

Excerpt of FSM 2710 issued 09-17-2008

2713.1 – Liability and Insurance

1. Inherent Risks.

a. Engaging in most activities on National Forest System lands involves inherent risks. Swimming, boating, skiing, horseback riding, mountain climbing, and even hiking, camping, and picnicking involve inherent risks.

b. All concessions authorized by the Forest Service, including resorts, ski areas, marinas, and outfitting and guiding that cater to the vacationing or traveling public, involve hazards to users in varying degrees.

c. Individuals engaging in activities on National Forest System lands, regardless of whether they involve concessions, assume these risks. While concessionaires must provide a safe operation, safe equipment, and good supervision and meet other requirements relating to public safety, the public assumes inherent risks not related to these operating requirements, such as encountering dangerous weather or being injured by snakes or other wild animals.

2. Insurance.

a. When to Require Liability Insurance. To protect the public and the United States from injury, loss, or damages for which concessionaires may be liable, require concessionaires to carry liability insurance. Require other holders to carry liability insurance if appropriate based on the likelihood and severity of injury.

b. Imposing Insurance Requirements.

(1) Permit Requirements. When a holder is required to carry liability insurance, include clause B-10 in the permit from FSH 2709.11, section 52.2, unless an insurance clause is already included in the applicable Forest Service standard form. B-10 clause requires the holder to provide the Forest Service with a copy of the insurance policy. In addition, before issuance of the permit, require the holder to submit a certificate of insurance on industry standard form ACORD 25-S that lists the policy limits of coverage.

(2) Naming the United States as an Additional Insured. Ensure that any insurance policy covering use and occupancy of National Forest System lands names the United States as an additional insured. Obtain documentation, such as an endorsement or declarations page, from the holder to verify that this requirement has been met.

c. Type of Coverage. Require liability insurance to provide coverage for third-party property damage, personal injury, and death that arise in connection with the authorized use and occupancy. Liability insurance may be either in the split limit or combined single limit format.

(1) Split Limit. A policy in the split limit format lists separate coverage limits for third-party property damage, personal injury or death to one person and personal injury or death to more than one person.

(2) Combined Single Limit. A policy in the combined single limit format lists a single coverage limit for third-party property damage, personal injury or death to one person, and personal injury or death to more than one person.

d. Minimum Amount of Coverage Generally. Except as provided in paragraph 2e for National Forest System roads subject to an investment sharing agreement or a reciprocal easement, exhibit 01 addresses minimum amounts of coverage for liability insurance. The sets of three numbers listed in the third column of exhibit 01 represent the minimum coverage requirements for a split limit insurance policy. The numbers listed in the fourth column of exhibit 01 represent the minimum coverage requirement for a combined single limit insurance policy. Exhibit 01 applies to the types of uses that are listed or that are comparable to those listed. For uses that are not listed and that are not comparable to those listed, the minimum coverage requirements are \$25,000, \$100,000, and \$300,000 for a split limit insurance policy and \$300,000 for a combined single limit policy.

2713.1 - Exhibit 01--Continued

| MINIMUM COVERAGE AMOUNTS FOR LIABILITY INSURANCE | | | |
|---|----------------------------|--|------|
| FSM Cite | Type of Special Use | Minimum Coverage Amount (in thousands of dollars) | |
| 2721.54 | Rental Services | 25/100/300 | 300 |
| 2721.55 | Restaurant | 25/100/300 | 300 |
| 2721.56 | Service Station | 25/100/300 | 300 |
| 2721.57 | Store, Shop, Offices | 25/100/300 | 300 |
| 2721.58 | Vendor and Peddler | 25/100/300 | 300 |
| 2721.61 | Winter Sports Resorts | | |
| | Nordic Skiing | 25/300/500 | 500 |
| | Snow Play | 25/500/1000 | 1000 |
| | Alpine Skiing | 25/500/2000 | 2000 |
| | Avalanche Training | 25/500/1000 | 1000 |
| 2721.62 | Lifts | 50/500/2000 | 2000 |
| 2721.63 | Ski Slopes | 50/500/2000 | 2000 |
| 2721.64 | Ski Activities | 25/100/300 | 300 |
| 2721.65 | Snow Play | 25/500/1000 | 1000 |

(1) The Regional Forester may increase the minimum coverage amounts in exhibit 01 and paragraph 2d on the basis of the amount of use, likelihood and severity of injury, protection of forest visitors, potential liability of the United States, and cost of the insurance.

(2) The Forest Supervisor may increase the national or regional minimum coverage amounts based on a case-specific risk assessment. The same coverage limit in an insurance policy may apply both per occurrence and in the aggregate, that is, an insurance policy may apply the same coverage limit per incident and per year, regardless of how many incidents occur. Therefore, it may be appropriate to increase the minimum coverage amounts that apply to claims in the aggregate, especially if a holder has operations in multiple locations on National Forest System lands.

e. National Forest System Roads Subject to an Investment Sharing Agreement or a Reciprocal Easement. National Forest System roads that have been jointly developed and that are cooperatively owned by the Forest Service and large corporate landowners or state land management agencies are subject to an investment sharing agreement or a reciprocal easement (FSM 7731.3). The investment sharing

agreement or reciprocal easement has requirements for commercial users to carry liability insurance for personal injury and third-party property damage. Regional Foresters that have these roads under their jurisdiction must establish a minimum amount of liability insurance for commercial users of these roads.

f. The Boy Scouts of America (BSA). BSA operates several organization camps under a special use permit and conducts a variety of events and programs on National Forest System lands. BSA's insurance policy is on file with the Forest Service National Insurance Center. Therefore, it is not necessary to obtain a copy of BSA's insurance policy or a certificate of insurance from BSA when issuing a permit to BSA.

g. Endorsement for Contracted Outfitting and Guiding Services and Equipment. To ensure that services and equipment contracted by an outfitter or guide pursuant to FSH 2709.11, section 41.53i, paragraphs 5a, 5b, or 5c, are covered by the outfitter's or guide's insurance policy, require the endorsement in exhibit 02 to be included in the outfitter's or guide's policy or require a separate insurance policy for the contracted services.

2713.1 – Exhibit 02

SAMPLE ENDORSEMENT FOR CONTRACTED OUTFITTING AND GUIDING SERVICES AND EQUIPMENT

The following contracts entered into by the insured for the provision of services and equipment in connection with outfitting and guiding authorized under a Forest Service special use permit are insured contracts for purposes of this policy [**Include the provisions below that apply, with additional detail as necessary, and delete the rest.**]:

1. Contracts for ancillary services that support the use authorized by the permit, such as provision of:
 - a. Special equipment or livestock.
 - b. Food and shuttle services.
 - c. For a limited number of trips, a specialized guide for people with disabilities or for highly technical trips.
2. When the insured is authorized to provide only outfitting services, contracts for guiding services.
3. Contracts for additional equipment or guiding services entered into when on a particular day the insured lacks sufficient equipment or guides to accommodate the insured's customers.