

Public Employees for Environmental Responsibility (PEER)
Comments on Proposed U.S. Forest Service Directive on
Advertising and Sponsorship on National Forest System Lands

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Introduction

The U.S. Forest Service has signaled its intention to begin accepting corporate advertisements and other commercial displays on national forest lands, under a proposed rule change submitted to the *Federal Register* on November 25, 2005. The proposed rewrite of the Forest Service Manual would transform the Forest Service's commercial-free status to one where display of commercial products, corporate logos and image enhancement could become common sights within our national forests.

The focus of the plan is a major drive to increase corporate presence within our national forests. To encourage large donations, the proposal substantially liberalizes "sponsor recognition" rules so that, for the first time, a corporation could –

- Display prominent advertisements, banners, kiosks and signs on national forest lands, alongside roadways and inside marinas, lodges and ski areas. The only limit on such displays would be the broad administrative discretion exercised by the designated agency "authorized officer;"
- Override state or local restrictions on advertising alcoholic beverages, tobacco products or other services and devices that are now subject to regulation; and
- Encourage and reward corporate investment in "special events, such as races, competitions [and] festivals" on national forest lands.

The proposed rule premises approval of sponsorship recognition on activities that "promote public participation in the management of NFS lands." The agency, however, provides no rationale or explanation for why display of corporate logos or advertisements of commercial products and services is in any way connected with the premise of public participation. By assuming a connection between advertising and public participation, the rule appears to presume that any sponsored activity is eligible for recognition. Moreover, the proposed rule contains no absolute prohibitions, with the lone exception of a ban on placing corporate logos or slogans on "government vehicles."

Comments

I. Proposed Rule Subjects National Forests to Corporate Branding Campaigns

To encourage large donations, the proposal substantially liberalizes rules on what is called "sponsor recognition," particularly with respect to special events. This liberalized recognition policy is a thinly disguised scheme to subject the public commons to

corporate branding campaigns in which companies are not selling their product per se but are selling themselves and their images.

The proposed rule encourages each company to submit “a plan that describes the program or project; its duration, objective and target audience; and communication or marketing strategy.” Thus, the rule is grounded in harnessing corporate marketing in a marriage of self-promotion and “cooperative relationships.”

In essence, the proposed rule dangles sponsor recognition within our national forests as an inducement for corporate contributions. As a consequence, under this plan an oil company could place “message ads” (*e.g.*, “XYZ Petroleum Corp. Cares About Our Environment”) throughout a national forest in return for sponsoring a litter-reduction campaign or a “fun run.”

As the rule does not provide any overall limits to this type of messaging, there will be few places in the common areas of our national forests that will be safely off-limits to the Nike swoosh or the McDonald’s arches.

II. State and Local Regulation of Liquor and Tobacco Promotions Would be Preempted

In the agency’s *Federal Register* notice discussion on the “Civil Justice reform” aspects of this rule, the following statement appears:

“If this [Interim Directive] were adopted (1) all State and local laws and regulations that are in conflict with this proposed directive or that **would impede its full implementation** will be preempted.” (Emphasis added)

This language appears to flatly proclaim that state or local regulations of liquor and tobacco products would be overridden by the decision of a forest supervisor who decides to allow a concessionaire to display such ads or approving an alcohol or tobacco company sponsorship of a competition or other special event.

In addition, the proposed open-door policy for corporate sponsor recognition makes no provision authorizing a forest supervisor to selectively refuse recognition to one corporation that is offered to others. As a result, the Forest Service will not likely be able to refuse permission for display of corporate logos for alcohol, tobacco and gaming interests that it extends to all other corporations.

The language is so broad that it would also appear to preempt local or state rules regulating such matters as light pollution from outdoor neon or other illuminated signage, size of roadside billboards or other accepted regulation of commercial speech. Under this rule, each forest would be free to create its own rules for recognizing corporate sponsors, regardless of local law or custom.

The legal authority for this claim of preemption is not stated nor is the policy rationale for

setting aside local rules. Moreover, it is not clear how the commercial displays that are the subject of this rule would be more important to public welfare than rules adopted by local elected representatives. Unless there is a compelling reason to override state and local regulation, the Forest Service should not so cavalierly usurp them.

III. Appropriateness Left to the Judgment of Appointees With Scant Guidance

The proposed rule provides almost no guidance to limit the discretion of the authorized forest officer who would make decisions about proposed advertising displays. Consequently, approvals for advertising may vary widely from forest to forest or within the same forest as supervisors change.

In addition, the supposed nexus suggested by the rule between promoting public participation and sponsor recognition is elusive, at best. If a casino wants to sponsor a hiker safety campaign, may a forest supervisor refuse to allow the arrangement and/or the public recognition of the casino? If so, does the supervisor have to state the grounds?

As a practical matter, a prospective corporate sponsor who is refused permission to advertise will likely elevate its concern up the agency chain-of-command until that corporation reaches a sympathetic political appointee with the authority to overrule the forest supervisor. Moreover, each supervisor will know that the applicant corporation will have the ability to elevate its request over the supervisor's head. Thus, it can be expected that large donors will be able to much more easily exert a form of gravitational influence over the Forest Service that may corrupt or distract the agency from its mission.

IV. Proposed Rule Places Intra-Concession Ads Beyond Any Regulation

Under this proposed rule, any concessionaire will be able to display whatever form of advertising it chooses inside its facilities and on its ski chair lifts. These commercial displays will be beyond the power of the Forest Service to veto or otherwise regulate, no matter how offensive or tasteless is the display.

V. Special Event Deals Create a Broad Advertising Authorization

Under the proposed rule, an approved sponsor of a special event can potentially set aside all prohibitions on advertising on forest lands and along roadways. This exception is no broad as to consume the rule.

Under the rubric of a 'special event,' the rule allows a forest to "temporarily waive the prohibition on exterior advertisement." The special event ads may include trademarks, slogans, and a description of products—in short, there is little that seems to be excluded from what a corporation may do.

For example, it is possible under these rules for a corporation to –

- Place a giant inflatable beer bottle on a forest mountain slope to recognize the brewery's sponsorship of a ski race;
- Distribute cell phone company flyers (containing its logo, slogan and product information) to every forest visitor as part of a hiker safety program; and
- Post signs on all trails for a blister medicine or foot powder throughout the summer so long as the sign reminds hikers to respect wildlife or "watch out for bears" (what the rule describes as "conservation awareness or public health and safety").

Similarly, there is no limit on the number of special events that a forest may approve. It is quite conceivable that a forest could simultaneously authorize several special events, each replete with an aggressive promotional campaign. Under this scenario, the line between a national forest and a strip mall begins to blur.

VI. No Safeguards Against Ethical Conflicts

The proposed rules, in ways both explicit and implicit, magnify the influence of big donors on forest policies. This collusive influence from donors becomes particularly troublesome when the corporate donor is also has a stake in the management policies of the national forest. Thus, the manufacturer of all-terrain vehicles or a telecommunications company with cell towers in national forest units may have a less than altruistic reason to make donations in support of forest events.

The rule also poses a danger in that it implicitly encourages forest managers to actively solicit contributions to supplement budgets for items such as trail maintenance and beautification projects.

Through sponsorship of favored projects, potential donors inevitably obtain much greater access to and influence over forest decision-makers. Thus, forest scientists, administrators or law enforcement personnel who find themselves involved with actions that affect corporate donors' interests become inherently at risk for pressure or retaliatory action to prevent irritating or alienating a donor who the key sponsor of a high-profile project.

The proposed rule contains no safeguards against sponsorship arrangements with corporations which stand to reap benefits from forest policies. Without such safeguards, one could reasonably expect unhealthy or unfair collusions between corporate sponsors and cash-starved forest managers to multiply. Consequently, by legitimizing this fee-for-service recognition, the proposed rule may create an insidious and pervasive corrupting influence on impartial forest management.

VII. Proposed Rule Undermines Public Support for U.S. Forest System

To the extent that one effect of this proposed rule is to make the public aware of broad corporate support for national forest projects, the public may perceive a diminished need for financial support for the U.S. Forest System from tax revenues.

Further, growing corporate “partnership” identification with U.S. Forests may also lessen the public’s own identification or feeling of ownership of these public institutions.

Our national forests are part of the public commons. This proposed rule would inevitably lead to greater commercialization of the public commons. This more prominent commercial presence will tend to make our forests feel more like the commercial theme parks, such as Disneyland, and less like part of a shared common heritage.

VIII. The Forest Service Has Not Demonstrated the Need for Proposed Rule Revision

The U.S. Forest Service has presented no fiscal or programmatic information supporting the need for this proposed rule revision. The total absence of any justifying information suggests that any negative impacts, no matter how slight, may outweigh the relative merits of the proposal.

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