

NONCOMMERCIAL RECREATION ACTIVITIES FAQs

Under the regulation, a “group use” is an activity that involves a group of 75 or more people, either as participants or spectators. “Noncommercial” is any use or activity where an entry or participation fee is not charged, and the primary purpose is not the sale of a goods or service. Some examples of noncommercial group uses are weddings, church services, endurance rides, family reunions, camping trips, hikes, rallies and graduations.

1. *Who has to get a permit under the regulation?*

The regulation requires a permit for noncommercial group uses of National Forest System lands. Under the regulation, a group use is an activity that involves a group of 75 or more people, either as participants or spectators. Noncommercial is any use or activity where an entry or participation fee is not charged, and the primary purpose is not the sale of a goods or service. Some examples of noncommercial group uses are weddings, church services, endurance rides, regattas, camping trips, hikes, music festivals, rallies, graduations, and races.

2. *Why are permits required for noncommercial group uses?*

As a steward of the National Forests, the Forest Service has a duty to minimize resource impacts on National Forest System lands. Large group gatherings in the National Forests have significant adverse impacts on Forest resources, public health and safety, and the agency's ability to allocate space in the face of increasing constraints on the use of National Forest System land. A permit system allows the agency to address these problems more expeditiously, more effectively, and more equitably. These adverse impacts include:

- The spread of disease;
- Pollution from inadequate site clean-up;
- Soil compaction from inadequate site restoration;
- Damage to archaeological sites; and
- Traffic congestion.

3. *How is this regulation different from the earlier versions?*

This regulation does not single out expressive conduct or treat it differently from other types of activity. The evaluation criteria in this regulation do not give an authorized officer discretion to deny an application based on the content of speech. Specifically, this rule:

- Establishes a single category called noncommercial group uses.
- Restricts the content of an application for noncommercial group uses to information concerning time, place, and manner.
- Applies the same evaluation criteria to all applications for noncommercial group uses, regardless of whether they involve the expression of views.
- Establishes specific, content-neutral evaluation criteria.
- Provides that applications for noncommercial group uses will be granted or denied within a short, specific timeframe.
- Provides that if an application is denied and an alternative time, place, or manner will allow the applicant to meet all the evaluation criteria, the authorized officer will offer that alternative.
- Requires an authorized officer to explain in writing the reason for denial of an application for a noncommercial group use.
- Provides that a denial of an application for noncommercial group use is immediately subject to judicial review.

4. *What are the eight evaluation criteria?*

Authorized officers will grant an application for a noncommercial group use if they determine that:

- Authorization of the proposed activity. is not prohibited by the rules at 36 CFR Part 261, Subpart A, by an order issued under the regulations at 36 CFR Part 261, Subpart B, or by federal, state, or local law unrelated to the content of the expressive activity;

- Authorization of the proposed activity is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan required under the National Forest Management Act and 36 CFR, Part 219;
- The proposed activity does not materially impact the characteristics or functions of the environmentally sensitive resources or lands identified in Forest Service Handbook 1909.15, chapter 30;
- 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 lands;
- The proposed activity does not violate state or any local public health laws and regulations as applied to the proposed site. Issues addressed by state and local public health laws and regulations as applied to the proposed site include but are not limited to:
 - The sufficiency of sanitation facilities;
 - The sufficiency of waste-disposal facilities;
 - The availability of sufficient potable drinking water;
 - The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site; and
 - The risk of contamination of the water supply.
- The proposed activity will not pose a substantial danger to public safety. Considerations of public safety do not include concerns about possible reaction to the user's identity or beliefs from non-members of the group applying for a permit and are limited to the following:
 - The potential for physical injury to other forest users from the proposed activity;
 - The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;
 - The potential for physical injury to users from scheduled or existing uses or activities on National Forest System land; and
 - The adequacy of ingress and egress in case of an emergency;
- 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
- A person or persons 21 years of age or older have been designated to sign and do sign a permit on behalf of the applicant.

5. *Can the Forest Service deny a permit for noncommercial group uses under the regulation?*

Yes, but the regulation establishes a presumption in favor of granting a permit for noncommercial group uses. Under the regulation, applications must be granted or denied in a short, specific timeframe. Applications must be submitted at least 72 hours in advance of a proposed activity and must be evaluated by the Forest Service within 48 hours of receipt. Otherwise they are deemed granted. A permit can be denied only if it does not meet the eight evaluation criteria.

Equally important, an authorized officer has to explain to the applicant in writing the reasons for the denial. There has to be an adequate factual basis for the denial, and a record has to be developed to support the reasons for the denial. If an application is denied, and an alternative time, place, or manner will allow the applicant to meet all the evaluation criteria, the authorized officer will offer that alternative.

6. *Do applicants for a noncommercial group use have to sign a permit?*

Yes, applicants for any noncommercial group use have to designate at least one person 21 years of age or older to sign a permit and that person or persons have to sign the permit. This feature is essential for effective permit administration. The agency must have someone to contact on behalf of the group. In addition, the signature gives the permit legal effect. A person who signs a permit for a noncommercial group use acts as an agent for the group and subjects the group to the terms and conditions of the permit. A person who signs a permit does not, however, assume personal

responsibility for the group's actions.

7. *Does the regulation require that applicants for a noncommercial group use permit obtain bonding or insurance?*

No. Noncommercial group uses involve or potentially involve First Amendment activities. Requiring bonding or insurance as a precondition to the issuance of a permit for expressive conduct could be construed as an undue burden on the exercise of First Amendment rights. In other words, requiring an applicant to obtain bonding or insurance before a permit is issued could be seen as putting a price tag on speech in violation of the United States Constitution.

8. *What are the differences between the Forest Service and the National Park Service (NPS) permit systems for noncommercial group uses?*

NPS, like the Forest Service, requires permits for noncommercial group uses. NPS has two permitting systems, one for the National Capital Region and one for the rest of the units in the National Park System. The former applies to specific sites and is more narrow in scope than the latter. The Forest Service rule applies to the entire National Forest System.

9. *Are large group gatherings an appropriate use of National Forests?*

Yes, they are an appropriate use, but it is important to minimize impacts on the environment and to ensure the health and safety of all forest visitors. The regulation accommodates these concerns by authorizing noncommercial group uses subject to constitutional time, place, and manner restrictions.

10. *How does the Forest Service manage gatherings of large groups?*

The Forest Service:

- Works with sponsors of the group to ensure adequate protection of the environment and to address health and safety concerns affecting group members and other forest visitors.
- Assembles an incident command team, if it is a particularly large group, consisting of resource managers and representatives from law enforcement, safety and health, and public affairs.
- Keeps the public informed.
- Provides direction on traffic management to minimize the environmental impacts associated with parking large numbers of vehicles.
- Provides guidance to reduce displacement of wildlife, to ensure provision of adequate sanitation, and to maintain stream quality.
- Ensure laws and assists state and local law enforcement officials if criminal violations occur.