



## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 251

### RIN 0596-AD71

### Land Uses; Special Uses

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Final rule.

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**SUMMARY:** The United States Department of Agriculture (Department), Forest Service (Forest Service or Agency), is issuing this final rule to update its special uses regulations on filming and still photography to be consistent with the new requirements in the *Expanding Public Lands Outdoor Recreation Experiences Act* (EXPLORE Act or Act). The technical revisions include adding a statutory reference to the EXPLORE Act and updating terminology and definitions to be consistent with the Act.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Mark Chandler, Realty Specialist, at (202) 205-1117 or [mark.chandler@usda.gov](mailto:mark.chandler@usda.gov). Information on this final rule may also be obtained via written request addressed to the Director, Lands, Minerals and Geology Management, USDA Forest Service, 201 14th Street SW, Washington, DC 20250-1124, or by email to [SM.FS.WO\\_LandStaff@usda.gov](mailto:SM.FS.WO_LandStaff@usda.gov). Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service, then provide the phone number of the person named as a point of contact for further information.

### SUPPLEMENTARY INFORMATION:

#### Background

This final rule makes technical and clarifying revisions to the Agency's existing regulations at 36 CFR 251.50 and 251.51 for issuing and administering special use authorizations for filming and still photography on National Forest System lands. The revisions add a citation for the EXPLORE Act (Pub. L. 118–234) and update terminology and definitions in the existing Forest Service regulations for filming and still photography to reflect statutory revisions made by the EXPLORE Act.

These are administrative changes to the existing regulations to incorporate the permitting thresholds and definitions established by the EXPLORE Act provisions for filming and still photography. The administrative changes do not formulate new standards, criteria, or guidelines applicable to Forest Service programs and therefore do not require public notice and opportunity to comment under section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1612(a)). This rule also qualifies for exemption under 5 U.S.C. 553(b)(3), as it constitutes a technical revision.

Section 125(b) of the EXPLORE Act establishes criteria for filming and still photography on Federal lands, including National Forest System lands. Under the current Forest Service regulations, special use permits and fees are commonly required for filming and still photography, regardless of the number of people involved. The EXPLORE Act reduces the circumstances in which permits may be required by establishing three tiers: (1) no authorization, permit, or fees may be required for qualifying activities involving no more than five individuals; (2) a de minimis use authorization instead of a permit, for qualifying activities involving six to eight individuals, of which no fee may be charged; and (3) a permit may be required for activities that involve more than eight individuals or do not meet statutory requirements for permit-free or de minimis treatment and a reasonable fee assessed.

The EXPLORE Act also directs the Forest Service to enable members of the public to apply for and obtain de minimis use authorizations for qualifying filming or still photography activities through a website and in person, and to automate approval and immediate issuance of such authorizations. The statute treats filming and still photography the same, regardless of the media used or the distribution platform. It establishes criteria for assessing reasonable fees, recovering costs, using proceeds, and authorizes the prohibition of filming or still photography to protect natural and cultural resources.

The Department is amending section 251.50 paragraph (c)(2) to refer to “filming or still photography” rather than just “still photography.” The Department is also amending paragraph (d)(1) by replacing the phrase “commercial filming or still photography” with “filming or still photography.” These changes update Forest Service regulations to be consistent with the terminology used in the EXPLORE Act. The Department is amending section 251.50 by adding paragraphs (f) through (l). Paragraph (f) identifies circumstances in which no authorization or fee may be required for filming or still photography activities on National Forest System lands. Paragraph (g) identifies when a de minimis use authorization is required for filming or still photography activities on National Forest System lands. Paragraph (h) identifies when a permit is required for filming or still photography activities on National Forest System lands. Paragraph (i) lists the requirements for all filming and still photography activities regardless of whether a permit or de minimis use authorization is required. Paragraph (k) specifies the circumstances under which filming or still photography activity will not be authorized in order to protect natural and cultural resources, public use and enjoyment, and public health and safety. Additionally, the Department is amending section 251.50 by adding paragraph (l), which cross-references the EXPLORE Act for special use authorization

and fee criteria applicable to filming or still photography activities that do not qualify under paragraphs (g) or (h) of this section.

The Department is amending section 251.51 Definitions to add definitions for the following terms: “content creation” and “filming or still photography.” The EXPLORE Act defines “Content creation” as any video, still photograph, or audio recording for commercial or noncommercial content creation on National Forest System lands, regardless of distribution platform, and it shall be considered a filming or still photography activity. The Department is deleting the stand-alone definitions for “commercial filming” and “still photography” and adding a combined definition for “filming or still photography” to be consistent with the EXPLORE Act terminology and its treatment of commercial and noncommercial content creation and the update to definitions in FSH 2709.11, chapter 40.

The revised regulation conforms to the statutory permitting framework and does not expand or contract the scope of permitted activities beyond what the Act authorizes. Additional guidance on filming and still photography on National Forest System lands will be updated and provided in Forest Service directives, which can be found at <https://www.fs.usda.gov/about-agency/regulations-policies/national-directives>.

## **Regulatory Certifications**

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this final rule is not significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most

innovative, and least burdensome tools for achieving regulatory ends.

The Department has developed the final rule consistent with E.O. 13563.

#### *Congressional Review Act*

This final rule implements the filming and still photography provisions of the EXPLORE Act, and it is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act, 5 U.S.C. 804(2)).

#### *National Environmental Policy Act*

This final rule will make only technical, clarifying revisions to existing Forest Service regulations at 36 CFR part 251, subpart B. Departmental regulations at 7 CFR 1b.4(c)(20) exclude 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 Department has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist that will require the preparation of an environmental assessment or environmental impact statement.

#### *Regulatory Flexibility Act Analysis*

The Department has considered this final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

#### *Federalism*

The Department has considered this final rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on 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 Department has concluded that the final rule does not have federalism implications.

#### *Consultation and Coordination with Indian Tribal Governments*

The Department has reviewed this final rule in accordance with the requirements of E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*. The Department has determined that national Tribal consultation is not necessary for the final rule. The final rule, which will make only technical, clarifying revisions to existing Forest Service regulations in 36 CFR part 251, subpart B, to implement the filming and still photography provisions of the EXPLORE Act, does not have any substantial direct effects on Tribes.

#### *Takings Implications*

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*. The Department has determined that the final rule will not pose the risk of a taking of private property.

#### *Energy Effects*

The Department has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211, and the Office of Information and Regulatory Affairs has not otherwise designated the final rule as a significant energy action.

### *Civil Justice Reform*

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon issuance of the final rule, (1) all State and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted, (2) no retroactive effect will be given to this final rule, and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), signed into law on March 22, 1995, the Department has assessed the effects of the final rule on State, local, and Tribal governments, and the private sector. The final rule will 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.

### *Paperwork Reduction Act*

The final rule does not contain information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. 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*

Land uses, special uses.

Therefore, for the reasons set forth in the preamble, the Department is amending 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 part 251, subpart B, continues to read as follows:

**Authority:** 16 U.S.C. 460l-6a, 460l-6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761-1772.

2. Amend § 251.50 by revising paragraphs (c)(2) and (d)(1) and adding paragraphs (f) through (l) to read as follows:

**§ 251.50 Scope.**

\* \* \* \* \*

(c) (1) \* \* \*

(2) The proposed use is filming or still photography as defined in § 251.51 of this subpart.

(d) \* \* \*

(1) The travel is for the purpose of engaging in a noncommercial group use, outfitting or guiding, a recreation event, filming or still photography, as defined in § 251.51 of this subpart, or for a landowner's ingress or egress across National Forest System lands that requires travel on a National Forest System road that is not authorized for general public use under § 251.110(d) of this part; or

\* \* \* \* \*

(f) No permit required for filming or still photography. Notwithstanding the requirements of paragraphs (c) and (d) of this section, no special use authorization or fee is required for filming or still photography that meets either of the following criteria:

(1) The activity:

(i) is conducted by not more than five individuals; and

(ii) meets all of the requirements in paragraph (i)(1) through (8).

(2) The filming or still photography is merely incidental to, or documenting, an activity or event that is allowed or authorized on National Forest System lands, regardless of:

(i) the number of individuals participating in the activity or event; or

(ii) whether any individual receives compensation for any products of the filming or still photography.

(g) De minimis use authorizations for filming or still photography.

Notwithstanding the requirements of paragraphs (c) and (d) of this section, a de minimis use authorization, for which no fee is charged, may be required for filming or still photography that meets both of the following criteria:

(1) The activity is conducted by a group of not fewer than six and not more than eight individuals; and

(2) The activity meets all of the requirements in paragraph (i)(1) through (8) of this section, and the authorized officer determines that the activity satisfies paragraph (k) of this section.

(h) Permit required for filming or still photography activities. Except as provided for in paragraphs (f) or (g) of this section, the authorized officer may require a special use authorization and assess a reasonable fee, consistent with 16 U.S.C. 4601-6d(b), for a filming or still photography activity that:

(1) involves more than eight individuals; or

(2) does not meet each of the requirements in paragraph (i)(1) through (8) of this section. Nothing in this paragraph or paragraphs (f) and (h) shall be construed to authorize filming or still photography in congressionally designated wilderness areas in a manner inconsistent with the Wilderness Act (16 U.S.C. 1131 et seq.).

(i) Requirements for filming or still photography activity. The filming or still photography requirements referred to in paragraphs (f), (g), and (h) are as follows:

(1) It is conducted in a manner that does not impede or intrude on the experience of other visitors to the National Forest System lands, and except as otherwise authorized, does not disturb or negatively impact a natural or cultural resource or an environmental or

scenic value, and allows for equitable allocation or use of facilities of the National Forest System lands.

(2) it is conducted at a location where the public is allowed.

(3) it does not require exclusive use of a site or area.

(4) It does not occur in a localized area that receives a very high volume of visitation.

(5) it uses only equipment that is carried by the individuals conducting the activity and does not use a set or staging equipment. Handheld equipment such as a tripod, monopod, and handheld lighting equipment is not considered staging equipment for purposes of this paragraph.

(6) it is conducted in compliance with the visitor use policies, orders, practices, and regulations applicable to the National Forest System lands on which the activity occurs.

(7) It is not likely to result in additional administrative costs being incurred by the Forest Service with respect to the filming or still photography activity, as determined by the authorized officer.

(8) It complies with the other applicable Federal, State, and local laws and regulations, including laws related to the use of unmanned aerial equipment.

(j) E-permitting for filming or still photography. The Forest Service shall provide procedures for members of the public to apply for and obtain de minimis use authorizations under paragraph (g) through a public website of the Forest Service and in person at the local field office, including procedures for automated approval of qualifying web applications and immediate issuance of qualifying in-person applications.

(k) Protection of resources. The authorized officer shall not authorize a filming or still photography activity under this section if the authorized officer determines that:

(1) there is a likelihood that the activity would cause resource damage on National Forest System lands, except as otherwise authorized;

(2) the activity would create an unreasonable disruption of the use and enjoyment by the public of National Forest System lands; or

(3) the filming or still photography activity poses a health or safety risk to the public.

(l) Statutory requirements for filming or still photography. Additional guidance for filming or still photography can be found at 16 USC 4601-6d.

3. Amend § 251.51 by removing the definitions “Commercial Filming” and “Still Photography” and adding the following definitions, in alphabetical order:

**§ 251.51 Definitions.**

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*Content creation* – Regardless of distribution platform, any video, still photograph, or audio recording for commercial or noncommercial content creation at a Federal land management unit shall be considered to be a filming or still photography activity.

\* \* \* \* \*

*Filming or still photography* – Filming, videotaping, sound recording, or the use of any other moving image, audio recording equipment, or use of still photography equipment on National Forest System lands but not including activities associated with broadcasting breaking news.

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**Michael K. Boren,**  
Under Secretary,  
*Natural Resources and Environment.*

