small entities; it does not affect the competitive position of small entities in relation to large entities; and it does not affect cash flow, liquidity, or ability to remain in the market for small entities.

There are no new paperwork or information collection requirements contained in the rule. Any authorizations issued pursuant to this rule will be applied for on Forest Service Form 2700-3 which has previously been approved for use by the Office of Management and Budget and assigned Control Number 0596-0082.

List of Subjects in 36 CFR Parts 251 and 261

Administrative practice and procedure, Law enforcement -- prohibitions, National Forests, and Public lands -- Permits.