

Land Use Regulation

**PHOTOCOPY
PRESERVATION**

directions of an authorized user physician.

5. In § 35.300, paragraph (b)(1) is revised to read as follows:

§ 35.300 Use of radiopharmaceuticals for therapy.

(b)(1) From August 23, 1990, to December 31, 1994, a licensee may depart from the package insert instructions regarding indications or methods of administration for a radiopharmaceutical for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), provided that the authorized user physician has prepared a written directive as required by § 35.32(a).

Dated at Rockville, Maryland, this 23rd day of April, 1993.

For the Nuclear Regulatory Commission,
James M. Taylor,
Executive Director for Operations.
[FR Doc. 93-10886 Filed 5-5-93; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 251 and 261

Land Uses and Prohibitions; Noncommercial Group Uses

AGENCY: Forest Service, USDA.
ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the existing rules governing noncommercial group events and noncommercial distribution of printed material within the National Forest System. These revisions would ensure that the authorization procedures for these activities comply with First Amendment requirements of free speech and assembly.

DATES: Comments must be received in writing by August 4, 1993.

ADDRESSES: Send written comments to Recreation, Cultural Resources, and Wilderness Management Staff (2340), Forest Service, USDA, PO Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: William T. Svensen, Recreation, Cultural Resources, and Wilderness Management Staff, (202) 205-1407, or Ellen R. Hornstein, Office of the General Counsel, Natural Resources Division, (202) 720-9616.

SUPPLEMENTARY INFORMATION:

Background

The First Amendment of the United States Constitution provides in part that the government may not abridge the freedom of speech or the right to assemble peaceably. U.S. Const., amend.

1. Freedom of speech means the right to disseminate ideas freely, both orally or in writing.

It is well established that the government may enforce reasonable time, place, and manner restrictions on First Amendment activities. Such restrictions are appropriate where they are justified without regard to the content of the regulated speech, where they are narrowly tailored to further a significant governmental interest, and where they leave open ample alternative channels for communication of information. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984). Permits have been recognized as constitutional restrictions of time, place, and manner when specific and objective standards guide the licensing authority. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51, 153 (1969).

The Forest Service regulates activity on National Forest System lands through the issuance of special use authorizations. Issuing special use authorizations allows the Forest Service to protect resources and improvements on National Forest System lands and to prevent conflicts among potential or existing uses and activities. The rules at 36 CFR part 251, subpart B, govern the issuance of special use authorizations for all uses of National Forest System lands, improvements, and resources, except the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222).

On June 21, 1984, the Secretary of Agriculture promulgated a revision to 36 CFR part 251, subpart B. That rule required a permit for two types of noncommercial group events, recreation events and special events, both of which involved ten or more participants or spectators. As defined, recreation events entailed competition, entertainment, or training, and special events included a meeting, assembly, demonstration, parade, or other activity involving the expression of views. Noncommercial groups that did not fall into either of these categories did not have to have a permit. Moreover, the rule contained different standards for denying a special use authorization for each type of group event (49 FR 25449).

Subsequently, a federal district court held that it is unconstitutional to require a group to obtain a special use

authorization simply because they gather to exercise their constitutional right of free speech. The court explained that the Forest Service has the right to regulate large group activities on government land, but only if the regulation is content-neutral and applies to all large groups. *United States v. Israel*, No. CR-86-027-TUC-RMB (D. Ariz. May 10, 1986).

On May 10, 1988, the Forest Service published an interim rule amending 36 CFR 251.50 through 251.54 to comport with First Amendment rights of assembly and free speech within the National Forest System (53 FR 16548). Upon challenge of this rule, a federal district court held that the Forest Service had failed to show good cause for adopting the interim rule without prior notice as required by the Administrative Procedure Act, 5 U.S.C. 553. *United States v. Rainbow Family*, 695 F. Supp. 294, 302-06 (E.D. Tex. 1988). In addition, the court invalidated the classification established by the 1984 rule, which on its face singled out expressive conduct and required that it be treated differently from other activity. The court held that the 1984 rule lacked clear and objective standards for determining when a group activity is a "recreation event" and when it is a "special event" involving the exercise of free speech. *Rainbow Family*, 695 F. Supp. at 309, 312. The court further held that the standards for evaluating an application for an authorization for expressive conduct were unconstitutionally vague as they vested too much discretion in the authorized officer. *Id.* at 309-12. The court ruled that the 1984 regulations were invalid for failure to impose a timeframe for filing and acting on an application, and that the absence of any requirement in the 1984 regulations that a reason be stated for denial of a special use authorization made it impossible to discern the grounds for an authorized officer's decision. *Id.* at 311-12. Finally, the court held that the 1984 rule was invalid for failure to provide for judicial review of the administrative determination. *Id.* at 311.

As a result of these court rulings, the Forest Service is proposing revisions of the rules governing special uses at 36 CFR part 251. The purpose of this proposed rule is to regulate noncommercial group events and noncommercial distribution of printed material on National Forest System lands in compliance with First Amendment rights of assembly and free speech. To achieve this goal, the proposed rule contains specific, content-neutral criteria for evaluating applications for noncommercial group

events and noncommercial distribution of printed material and requires that the same criteria be applied to those activities, regardless of whether they involve First Amendment rights. In addition, the proposed rule requires an authorized officer to notify an applicant in writing of the reasons for denial of a special use authorization and provides for immediate judicial review of a decision denying an authorization.

Section-by-Section Analysis

Amendments to Part 251

Section 251.50—Scope

Paragraph (a) would be revised for clarity and to make explicit that an application is required for authorization of a special use. Paragraph (c) would be revised to clarify that a special use authorization is required for noncommercial group events involving 25 or more people and noncommercial distribution of printed material.

The agency has an interest in regulating group activities. Group activities tend to have a greater impact on forest resources and facilities than activities involving individuals or smaller parties. The agency also has an interest in regulating when noncommercial distribution of printed material occurs. Such distribution can occur by posting, affixing or erecting the material, which could damage natural resources if not regulated. In addition, as distribution generally occurs in crowded areas, it can obstruct traffic and create unsafe traffic conditions, for example, where a single-lane road provides the only access to a popular national forest attraction or where a national forest is near an urban center.

Section 251.51—Definitions

Section 251.51 contains definitions used in part 251, subpart B. The proposed rule would revise the definition for "group event" and add new terms and definitions for "commercial use or activity," "noncommercial use or activity," "printed material," and "distribution of printed material."

The term "group event" would cover any activity that involves and/or attracts 25 or more people, regardless of the purpose of the gathering. Thus, this term would embrace all groups that were included in the "special event" and "recreation event" categories of the 1984 rule, as well as those that were excluded. The Forest Service is proposing a cutoff of 25 people based on a review of the potential impact on resources and facilities. The agency believes that activities involving 25 or more people tend to have a greater

impact on resources and facilities and thus require evaluation by an authorized officer. If the agency required an authorization for smaller group activities, the agency would be inundated with applications, which would create an unnecessary administrative burden and cost in light of the generally low impact of these activities. Public comment is especially invited on this group number threshold.

The terms and definitions for "commercial use or activity" and "noncommercial use or activity" would be added to clarify which activities would be subject to the authorization requirement in § 251.50(c)(3). The terms and definitions for "printed material" and "distribution of printed material" would be added to clarify one of the types of activities subject to the authorization requirement in § 251.50(c)(3).

Section 251.54—Special Use Applications

Section 251.54 of the existing rule prescribes procedures and requirements for processing applications for special use authorizations. Section 251.54(a) encourages all proponents to contact an authorized officer as early as possible so that potential constraints may be identified, the proposal can be considered in land management plans if necessary, and processing of an application can be tentatively scheduled. The proposed rule would amend § 251.54(a) to provide that the proponent will be given guidance and information about the items listed in paragraphs (a)(1) through (a)(8) only to the extent applicable to the proposed use and occupancy. For example, fees and bonding requirements listed in paragraph (a)(4) would not apply to applications for noncommercial group uses and noncommercial distribution of printed material and would not be discussed with proponents of those activities.

Section 251.54(e) specifies the information that must be contained in an application for a special use authorization. The proposed rule would amend paragraph (e)(1) to specify applicant identification requirements applicable to all special uses. Specifically, paragraph (e)(1) would require any applicant to provide his or her name and mailing address, or if the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application.

Additionally, the proposed rule would amend this paragraph by adding a new paragraph (e)(2) to specify separate information requirements for

noncommercial group uses and noncommercial distribution of printed material. Paragraph (e)(2) would require applicants for noncommercial group uses and noncommercial distribution of printed material to provide the following:

- (1) A description of the proposed activity;
- (2) A description of the National Forest System land and any facilities the applicant would like to use;
- (3) The estimated number of participants and spectators;
- (4) The date and time of the proposed activity; and
- (5) The name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the applicant.

This is the minimum information needed by the authorized officer to apply the evaluation criteria in the proposed rule. Application information requirements for all other special uses would remain as provided in the existing rule, with one exception. The provision currently in paragraph (e)(1) concerning the deference to be given to findings of another agency would be moved to a new paragraph (f)(4), since this provision relates to the processing of applications rather than to their content.

The *Rainbow* court identified the need for a specific timeframe for granting or denying an application for a noncommercial group event or noncommercial distribution of printed material. 695 F. Supp. at 311. This decisionmaking process, however, may trigger extensive statutory and regulatory requirements, including those imposed by the National Environmental Policy Act of 1969 (NEPA), 42 USC 4331 *et seq.*, the Endangered Species Act (ESA), 16 USC 531 *et seq.*, the National Historic Preservation Act, 16 USC 470 *et seq.*, and other laws. The time needed to comply with these requirements varies greatly depending on the particular circumstances of each application. Committing to a specific timeframe could put the agency in the position of having to choose between violating either its own regulations or one or more of these statutory mandates.

Consequently, the agency has determined that it would be infeasible and arbitrary to specify a time period in which final agency decision would be made.

In recognition of these competing concerns, the proposed rule would add a new paragraph (f)(5) providing that the agency would grant or deny an application for noncommercial group events or noncommercial distribution of

printed material without unreasonable delay. A determination of whether the agency acted with sufficient speed would require an analysis of what is reasonable under the circumstances, in view of the applicable statutory and regulatory obligations. Applicants are encouraged to contact the agency as early as possible to discuss the amount of time that could be required to make a decision, and to apply sufficiently in advance of their proposed activities to allow the agency to comply with applicable statutory and regulatory requirements.

Section 251.54(h) of the 1984 rule enumerated grounds for denying an application for a special use other than a special event. Section 251.54(i) listed separate grounds for denying an application for a special event, which involved the expression of views. Thus, the 1984 rule applied different criteria for activities with First Amendment implications than for all other activities, including other types of group events. Moreover, the criteria for First Amendment activities were not specific enough to reduce the potential for application of disparate standards in reviewing applications for an authorization.

The proposed rule would presume that any noncommercial group event and noncommercial distribution of printed material would be authorized, upon a determination that seven evaluation criteria were met. These criteria would merely regulate time, place, and manner with respect to a proposed activity. The proposed rule would dictate that these same criteria be applied to all types of noncommercial group events and noncommercial distribution of printed material. Thus, these criteria are intended to be content-neutral, are narrowly tailored to advance significant governmental interests, and leave open ample alternative channels for communication of the information.

Specifically, § 251.54(h)(1) of the proposed rule would provide that an authorized officer shall grant an application for a special use authorization for any noncommercial group event or for noncommercial distribution of printed material, upon a determination that:

(1) *The proposed activity is not prohibited by the rules at 36 CFR part 261, subpart A, or by an order issued pursuant to 36 CFR part 261, subpart B, or by federal, state, or local law unrelated to the content of expressive activity.* This criterion would allow the agency to deny an application for an activity that would violate federal, state, or local law. This criterion would also

allow the Forest Service to regulate where a proposed activity would be conducted. The Forest Service must comply with applicable federal law and regulations in managing the National Forest System. For example, the Wilderness Act requires the Forest Service to protect and manage wilderness areas so as to preserve their natural condition and to ensure that the imprint of human activity remains substantially unnoticeable. 16 U.S.C. 1131(c). The ESA prohibits a taking of an endangered species. A "taking" as defined by the ESA includes the loss of a listed species habitat. Thus, an authorized officer might deny an application if the activity would be conducted in a wilderness area or would risk a taking of a threatened or endangered species such as the spotted owl or grizzly bear. In addition, an authorized officer would have to deny an application if the activity would be conducted in an area that is closed or restricted pursuant to an order issued under 36 CFR part 261. Under a 261 order, the Forest Service might close a trail in the event of extreme fire danger or inclement weather.

(2) *The proposed activity is consistent or can be made consistent with the applicable approved land and resource management plan.* The National Forest Management Act requires that "(r)esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans." 16 U.S.C. 1604(i). An activity is consistent with a forest plan if it adheres to a plan's standards and guidelines that are forest-wide or that are included in management prescriptions for specific management areas. Standards and guidelines describe any activities that are not permitted to occur in a specified area or prescribe how activities must be implemented for environmental protection or other purposes. Forest plans are developed in accordance with the rules at 36 CFR part 219 and adopted with extensive public participation and comment.

(3) *The proposed activity would not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System land, including but not limited to uses and activities authorized pursuant to parts 222, 223, 228, and 251 of this chapter.* Under this criterion, an authorized officer might require a large group to alter arrival and departure times or to use an alternative access route to avoid congestion. An officer might suggest an alternate site on the opening day of fishing season for the

same reason. This criterion would also allow the Forest Service to ensure that a group of Boy Scouts is not given a site that is already being used as pastureland under a grazing permit or that is currently being logged under a timber sale contract.

The 1984 rule provided that an application for a special event could be denied if the event conflicted with a previously approved use or if it would be of such nature or duration that it could not reasonably be accommodated in the place and time requested (49 FR 25449). The federal district court in *Rainbow Family* held that denying a permit because it "conflicts" with another use or because it "cannot reasonably be accommodated" in the time and place requested allows for too much discretion on the part of the authorized officer. 695 F. Supp. at 312.

This proposed rule would address the court's concern by providing specific examples of how an activity covered by this paragraph could delay, halt, or prevent existing or scheduled activities and what those activities might include. Similarly, the proposed rule would remove the unconstitutionally vague criterion which allows an authorized officer to deny an application for an activity covered by this proposed rule on the ground that it cannot reasonably be accommodated in the time and place requested.

(4) *The proposed activity would not pose a substantial danger to public health. Considerations of public health shall be limited to the following with respect to the proposed site:*

(a) *The sufficiency of sanitation facilities;*

(b) *The adequacy of waste disposal facilities;*

(c) *The availability of sufficient potable drinking water, in view of the expected number of users and duration of use;*

(d) *The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site;*

(e) *The risk of contamination of the water supply; and*

(f) *The sufficiency of a plan for safe handling of food.*

(5) *The proposed activity would not pose a substantial danger to public safety. Considerations of public safety shall not include concerns about possible reaction to the users' identity or beliefs from non-members of the group seeking an authorization and shall be limited to the following:*

(a) *The potential for physical injury to other forest users from the proposed activity;*

(b) *The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;*

(c) *The potential for physical injury to users from scheduled or existing uses or activities on National Forest System land; and*

(d) *The adequacy of ingress and egress in case of an emergency.*

The 1984 rule allowed an authorized officer to deny an application for a special event if it presented a clear and present danger to the public health or safety (49 FR 25449). The Rainbow court struck down this language because it was too vague and allowed for too much discretion on the part of the authorized officer. 695 F. Supp. at 311. The proposed rule would overcome this deficiency. In regulating where the activity would occur, the criterion in the proposed rule would restrict the authorized officer's discretion by enumerating concrete, content-neutral considerations of public health and safety.

(6) *The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.* This activity does not implicate the First Amendment and is currently prohibited by Forest Service policy as inconsistent with National Forest System purposes.

(7) *A person or persons 21 years of age or older has been designated to sign and does sign a special use authorization on behalf of the applicant.* The agency must have someone to contact for purposes of special use administration. The authorized officer may have questions about the application or may need to notify the applicant in the event of an emergency. If the application does not identify a contact person, the agency cannot make the appropriate notifications. In addition, someone on behalf of the applicant must accept the responsibilities associated with use of National Forest System land.

Public comment is especially invited on the seven evaluation criteria.

If, at the conclusion of the application process, the application does not meet the seven criteria, an administrative officer could deny the application. Under proposed § 251.54(h)(2), however, an authorized officer would have to notify an applicant in writing of the reasons for denial of an application for a special use authorization. The proposed rule would make explicit that a denial of an application under § 251.54(h)(1) would constitute final

agency action and would be immediately subject to judicial review.

Section 251.56—Terms and Conditions

The proposed rule would amend § 251.56(e) on bonding to provide that an authorized officer could not require bonding for holders of authorizations for noncommercial group events or noncommercial distribution of printed material. This amendment would clarify the agency's intent to ensure that no undue burdens are imposed on the exercise of First Amendment rights.

Section 251.57—Fees

The proposed rule revises § 251.57 on fees for special use authorizations to provide that no fee will be charged when the authorization is for a noncommercial group event or for the noncommercial distribution of printed material. This revision would clarify the agency's intent to ensure that no undue burdens are imposed on the exercise of First Amendment rights.

Section 251.60—Termination, Revocation, and Suspension

Section 251.60 provides several grounds for terminating, revoking, or suspending a special use authorization, one of which is for reasons in the public interest. The proposed rule would amend this broad basis for termination, revocation, or suspension to exclude authorizations for noncommercial group events or noncommercial distribution of printed material. This amendment would clarify the agency's intent to ensure that the authorized officer does not have unbridled discretion with respect to administration of noncommercial First Amendment activities in the National Forest System. Under § 251.60(a), an authorized officer could still terminate, revoke, or suspend an authorization for these activities for noncompliance with applicable statutes, regulations, or terms and conditions of the authorization; for failure of the holder to exercise the rights and privileges granted; with the consent of the holder; or when, by its terms, a fixed or agreed upon condition, event, or time occurs.

Amendment to Part 261

In addition to the changes at 36 CFR part 251, subpart B, the proposed rule would make corollary amendments to the rules at 36 CFR part 261, subpart A, which contain general prohibitions in effect for the National Forest System.

The proposed rule would amend the authority citation for part 261 to consolidate the references. The proposed rule would also amend the definitions and prohibitions governing

occupancy and use to make them consistent with the requirement in part 251 that a special use authorization is required for noncommercial distribution of printed material.

Section 261.2—Definitions

In the definitions section, the term "placing" would be replaced by the word "affixing." "Placing" could be construed to prohibit leaving printed material under windshield wipers or on dashboards of vehicles, neither of which would result in injury to public or private property. Use of the word "affixing" would narrow the prohibition to address damage to forest resources and facilities.

Section 261.10—Occupancy and Use

With respect to distribution of printed material, the proposed rule would prohibit delaying, halting, or preventing administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System land; misrepresenting the purposes or affiliations of those distributing the material; or misrepresenting the availability of the material without cost or donation. Consistent with the third evaluation criterion proposed for part 251, this language would regulate time, place, and manner for the distribution of printed material. This prohibition would also protect the public from fraud by prohibiting specific types of misrepresentation in the context of such distribution.

Section 261.14—Developed Recreation Sites

The proposed rule would remove from this section the prohibition on distribution of printed material without a special use authorization. This prohibition is subsumed in the prohibition contained in § 261.10(g), which applies throughout the National Forest System.

Summary

With the changes in definitions and establishment of very limited circumstances under which an authorized officer could deny a special use authorization for noncommercial group events and noncommercial distribution of printed material, the proposed rule would preserve the fundamental constitutional rights of free speech and assembly, while providing reasonable administrative mechanisms to control or prevent adverse impacts on resources and public health and safety.

Public comment is invited and will be considered in adoption of the final rule. It will aid analysis of comments if

reviewers key them to specific sections of the proposed rule. Respondents should also note that in conducting this analysis, the agency will give more weight to substantive comments than to simple "yes," "no," or "check-off" responses to form letters or questionnaires.

A separate proposed rule revising the existing regulations at 36 CFR part 251 governing application procedures for all other special uses was published in the Federal Register at 57 FR 36618 on August 14, 1992. Upon adoption, that final rule will be integrated with this rulemaking to ensure consistency in substance and format.

Regulatory Impact

This proposed rule has been revised under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this would not be a major rule. The proposed rule would not have an effect of \$100 million or more on the economy, substantially increase prices or costs for consumers, industry, or state or local governments, or adversely affect competition, employment, investment, productivity, innovation, or the ability of domestic companies to compete in foreign markets. In short, this proposed rule would have little or no impact on the national economy. The proposed rule would consist primarily of technical and administrative changes for authorization of occupancy and use of National Forest System lands.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action would not have a significant economic impact on a substantial number of small entities because it would not impose recordkeeping 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.

This proposed rule has been reviewed for its impact on private property rights under Executive Order 12630 of March 15, 1988, as implemented by the United States Attorney General's Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings. Executive Order 12630 would not apply to this proposed rule because it would consist primarily of technical and administrative changes governing application procedures for authorization of occupancy and use of National Forest System lands. Application for a special use authorization does not grant any right, title, or interest in or to lands or resources held by the United States.

This proposed rule has been reviewed under Executive Order 12778, 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 which 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.

Paperwork Reduction Act

The information an applicant must provide the Forest Service to obtain an authorization for a noncommercial group event or noncommercial distribution of printed material (proposed § 251.54(e)(2)(i) (A)-(E)) constitutes an information requirement as defined by the Paperwork Reduction Act and the Office of Management and Budget implementing rules at 5 CFR part 1320 and thus would require OMB approval before adoption of the final rule. The Forest Service is requesting OMB approval of the information required for these applications. The agency estimates that each applicant would spend an average of one to four hours preparing an application, depending on the scope and complexity of the proposed activity. Comments on this information requirement should be submitted to the office listed in this proposed rule under ADDRESSES, as well as to the: Forest Service Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Environmental Impact

This proposed rule consists primarily of technical and administrative changes related to authorization of occupancy and use of National Forest System lands. No extraordinary circumstances have been identified that might cause this proposed action to have a significant effect on the human environment. Therefore, the agency's preliminary determination is that this proposed rule is categorically excluded from documentation in an Environmental Impact Statement or an Environmental Assessment (40 CFR 1508.4; Forest Service Handbook 1909.15, Environmental Policy and Procedures, section 31.1b(2), 57 FR 43208, September 18, 1992). A final determination will be made at the time of publication of the final rule.

List of Subjects

36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, it is proposed to amend part 251, subpart B, and part 261, subpart A, of chapter II 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:

Authority: 16 U.S.C. 472, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1771.

2. Amend § 251.50 by revising the heading and paragraphs (a), (c), introductory text, and (c)(3) to read as follows:

§ 251.50 Scope.

(a) All uses of National Forest System lands, improvements, and resources, except those provided for in the regulations governing the disposal of timber (part 223) and minerals (part 228) and the grazing of livestock (part 222), are designated "special uses." Before engaging in a special use, persons or entities must submit an application to an authorized officer and must obtain a special use authorization from the authorized officer, unless that requirement is waived by paragraph (c) of this section.

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

(3) Noncommercial group events or noncommercial distribution of printed material as defined in § 251.51 of this subpart.

3. Amend § 251.51 by removing the terms and definitions for *Distributing noncommercial printed material* and *Noncommercial printed material*, revising the definition for "Group event," and adding the following new terms and definitions in alphabetical order to read as follows:

§ 251.51 Definitions.

Commercial use or activity—any use or activity on National Forest System lands involving the charge of an entry or participation fee, or the purchase, sale, or exchange of a product or service, regardless of whether the use or activity is intended to produce a profit.

Distribution of printed material—disseminating, posting, affixing, or erecting printed material as defined in this section or soliciting information, views, or signatures in conjunction with the distribution of printed material.

Group event—an activity conducted on National Forest System lands that involves and/or attracts 25 or more people.

Noncommercial use or activity—any use or activity that does not involve a commercial use or activity as defined in this section.

Printed material—any written and/or graphic material including but not limited to pamphlets, periodicals, leaflets, brochures, photographs or graphics, handbills, signs, petitions, posters, bumper stickers, and booklets.

4. Amend § 251.54 by revising paragraphs (a), introductory text, (e)(1), (e)(2)(i) and the introductory text of (e)(2)(ii), redesignating paragraphs (f)(1) and (f)(2) as (f)(2) and (f)(3) and redesignating the first sentence of paragraph (f) as paragraph (f)(1), and adding new paragraphs (f)(4) and (f)(5) and revising paragraph (h) to read as follows:

§ 251.54 Special use applications.

(a) **Preapplication activity.** When occupancy or use of National Forest System land is desired, a proponent is encouraged to contact the Forest Service office(s) responsible for management of the affected land as early as possible so that potential constraints may be identified, the proposal can be considered in land management plans if necessary, and processing of an application can be tentatively scheduled. To the extent applicable to the proposed use and occupancy, the proponent will be given guidance and information about:

(e) **Application content**—(1) **Applicant identification.** Any applicant for a special use authorization shall provide the applicant's name and mailing address, or if the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application.

(2) **Minimum information.**—(i) **Noncommercial group events and**

noncommercial distribution of printed material. An applicant for noncommercial group events and noncommercial distribution of printed material shall provide the following:

(A) A description of the proposed activity;

(B) A description of the National Forest System land and any facilities the applicant would like to use;

(C) The estimated number of participants and spectators;

(D) The date and time of the proposed activity; and

(E) The name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the applicant.

(ii) **All other special uses.** If requested by an authorized officer, an applicant in one of the following categories shall furnish the information specified for that category:

(A) A State and local government agency: a copy of the authorization under which the application is made;

(B) A public corporation: the statute or other authority under which it was organized;

(C) A Federal government agency: the title of the agency official delegated the authority to file the application;

(D) A private corporation: (1) Evidence of incorporation and its current good standing; (2) if reasonably obtainable by the applicant, the name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; (3) the name and address of each affiliate of the entity; (4) in the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the entity owns either directly or indirectly; or (5) in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly by the affiliate; or

(E) A partnership, association or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

(f) **Processing applications.** (1) * * *

(4) The authorized officer shall give due deference to the findings of another agency such as the Public Utility Commission, the Federal Energy Regulatory Commission, or the Interstate Commerce Commission in lieu of another detailed finding. If this

information is already on file with the Forest Service, it need not be refiled if reference is made to the previous filing date, place, and case number.

(5) A decision to grant or deny an application for a noncommercial group event or noncommercial distribution of printed material shall be made without unreasonable delay.

(h) **Response to applications for noncommercial group events or for the noncommercial distribution of printed material.** (1) An authorized officer shall grant an application for a special use authorization for a noncommercial group event or for noncommercial distribution of printed material, upon a determination that:

(i) The proposed activity is not prohibited by the rules at 36 CFR part 261, subpart A, or by orders issued pursuant to 36 CFR part 261, subpart B, or by Federal, State, or local law;

(ii) The proposed activity is consistent or can be made consistent with the applicable approved land and resource management plan required pursuant to 36 CFR part 219;

(iii) The proposed activity will not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System land, including but not limited to uses and activities authorized pursuant to parts 222, 223, 228, and 251 of this chapter;

(iv) The proposed activity will not pose a substantial danger to public health. Considerations of public health shall be limited to the following with respect to the proposed site:

(A) The sufficiency of sanitation facilities;

(B) The adequacy of waste disposal facilities;

(C) The availability of sufficient potable drinking water, in view of the expected number of users and duration of use;

(D) The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(E) The risk of contamination of the water supply;

(F) The sufficiency of a plan for safe handling of food.

(v) The proposed activity will not pose a substantial danger to public safety. Considerations of public safety shall not include concerns about possible reaction to the users' identity or beliefs from non-members of the group seeking an authorization and shall be limited to the following:

(A) The potential for physical injury to other forest users from the proposed activity;

(B) The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(C) The potential for physical injury to users from scheduled or existing uses or activities on National Forest System land; and

(D) The adequacy of ingress and egress in case of an emergency;

(vi) The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded; and

(vii) A person or persons 21 years of age or older has been designated to sign and does sign a special use authorization on behalf of the applicant.

(2) If an authorized officer denies an application because it does not meet the criteria in paragraphs (h)(1)(i) through (vii) of this section, the authorized officer shall notify the applicant in writing of the reasons for the denial. A denial of an application under paragraph (h)(1)(i) through (vii) of this section constitutes final agency action and is immediately subject to judicial review.

5. Amend § 251.56 by revising paragraph (e) to read as follows:

§ 251.56 Terms and conditions.

(e) *Bonding.* An authorized officer may require the holder of a special use authorization for other than noncommercial group events and noncommercial distribution of printed material to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or by any applicable law, regulation or order.

6. Amend § 251.57 by redesignating paragraphs (d) through (g) as (e) through (h) and adding a new paragraph (d) to read as follows:

§ 251.57 Rental fees.

(d) No fee shall be charged when the authorization is for a noncommercial group event or for the noncommercial distribution of printed material as defined in § 251.51 of this subpart.

7. Revise § 251.60(b) to read as follows:

§ 251.60 Termination, revocation, and suspension.

(b) A special use authorization may be suspended, revoked or terminated, in the discretion of the authorized officer, for reasons in the public interest, except that this provision shall not apply to special use authorizations for noncommercial group events or noncommercial distribution of printed material.

PART 261—PROHIBITIONS

8. Revise the authority citation for part 261 to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 1133(c)-(d)(1), 1246(i).

Subpart A—General Prohibitions

9. Amend § 261.2 by adding the following new terms and definitions in alphabetical order to read as follows:

§ 261.2 Definitions.

Distribution of printed material. Disseminating, posting, affixing, or erecting printed material as defined in this section or soliciting information, views, or signatures in conjunction with the distribution of printed material.

Printed material. Any written and/or graphic material including but not limited to pamphlets, leaflets, brochures, photographs or graphics, handbills, signs, petitions, posters, bumper stickers, and booklets.

10. Amend § 261.10 by redesignating paragraphs (h) through (m) as paragraphs (i) through (n), revising paragraph (g), and adding a new paragraph (b) to read as follows:

§ 261.10 Occupancy and use.

(g) Distributing any printed material without a special use authorization.

(h) When distributing printed material, delaying, halting, or preventing administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System land; misrepresenting the purposes or affiliations of those selling or distributing the material; or misrepresenting the availability of the material without cost or donation.

§ 261.14 [Amended]

11. Amend § 261.14 by removing paragraph (p) and redesignating paragraph (q) as paragraph (p).

Dated: March 25, 1993.

George M. Leonard,
Associate Chief.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-4652-3]

Public Meeting on the Rulemaking for the Pulp, Paper, and Paperboard Industry

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing two public meetings regarding regulations that will apply to the pulp, paper, and paperboard industry. The regulations are scheduled to be proposed in October 1993. EPA is sponsoring these meetings to report on the status of regulatory development and to gather information and ideas from interested parties.

DATES: The dates for the public meetings are Wednesday, May 19, 1993, 9 a.m. to 5 p.m. and Wednesday, June 9, 1993, 9 a.m. to 5 p.m.

ADDRESSES: The May 19 meeting will be held at the Virginia Center for Innovative Technology, which is located near Dulles Airport at 2214 Rock Hill Road, Herndon, Virginia 22070, telephone number 703-689-3000. The June 9 meeting will be held at the Omni Durham Hotel, 210 Foster St., Durham, North Carolina 27701. A block of rooms is being held for meeting participants. Please call the hotel directly at 919-683-OMNI for reservations.

FOR FURTHER INFORMATION CONTACT: Wendy Smith at the U.S. Environmental Protection Agency—by mail at WH-552, Office of Science and Technology, 401 M. Street SW, Washington, DC 20460; by telephone at (202) 260-7184.

SUPPLEMENTARY INFORMATION: EPA is developing effluent limitations guidelines and standards under authority of the Clean Water Act and maximum achievable control technology standards under authority of the Clean Air Act. The Agency is scheduled to propose these water and air regulations in October 1993.

At the public meeting on May 19, 1993, EPA plans to report the technology basis selected for the proposed regulations. Other agenda items may include implementation