

**Forest Service Handbook
National Headquarters- Washington Office
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Forest Service Handbook 5409.17 – Rights-of-Way Acquisition Handbook

Chapter 50 – Terms Easements and Permits

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Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 5409.17-2013-3 to 5409.17_30

50: Revises chapter caption from “Special Types of Rights-of-Way” to “Term Easements and Permits.” Revises, updates, and sets forth new direction throughout the entire chapter.

Table of Contents

50.1 – Authority.....	3
50.2 – Objectives	3
50.3 – Policy	3
50.4 – Responsibility	3
50.5 – Definitions.....	3
51 - Term Easements	3
52 - Permits	4
52.1 – Road Rental Agreements	5
52.11 – Form and Contents of Road Rental Agreements.....	5
52.2 – Highway Encroachment Permits	6
53 - Agreements with Public Road Agencies	6

50.1 – Authority

National Forest Roads and Trails Act (FRTA) of October 13, 1964 (16 U.S.C. 532-538). This Act authorizes the Secretary of Agriculture to acquire, construct, and maintain forest development roads and trails to obtain and grant easements under a cooperative program.

50.2 – Objectives

(See FSM 5460.2).

50.3 – Policy

(See FSM 5460.3).

50.4 – Responsibility

(See FSM 5460.4).

50.5 – Definitions

License. Permission to cross land for specified purposes, often revocable at the will of the licensor and not assignable. A license does not convey an interest in land. It may be non-written or written. If it is written, the license is a permit.

Permit. A written license.

Right-of-Way. This term may refer to either: (1) a right to pass over the land of another for a road, trail, utility line, pipeline, irrigation canal or ditch, or other linear use; or (2) the land over which that right is granted. For purposes of this chapter, the first meaning is intended.

Road Rental Agreement. A permit that specifies payments by the road user to the landowner on an “as used” basis for use of a private road. When a road rental agreement is contemplated, typically the Forest Service drafts the agreement and makes the arrangement for the road rental agreement.

Term Easement. A recordable right-of-way that expires on a specified date.

51 - Term Easements

For temporary roads, obtain term easements or permits rather than permanent easements. For National Forest System (NFS) roads acquire permanent easements.

For road purposes, especially when road construction at Government expense is contemplated, term easements are generally preferable to permits because they convey a property right rather than a contractual right or license.

Term easements should conform as closely as possible to the format used for a permanent easement found in chapter 10, sec. 11, exhibit 01. The principal difference is that the term easement terminates on a specified date. In Regions where the need for term easements is extensive develop a form in consultation with the Office of the General Counsel (OGC) and publish it as a Regional handbook supplement together with instructions for its use.

Acquire term easements in the same manner as permanent easements. The requirements for title approval of permanent easements generally apply to term easements, but may be modified by the Office of the General Counsel where appropriate.

52 - Permits

Verbal permission or license to use a road or trail across private land does not assure access since it may be withdrawn at any time and without prior notice, and leaves considerable uncertainty as to the terms and conditions for use of the road or trail. Nonetheless, the Forest Service may accept verbal permission or license to use roads or trails across non-federal land for routine administrative purposes.

Written authorization must be obtained in all other situations, and especially when:

1. The Forest Service intends to invest federal funds in construction, reconstruction, or maintenance of the road or trail.
2. The Forest Service requires use of the road or trail for access to projects where there is an investment of federal funds in the project and the value of the investment would be lost if the license or permission is withdrawn before the project is completed.
3. The road or trail is needed for a contractor to access NFS land to perform under a federal contract.
4. The Forest Service intends to designate the road or trail for public use. The Forest Service may not authorize or permit use of a road or trail across non-federal land by others where it does not have written authorization for use of the road or trail.

Forest Supervisors may obtain permits for the temporary use of private roads or the construction of temporary roads. Consider obtaining a permit when the need is for a minimal or short-term use and where costs to the Government associated with construction or use are minimal. Do not obtain a permit when a NFS road is needed.

There is no prescribed form for a permit, except for permits obtained through Road Rights-of-Way Construction and Use Agreements (chapter 60, sec. 61, exhibit 01d). Regional Foresters, in consultation with the Office of the General Counsel, shall develop forms and instruction to meet the needs in their Regions.

Title approval for permits is not mandatory. If there are any questions regarding the title of the grantors or the terms of the permit, consult with the Regional Lands Staff.

52.1 – Road Rental Agreements

Road rental agreements are often preferable to temporary easements for short-term or periodic use of private roads. Use a rental agreement under the following conditions:

1. The need to use the road is for timber hauling, and the timber purchaser should bear the cost for use of the road.
2. There is no need for the Government to control traffic as it would with a temporary easement.
3. The road owner prefers a rental agreement to a temporary easement.

52.11 – Form and Contents of Road Rental Agreements

Because of the great variety of conditions affecting the formation of road rental agreements, no form is prescribed for general use. Prepare agreements in consultation with the Regional Budget and Finance Staff (B&F) and OGC. Both B&F and OGC should approve the form of the agreement. The agreement should include the following provisions:

1. The road owner agrees to allow purchasers of National Forest timber to haul over the road upon payment of a stated rate per thousand board feet hauled. If varying lengths of road will be used, the unit of use should be per thousand board feet per mile.
2. Specify arrangements for making payment to ensure prompt payment and refunds of overpayments. The Forest Service can make the collections from timber purchasers and pay them to the road owner under authority of the National Forest Roads and Trails Act of October 13, 1964, (16 U.S.C. 538). Make payments from a purchaser's deposit only after timber has been hauled and measured.
3. Specify the time period during which the agreement will remain in force. The period should cover at least the life of the proposed timber sale plus one year. Do not write the agreement as a contract requiring use of the road; rather, it is an agreement covering such use as the Government may authorize during the period the agreement is in force.
4. Specify that the road owner's traffic rules that Government users must follow also must apply to the road owner's traffic. Consider specifying the traffic rules in the agreement.
5. Authorize the Forest Service to use the road for administration and protection of National Forest land without charge or liability for maintenance payments.

The agreement must cover maintenance arrangements. Typically, where road owners do the maintenance, the road owners prefer that users pay their share of maintenance costs directly to them. Include rates for maintenance payments in the agreement where payments are to be made directly to the owner. However, the Forest Service can agree to make the collections for maintenance and pay the road owner as described in provision 2 above, or agree to require its

timber purchasers to perform maintenance directly, if the road owner prefers. In every instance, maintenance specifications or payment requirements should be included in the agreement and timber sale.

It is acceptable to include requirements that the Government's users carry liability insurance in stated maximum amounts covering their operations on the roads. However, do not agree to make the Government liable for Government users.

52.2 – Highway Encroachment Permits

When a NFS road begins, ends or encroaches upon a state highway or county road, an encroachment permit is normally required. The form of the permit and the conditions vary by state and county.

The Forest Service does not have encroachment permits for many existing NFS roads that begin or end at state or county roads. Acquire encroachment permits for these roads when improvements or reconstruction are planned within the state or county right-of-way.

Title approval is not mandatory, but consult the Office of the General Counsel regarding the terms of the permits. Some standard state forms have liability requirements or other terms that the Government cannot accept. In negotiations with state highway departments, the participation of the Office of the General Counsel is often helpful.

53 - Agreements with Public Road Agencies

See FSH 1509.11, chapter 30 for sample cooperative forest road agreements and instructions for application and use with states, counties, and local road agencies.