



[3410-11-P]

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AC41

Advertising and Sponsorship in Connection With Concessions Involving Privately Owned Improvements on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of final directive; response to public comment.

SUMMARY: The Forest Service is amending its internal directives for concessions with privately owned improvements that operate under special use permit on National Forest System (NFS) lands. Subject to certain conditions, the final directive allows holders of concession permits to advertise (1) inside buildings and other interior spaces they own; (2) on chairlift restraining bars in conjunction with trail map displays; (3) at designated ski/snowboard racing sites; and (4) at venues for short-term competitive events. In addition, the final directive allows concessioners to advertise the services and accommodations they offer at the concession site. The final directive also encourages third-party sponsorships of events, projects, and programs to assist the Agency in promoting public participation in or awareness of management of NFS lands. The revised direction promotes consistency in the special uses program by clarifying where advertising is permitted or prohibited and by describing how sponsorships may be utilized and how sponsors may be recognized. The final directive also adds several definitions to FSM 2340 to aid in understanding terms used in this directive.

DATES: This directive is effective [insert date of publication in the Federal Register].

ADDRESSES: The record for this final directive is available for inspection and copying at the office of the Director, Recreation, Heritage, and Volunteer Resources Staff, USDA, Forest Service, 4th Floor Central, Sidney R. Yates Federal Building, 1400 Independence Avenue, S.W., Washington, D.C., from 8:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Those wishing to inspect these documents are encouraged to call ahead at (202) 205-9530 to facilitate access to the building.

FOR FURTHER INFORMATION CONTACT: Corey Wong, Recreation, Heritage, and Volunteer Resources Staff, (970) 874-6668.

SUPPLEMENTARY INFORMATION:

1. Background and Need for the Final Directives

Background

The Forest Service authorizes and regulates the provision of concession recreation services to the public through private individuals and entities that own and operate recreational facilities and provide services on NFS lands. These facilities and services are authorized by special use permits and are intended to enhance opportunities for the public to recreate on NFS lands. Concessioners often provide the primary and sometimes the only experience on NFS lands for many members of the public. Many people visit concessions on NFS lands each year. For example, approximately one-half of the 60 million annual skier and snowboarder visits in the United States occur at ski areas that operate under a Forest Service special use permit. Thus, concessioners such as resort, marina, and ski area operators greatly assist the Forest Service in providing outdoor recreation opportunities in developed settings.

Concession special use permits are issued to provide for particular types of public recreation opportunities. While the Agency recognizes that a permit holder must charge fees to cover the cost of these facilities and services and to provide a return on the holder's financial investment, these authorizations are not issued simply to generate revenue. A primary objective in the NFS recreation program is to "provide nonurbanized outdoor recreation opportunities in natural appearing forest and rangeland settings" (FSM 2302). At concession sites, the Agency is required to manage for "a diversity of recreation activities that emphasize the forest setting and rustic, natural resource-based recreation opportunities" (FSM 2343.02). Under these policies, the Forest Service has a responsibility at concession sites to limit the types of development and posted displays and information to protect the natural setting.

Prior to 2005, Forest Service directives prohibited all outdoor advertising, except for posting of available services and accommodations inside buildings (FSM 2343.03, para. 11). Since 2005, the Forest Service has authorized limited outdoor advertising under an interim directive issued on November 25, 2005. The interim directive recognizes that it may not be economical for a concessioner to conduct some types of activities or provide some facilities without the financial support of third parties. In addition, the interim directive recognizes that sponsorship of events, projects, and programs can promote public participation in and awareness of management of NFS lands if these activities evaluate solutions to specific natural resource management problems, increase conservation awareness, or promote public health or safety.

Need for the Final Directive

The final directive provides long-term direction to field employees on advertising

and sponsorship at concession sites and reflects current trends at concession sites. At many of these sites, such as ski areas, the nature of the setting and the activities offered have become more developed in recent years. In addition, some activities, such as national and international ski and snowboard racing, including Olympic events, would not be possible if advertising were not allowed. Financial support for certain facilities and activities from third parties such as the National Standard Race Program is critical and probably would not be feasible if the supporting entities were not provided some sort of promotional opportunity. The final directive keeps pace with these changes while ensuring that concession sites remain a place for natural resource-based recreation, where visitors can expect to find refuge from extensive advertising and other urban pressures. The revisions to the provisions on sponsorship provide for a more consistent approach nationally and more clearly distinguish sponsorship from advertising.

2. Public Comments on the Interim Directive and Agency Responses

On November 25, 2005, the Forest Service published notice in the **Federal Register** (70 FR 71081) of and requested public comment on an interim directive governing advertising at concession sites with privately owned improvements. The interim directive allowed holders of concession permits to advertise inside buildings and other interior spaces that they own. In addition, the interim directive introduced sponsorship as a means of promoting public participation in and awareness of management of NFS lands through events, projects, and programs that provide for evaluation of solutions to specific natural resource management problems, increase conservation awareness, or promote public health or safety.

The notice of the interim directive was posted electronically on the **Federal Register** website, *www.gpoaccess.gov*, and on the FirstGov e-rulemaking site, *www.regulations.gov*. The Agency posted the notice and the interim directive on its special uses website, *www.fs.fed.us/recreation/permits*. The notice provided for a 120-day public comment period ending March 27, 2006. The Forest Service received 190 comments on the interim directive. Each respondent was grouped in one of the following categories:

Business	9
Commercial Recreation Permit Holder or Association	3
Individual	172
Environmental Organization	5
Recreation Organization	1

The 190 respondents represented 16 States and the District of Columbia. Most comments were short statements of one paragraph or less provided via e-mail. Fewer than 20 of the comments were identical.

Many respondents offered general comments supporting or opposing the interim directive, while others offered comments on specific sections of the interim directive. Most respondents stated that NFS and other Federal lands should be a refuge from the constant barrage of commercialism in their daily lives and that advertising detracts from the natural environment they seek when visiting the NFS. These respondents generally objected to any change in the Agency's pre-2005 policy on advertising.

Many respondents objected to the designation of the side of a restraining bar facing the rider on a chairlift as an indoor space owned by the permit holder and therefore

eligible for placement of advertising. Several respondents stated that the advertisements on a chairlift restraining bar did not diminish their experience and were helpful.

Other respondents provided specific comments about other agency policy-making efforts or existing Forest Service direction in other areas, which are beyond the scope of the interim directive.

Untimely comments were not considered.

General Comments and Responses

Comment. Several respondents observed that the Forest Service provided no information supporting the public need to revise the policy on advertising. One respondent stated that there is no historical precedent that supports advertising as a legitimate use of Federal lands.

Response. The Agency believes that in general outdoor advertising on NFS lands at concession sites is not appropriate. The Forest Service has not identified outdoor advertising generally as a needed public service. However, there are limited situations where advertising at concession sites on NFS lands provides a useful public service that would not otherwise be available. Further clarification and clear limitations on advertising opportunities are important aspects of the revised policy. Specifically, the final directive (1) more clearly defines what constitutes an indoor space where advertising is allowed and specifies applicable restrictions, including those governing advertising on chairlift restraining bars; (2) clarifies that permit holders may advertise their own accommodations and services; (3) indicates that printed materials distributed at concession sites, such as trail map brochures, are not subject to advertising restrictions; (4) provides for limited advertising opportunities at short-term competitive events, such

as ski races; and (5) includes provisions for limited advertising at designated competitive courses that are used throughout an operating season.

In terms of sponsorships, the Forest Service sees a public need to promote public interest and participation in management of NFS lands. The Agency believes this objective is met by sponsorship of events, projects, and programs that provide for evaluation of solutions to specific natural resource management problems, increase conservation awareness, or promote public health or safety. Without sponsorship opportunities, these endeavors might not provide a return on investment for concessioners and therefore most likely would not be undertaken.

Comment. Several respondents were concerned that implementation of the interim directive will lead to incremental proliferation of advertising at concession sites due to pressure from permit holders and advertisers on authorized officers.

Response. The Forest Service believes that the final directive provides sufficient controls on advertising to prevent the incremental proliferation of advertising at concession sites.

Comment. Several respondents expressed a concern that the revenues generated from advertising at concession sites will result in a reduction in public support for Forest Service appropriations from tax revenues, as well as a reduction in the public's sense of ownership of NFS lands.

Response. Most advertising revenues will not accrue to the Forest Service. Rather, they will accrue to permit holders. The Forest Service will obtain only a percentage of advertising revenue as part of the land use fee for concessions. Therefore,

implementation of the final directive will have minimal effect on public support for Forest Service appropriations or the public's sense of ownership of NFS lands.

Comment. One respondent voiced opposition to concessioners operating on NFS lands.

Response. Whether concessions are an appropriate use of NFS lands is outside the scope of the interim directive and therefore was not considered in formulation of the final directive.

Comment. Many respondents expressed opposition to the interim directive because they believed it will result in commercialization of NFS lands, promote corporate branding, and generate profits for resorts.

Response. The Agency believes the final directive includes sufficient restrictions to protect the National Forest setting. The Forest Service understands that both permit holders and third parties are motivated by a variety of factors, including financial considerations. Most concession permit holders are for-profit businesses.

Comment. One respondent stated that the interim directive will allow posting of religious messages.

Response. The final directive defines advertising as "the act of calling public attention to a product or business" and therefore does not apply to the posting of religious information.

Comment. One respondent stated that the interim directive provides no assurance that any of the revenues generated will be devoted to a public purpose that enhances the recreation experience. This respondent also noted that in implementing the

interim directive, the Forest Service will be conveying valuable property rights of the United States to concessioners without receiving compensation.

Response. The advertising revenues a permit holder generates are subject to land use fees that are returned to the U.S. Treasury. The Forest Service believes that the changes made to the interim directive will help ensure that sponsorship funding will be focused on promoting public awareness of and engagement in management of NFS lands. Enhancement of the recreation experience is not an objective of the sponsorship program, although it could be a secondary result in some cases. Sponsorship and advertising provided for in the final directive do not convey a property interest to permit holders.

Comment. Some respondents supported the interim directive and stated that it will provide more clarity and consistency for concessioners.

Response. The Forest Service believes that the changes contained in the final directive are important to help reduce confusion and promote consistent application.

Comment. One respondent stated that sponsorships were needed for some concessions to underwrite services and amenities provided to the public.

Response. This comment confuses advertising and sponsorship. Sponsorship is not intended as a means for the holder to cover operating expenses or finance new recreational facilities. The final directive includes more explicit language on this point and reiterates that to qualify for sponsorship, events, projects, and programs must provide for evaluation of solutions to specific natural resource management problems, increase conservation awareness, or promote public health or safety.

Comment. One respondent stated that the interim directive was too restrictive with respect to the types of commercial information that may be posted in the base area

of ski resorts. This respondent noted that the base area is already developed and that posting some commercial information at that location beyond what the interim directive allows would not detract from the outdoor experience.

Response. The Forest Service agrees that the base area of ski resorts, especially those with intermingled private and Federal land ownership, often has a more developed appearance. However, the Agency does not believe it would be appropriate or practical for the amount of commercial information allowable to be based on the level of development.

Comment. Some respondents expressed a concern about the need to analyze adverse effects from the interim directive on scenic quality, open space, and the Forest Service's mission and core values.

Response. With respect to advertising, the Agency does not believe that the final directive will have adverse effects on scenic quality, open space, or the Forest Service's mission and core values because advertising will be confined to indoor spaces; chairlift restraining bars, provided certain conditions are met; holder services, provided certain conditions are met; printed materials and other media produced outside the permit area and distributed inside the permit area, provided they are not posted in outdoor settings inside the permit area; short-term competitive events; and at the start and finish points of designated ski and snowboard race courses and terrain parks.

With respect to sponsorship, the Agency does not believe that the final directive will have adverse effects on scenic quality, open space, or the Forest Service's mission and core values because events, projects, and programs must provide for evaluation of solutions to specific natural resource management problems, increase conservation

awareness, or promote public health or safety. Moreover, the final directive does not approve or disapprove any event, project, or program. Events, projects, and programs proposed for sponsorship will be subject to the requisite analysis under the National Environmental Policy Act (NEPA). Issues pertaining to scenic quality and open space that arise in connection with these events, projects, and programs could be addressed in any required environmental analysis.

Comment. One respondent asserted that the interim directive will eventually affect many small entities.

Response. The final directive will apply only to holders of concession permits authorizing facilities that are constructed and operated by the permit holder on NFS lands. These facilities primarily include operations such as resorts, marinas, and ski areas, some of which are not built and operated by small entities. The final directive will apply equally to all these permit holders, regardless of the size of the business. Moreover, the final directive enhances the financial position of these concessioners to the extent the final directive allows advertising and sponsorship, which will generate revenue for the concessioners. The Forest Service believes it is unlikely that there would be any change in the number of special uses authorized as a result of the final directive.

Comment. Several respondents stated that State and local law regarding advertisement of alcohol and other products will be preempted by the interim directive.

Response. The final directive governs the time, place, and manner in which advertising may take place at concessions on NFS lands. The final directive does not address the types of products that may be advertised and therefore does not preempt State

and local law governing advertisement of specific products such as alcohol. State and local law regarding advertisement of alcohol and other products will still be in effect.

Comment. Several respondents expressed concerns about the effect the interim directive will have on NFS lands outside the permit area. One respondent was concerned that the interim directive will lead to requests from businesses to allow advertising along roads and scenic byways.

Response. The final directive provides for limited advertising only within the permit area for concessions involving privately owned improvements. The final directive does not allow advertising in other contexts on NFS lands, including along roads and scenic byways. Therefore, the Agency does not believe that the final directive will have any effect on NFS lands outside the permit area for these concessions, nor does the Agency believe that the final directive will lead to requests from businesses to allow advertising along roads and scenic byways.

Comment. Several respondents stated that they believed that the interim directive will give companies and donors undue influence over Forest Service decision-makers.

Response. Under the final directive, the business relationship for both advertising and sponsorship is between the advertiser or sponsor and the concessioner. The Agency's role is limited to ensuring that advertising and sponsorship meet the requirements in the final directive. The final directive restricts advertising to specific situations and more clearly defines sponsorships. In the case of advertising, the final directive helps meet the Agency's objectives of resource protection and scenery management. In the case of sponsorship, the final directive helps meet the Agency's

objectives regarding natural resource management, conservation awareness, and promotion of public health and safety.

Comment. A few respondents made suggestions regarding accounting for funds received by the Forest Service under the interim directive, including retaining the funds in the unit where they are collected, requiring advertisers to enter into an agreement with the permit holder for use of NFS lands, and ensuring that the United States receives market value fees for advertising and sponsorship revenue received by concessioners under the interim directive. Other respondents asked the Forest Service to ensure that the additional revenue generated under the interim directive be devoted to public programs, projects, or activities.

Response. The Forest Service does not have the authority to retain land use fees for concession permits involving privately owned improvements, including the part of the fees attributable to advertising and sponsorship revenues. These fees will be deposited in the U.S. Treasury. Advertisers will enter into advertising agreements with holders of permits for concessions involving privately owned improvements. The Forest Service will not be a party to these agreements. A land use agreement between these parties is unnecessary, as the permit holder is responsible for use and occupancy of NFS lands for the concession, including advertising and sponsorship authorized under the final directive. The Forest Service collects land use fees based on market value for concessions involving privately owned improvements. To the extent authorized by law, revenues derived from advertising and sponsorships will be factored into calculation of these land use fees. The National Forest Ski Area Permit Fee Act (16 U.S.C. 497c(f)) exempts sponsorship event revenue from the land use fee calculation for ski area permits.

Although the Forest Service cannot retain and spend revenues generated from advertising and sponsorship under the final directive, sponsored events, projects, and programs promote the public interest by providing for evaluation of solutions to specific natural resource management problems, increasing conservation awareness, or promoting public health or safety.

Specific Comments and Responses

FSM2343.03, Paragraph 11 – Advertising

Prior to issuance of the interim directive in 2005, Forest Service policy prohibited all advertising at concession sites, except for signs on buildings that simply iterated the services and accommodations available inside. Forest Service policy did not address advertising inside buildings and other structures. Paragraph 11 of the interim directive addressed this issue by allowing for advertising in interior spaces owned by the permit holder. The interim directive included chairlift restraining bars at ski areas as an interior space. Paragraph 11 also cited paragraph 12 for guidance regarding advertising for short-term special events.

Confusion between advertising and sponsorship has been the most common obstacle to consistent implementation of the interim directive. To distinguish sponsorship recognition more clearly from advertising, the final directive defines sponsorship as “monetary or in-kind support from an individual or entity for an event, project, or program that promotes public participation in or awareness of management of National Forest System lands” (FSM 2340.5). In contrast, advertising is defined as “the act of calling public attention to a product or business.” Additionally, the final directive addresses this confusion by focusing on advertising in paragraph 11 and on sponsorship

in paragraph 12. In addition, paragraph 11 of the final directive includes limited exceptions to the general advertising prohibition, some of which might have been approved as sponsorships under the interim directive.

In response to public comments, the final directive clarifies that chairlift restraining bars facing passengers are not an interior space, but qualify as a location for placement of advertising if the advertising meets the conditions enumerated in the final directive. Specifically, based on the recognition that trail maps are helpful to ski area visitors, the advertising must be included in a trail map display and must not exceed 33 percent of the surface area of the panel facing passengers.

Paragraph 11 of the final directive also includes other exceptions to the general advertising prohibition that might have previously been treated as sponsorships because of ambiguity in the interim directive. The final directive clarifies that concession permit holders may advertise their services and accommodations at their concession site and that printed materials and other media produced outside the permit area that contain advertising may be distributed at the concession site, provided they are not posted in outdoor settings in the permit area. The final directive also includes exceptions for advertising at short-term competitive events and for limited advertising at designated ski and snowboard race courses and snow sports terrain parks.

The Forest Service recognizes that concessioners may have some advertisements and displays under contract with third parties that do not meet the requirements of the final directive. Therefore, the final directive provides that these advertisements and displays may remain in place through the term of the current contract. Finally, as in the interim directive, the final directive prohibits display of Forest Service symbols in

conjunction with product or service names and advertisements and requires prior written approval for exterior signage.

Comment. Many respondents stated that expanding opportunities for advertising in indoor spaces owned by permit holders would detract from the natural environment they expect on NFS lands. One respondent stated that social science research indicates that increased commercialism results in less enjoyment of the outdoor experience.

Response. The interim and final directives authorize advertising only at concessions with privately owned improvements, such as ski areas, marinas, and other resorts. These concessions involve significant developments. Nevertheless, the Agency believes that even these developed settings should offer visitors some degree of refuge from urban and commercial influences. The restrictions in the final directive strike a balance between allowing advertising in some contexts at commercial public service sites and maintaining the natural integrity of these areas so that they stand apart from urban settings as a place for natural resource-based outdoor recreation.

Comment. Many respondents expressed opposition to allowing advertising on chairlift restraining bars. These comments were often focused on a pilot program that was in place in Colorado where advertising was integrated into trail map displays. Respondents frequently stated that chairlift restraining bars should not be considered an indoor space; that riding on a chairlift was a highly outdoor experience; and that advertising on the restraining bar would detract from their enjoyment of the natural setting. Several respondents objected to being a captive audience to the advertising while on a chairlift. One respondent suggested that if a ski area believes that trail map displays on chairlift restraining bars add value to the recreation experience, the maps could be

provided without advertising.

Response. The Forest Service agrees that chairlift restraining bars should not be considered an indoor space. However, the Agency believes that trail map displays on chairlift restraining bars provide a useful public service and that recognition of third-party support in the limited manner authorized by the final directive will not unduly detract from the outdoor experience of skiers and snowboarders. The fact that trail map displays on chairlift restraining bars did not exist before advertising was allowed in conjunction with them suggests that permit holders would be unlikely to include the displays without that support.

Comment. Some respondents were supportive of the usefulness and convenience of trail map displays on chairlift restraining bars. A few of these respondents thought the advertising or message on the map was either useful or did not negatively affect their experience. One respondent noted that the three types of maps available (on paper, on chairlift restraining bars, and posted on the mountaintop) were redundant and unnecessary.

Response. The Agency believes that trail maps that are attached to chairlift restraining bars are a positive amenity for skiers and snowboarders. However, the interim directive allowed advertising on chairlift restraining bars with no requirement that the display include a trail map or any other public service feature. Likewise, the interim directive did not include any limit on the size or extent of advertising that may be placed on chairlift restraining bars. The final directive does not allow any advertising on chairlift restraining bars unless it is part of a trail map display and conforms to the other limitations specified.

Comment. Some respondents expressed concern that the interim directive will lead to advertising in other areas at resorts. One respondent stated that considering chairlift restraining bars an indoor space will lead to advertising on rope tow handles and platters on tows. Another respondent stated that advertising on chairlift restraining bars will probably lead to electronic alternating message displays.

Response. The Forest Service believes that the final directive includes sufficient restrictions to prevent the expansion of advertising into other areas of resorts and undesirable formats.

Comment. One respondent was concerned that allowable commercial displays will be beyond the power of the Forest Service to regulate, no matter how offensive or tasteless they are.

Response. The final directive merely addresses the time, place, and manner of sponsorship recognition and advertising. The Forest Service does not believe advertising and sponsorship recognition under the final directive will be objectionable to most members of the public because the final directive establishes clear limits on the extent of the displays. In addition, State and local government restrictions on these displays will still apply. Moreover, the activities offered at commercial public service sites tend to be family-oriented, and the Agency expects that permit holders will use good judgment as to the content of materials they post.

Comment. One respondent expressed concern that the interim directive will make it more difficult for the Forest Service to enforce the requirement that permit holders acknowledge in their brochures and advertising that their concession is located on

NFS lands. Another respondent noted that NFS visitors will infer that the Forest Service endorses the products and services that are advertised on NFS lands.

Response. Special use permits for concessions involving privately owned improvements continue to require holders to acknowledge in their brochures and other printed materials that their concessions are located on NFS lands. The final directive expressly states that Forest Service symbols must not appear in conjunction with commercial product or service names and advertisements and that care must be taken to avoid any other appearance of Agency endorsement of products or services. The final directive also states that placement of product or service names or advertisements on Government vehicles is always prohibited. In addition, the final directive addresses endorsement and the appearance of endorsement by more clearly describing the situations where advertising may be permitted and providing clearer direction for sponsorship recognition.

FSM2343.03, Paragraph 12

Before 2005, Forest Service directives did not address the use of sponsorships at commercial public service sites. The 2005 interim directive allowed sponsorship recognition and provided guidance on its implementation. Since 2005, confusion between advertising and sponsorship recognition has impeded consistent application of the interim directive and has resulted in approval of some projects that do not conform with the interim directive's objective of promoting public participation in management of NFS lands. The final directive reinforces this objective by emphasizing that sponsorship recognition is not intended to offset the cost of operating a public service site, attract

more customers, or provide financial support for basic elements of a permit holder's operations.

Paragraphs 12(a) through 12(c) closely parallel the interim directive in describing how sponsors may be recognized. Paragraph 12(a) describes the duration and location of sponsor recognition; paragraph 12(b) describes the content of allowed recognition; and paragraph 12(c) addresses sponsored events and describes how sponsors may be recognized at event sites.

Comment. Some respondents were concerned that the concept of public participation in management of NFS lands was not clearly defined in the interim directive.

Response. The Forest Service agrees. The final directive includes changes that more clearly define sponsorships and the objectives of sponsorship recognition. Under the final directive, events, projects, and programs that provide for evaluation of solutions to specific natural resource management problems, increase conservation awareness, or promote public health or safety will be suitable for sponsorship initiatives. Some examples of events, projects, and programs that are appropriate for sponsorship include (1) interpretative displays that inform visitors about the area's geology, wildlife, or vegetation; (2) initiatives seeking public involvement or support for Forest Service watershed or wildlife habitat improvement projects or Forest Service efforts to reduce the spread of noxious weeds; and (3) promotion of public safety programs for visitors to the concession or surrounding NFS lands. Exhibit 01 has been added to the final directive to provide an example of a plan for an appropriate sponsorship.

Comment. Several respondents commented about the terms used in the interim directive. One respondent stated that “trademark” should be defined to include a name, word, phrase, slogan, symbol, logo, or design that allows the trademark owner to dictate its use in identifying a product. Another respondent commented that use of the term “cooperator” may imply that the interim directive applies to interpretive associations that work with the Forest Service.

Response. The word “trademark” is a term of art in advertising and business that does not need to be defined in the final directive. The term “cooperator” is not used in the final directive. The final directive applies only to commercial public service sites involving privately owned improvements that are authorized under a special use permit. Interpretive associations do not operate these concessions.

Comment. Several respondents commented that sponsor recognition was essentially advertising designed to promote brand identification and should not be allowed. Some of these respondents believed that sponsorship recognition will commercialize NFS lands and that the revenues generated will not be devoted to public participation in management of NFS lands and will instead generate profits for the resorts. Several respondents objected to inclusion of corporate logos in sponsorship recognition on the grounds that they were just another form of advertising.

Response. To distinguish sponsorship recognition more clearly from advertising, the final directive defines sponsorship as “monetary or in-kind support from an individual or entity for an event, project, or program that promotes public participation in or awareness of management of National Forest System lands” (FSM 2340.5). In contrast, advertising is defined as “the act of calling public attention to a product or business.” The

Agency believes the final directive includes adequate controls to ensure that sponsorship recognition does not become advertising by another name.

Comment. Several respondents expressed concern that sponsorship recognition will place undue influence on Forest Service managers. One respondent commented that if one sponsor is recognized, it will be difficult for the Forest Service to refuse recognition to any other sponsor and that the Agency will not be able to prevent posting of corporate logos for alcohol, tobacco, and gaming interests. Another respondent stated that sponsorship recognition will create an insidious and pervasive corrupting influence on cash-starved Forest Service managers; that corporations will exert improper leverage over the Agency through donations; and that Forest Service officials will be forced to solicit contributions.

Response. Sponsors will enter into sponsorship agreements with holders of permits for concessions involving privately owned improvements. The Forest Service is not subject to undue influence, as the Agency will not be a party to these agreements and will receive funds from these agreements only to the extent the funds are factored into the land use fee. The National Forest Ski Area Permit Fee Act (16 U.S.C. 497c(f)) exempts event sponsorship revenue from the land use fee calculation for ski area permits. Sponsored events, projects, and programs promote the public interest by providing for evaluation of solutions to specific natural resource management problems, increasing conservation awareness, or promoting public health or safety. The final directive does not restrict the number and type of sponsors. Rather, the final directive limits how sponsors can be recognized.

Comment. One respondent commented that sponsorship recognition should be expanded beyond resorts to allow other groups to work more effectively with the Forest Service.

Response. The interim and final directives apply only to concession sites with privately owned facilities. Expanding sponsorship recognition to other contexts is beyond the scope of the interim and final directives.

Comment. Many respondents were concerned that the interim directive needed either more specificity or more latitude to provide authorized officers with effective guidelines when considering approval of sponsorship recognition and outdoor advertising for short-term events. Concerns included (1) the need for additional direction on the size, scope, location, and timing of sponsor recognition and advertising to apply the interim directive consistently on NFS lands; (2) lack of sufficient guidance to determine when sponsorship recognition and advertising are excessive; (3) insufficient distinction between sponsorship and advertising; and (4) excessive constraints on allowable recognition.

Response. The Forest Service agrees that effective guidelines are needed when considering approval of sponsorship recognition and outdoor advertising. Based on public comments on the interim directive and experience gained since 2005, the final directive provides more guidance to the authorized officer in determining whether to approve advertising and sponsorship recognition. In addition, the final directive more clearly differentiates between advertising and sponsorship recognition. The Agency believes that advertising and placement of commercial displays on NFS lands are generally not appropriate and should be allowed only in limited circumstances, subject to

certain constraints. Therefore, the final directive provides only specific exceptions to the advertising prohibition and authorizes sponsorship recognition only in specified circumstances that serve the public interest, rather than providing more latitude for the authorized officer.

Comment. Several respondents stated that the interim directive does not contain sufficient clarity to manage sponsorship recognition effectively. Some respondents commented that the interim directive should contain criteria for determining how much sponsorship recognition should be allowed and should contain provisions preventing commercial displays from being installed all over a ski area. One respondent stated that the interim directive will allow every chair on every chairlift to be turned into a billboard and objected to a 25-foot advertising banner for a ski manufacturer on the outside of a yurt where skis are rented being considered sponsorship recognition.

Response. The final directive includes more specificity to allow authorized officers to manage sponsorship recognition as intended in the interim directive and set more specific limits on the extent of advertising. For example, the final directive clarifies that sponsorship recognition may not be used to fund services or facilities required for the concession. With the additional specificity, the Agency believes the final directive will not allow chairs on ski lifts to become billboards. A banner for a ski manufacturer placed on the outside of a yurt where skis are rented would not meet the requirements of a sponsorship.

Comment. Some respondents were concerned that sponsorship recognition would become more prevalent on NFS lands and would appear, for example, on ski trail signs.

Response. The Forest Service believes that the additional limitations included in the final directive will prevent inappropriate posting of commercial information.

Comment. One respondent commented that the special events provisions in the interim directive give the Forest Service undue control over management and promotion of the concessioners' business and that the Agency should provide a resort a certain number of days each season to allow advertising for special events.

Response. Paragraph 11 of the final directive includes provisions allowing holders to promote the services and accommodations they offer at their concession. Furthermore, the final directive allows outdoor advertising on chairlift restraining bars and in connection with short-term events, subject to certain restrictions. However, the Forest Service issues concession special use permits to provide for public recreation, not simply to provide a business opportunity for permit holders.

Comment. Several respondents expressed concern about sponsorship recognition for short-term special events. Some respondents stated that temporarily waiving the advertising prohibition for special events is too expensive and allows almost any advertising to be approved. Another respondent commented that successive and simultaneous short-term events will result in de facto permanent advertising and aggressive marketing campaigns and will make the national forests look more like a strip mall.

Response. The Forest Service agrees that a temporary waiver is too expensive and difficult to manage effectively. The final directive eliminates this provision and limits posted commercial information to a sponsor's name and trademark. The Forest

Service believes that the restrictions on advertising in connection with short-term events will prevent de facto permanent advertising.

Comment. One respondent stated that the interim directive should allow local ski race teams, working with ski areas, to place company sponsor names on the back of chairlifts because the revenue from this program would help fund the teams.

Response. Providing financial support to local ski race teams would not promote public participation in management of NFS lands and would not qualify for sponsorship recognition in most cases under the final directive.

FSM 2343.03, Paragraph 13 (previously Paragraph 12)

This section specifies holders' responsibilities for the safety of their employees and the public while participating in activities covered by the holders' special use permit.

Comment. Several respondents expressed concerns about skier safety with respect to advertising panels placed on chairlift restraining bars.

Response. This paragraph was merely renumbered; no substantive changes were made to this paragraph. The Agency does not believe that advertising that is part of a trail map display on a chairlift restraining bar presents an increased safety risk. The Agency is not aware of any safety-related incidents that have occurred since 2005 when the interim directive went into effect.

FSM 2343.03, Paragraph 14 (Previously Paragraph 13)

This paragraph requires that advertising of facilities and services be free from discriminatory statements and include recognition that facilities and services are located on NFS lands. This paragraph was merely renumbered. No substantive changes were made to this paragraph, and no comments were received on this paragraph.

3. Summary of Revisions to the Proposed Directives

The Agency has made changes to the interim directive based on public comments and experience acquired in implementing the interim directive since 2005. The Agency believes that the changes to the interim directive add clarity and provide for more consistent application. In addition, the Agency has revised the interim directive to include a definition for sponsorship and a terrain park. The changes to the interim directive at FSM 2343.03 are summarized below.

Paragraph 11 – Advertising. The Agency revised this paragraph to include the title “Advertising” to distinguish this activity more clearly from sponsorship; to note that advertising is prohibited except as specified in paragraphs 11 and 12; to state that naming of facilities intended to promote the products or services of a third party is prohibited; to note that the Agency has no authority to regulate advertising on non-NFS lands; to add provisions for removal of noncompliant advertising and other displays; and to add subparagraphs (a) through (f), which provide exceptions to the advertising prohibition.

Paragraph 11(a) – Indoor Spaces. This paragraph more clearly addresses advertising in indoor spaces; notes that chairlift restraining bars and other ski lift components are not an indoor space; requires that indoor advertising not be visible from outdoor locations; and clarifies that advertising inside buildings owned by the permit holder is permitted.

Paragraph 11(b) – Chairlift Restraining Bars. This paragraph provides for advertising on chairlift restraining bars only when the advertising is included as part of a trail map display and only to the extent the advertising does not exceed 33 percent of the surface area of the panel facing passengers.

Paragraph 11(c) – Holder Services. This paragraph allows holders to post signs and other information at suitable indoor and outdoor locations in the permit area that notify visitors of the location of services offered at the concession site, provided that outdoor postings are limited to those services provided by the holder and identify only the name and location of services provided at the concession site. This paragraph provides that outdoor postings may not include the name of other companies or product descriptions, trademarks, taglines, promotional graphics, or any other advertising for those companies.

Paragraph 11(d) – Holder Name and Logo. This paragraph allows holders, contractors, and service providers to use vehicles in the permit area that have the name and logo of holder or company attached to the exterior of the vehicle.

Paragraph 11(e) – Printed Materials and Other Off-Site Media. This paragraph notes that printed material such as trail map brochures and other media that are produced off the NFS and that contain advertising may be distributed at the site, but may not be posted in outdoor settings in the permit area.

Paragraph 11(f) – Short-Term Competitive Events. This paragraph allows authorized officers to approve outdoor advertising for competitive events lasting 21 days or less. This paragraph also states that advertising materials may be placed only at the event site and must be removed as soon as practicable after the event.

Paragraph 11(g) – Designated Ski and Snowboard Race Courses and Terrain Parks. This paragraph is new and allows entities that provide financial or in-kind support for snow sport race courses and terrain parks to be recognized at the start and finish points of the courses and parks throughout the winter season; states that advertising,

taglines and other promotional materials may not be posted elsewhere at these sites; and requires snow sport race courses and terrain parks to be identified in a master development plan or an operating plan approved by the authorized officer.

Paragraph 11(h) – Manufacturer’s Name. This paragraph allows for a manufacturer’s name to be included on products and equipment that are used within the permit area when they are made a part of these products through the manufacturing process.

Paragraph 12 – Sponsorship. The Agency revised this paragraph to include the title “Sponsorship” to distinguish this activity more clearly from advertising; to delete “proposed public services” as an example of a sponsorship activity and to eliminate the use of the term “cooperator”; to state that sponsorships should promote agency conservation education and outdoor environmental education objectives; to indicate that sponsorships should not be a means to defray the cost of services or facilities; and to note that facilities such as trail map bulletin boards, directional signing, and similar postings are not appropriate for sponsorship recognition. A second section has been added to this section to note that recognition of sponsors should be no larger than necessary to be visible at a pedestrian scale and that such postings should be consistent with the Forest Service Built Environment Image Guide. A new exhibit (FSM 2343.01, exhibit 02) has been added to illustrate the appropriate format and content for a sponsorship plan submitted by a permit holder to the authorized officer for approval. Minor revisions were also made to subsections of this paragraph.

Paragraph 12(a) – Duration and Location of Recognition. This paragraph has been revised to eliminate the use of the term “cooperator” and the reference to recognition on government vehicles, since both are addressed earlier in paragraph 12.

Paragraph 12(b) – Scope of the Recognition. The title of this paragraph has been revised from “Content of the Recognition,” and the content of this paragraph has been revised to eliminate use of the term “cooperator”; and to state that taglines and other promotional materials must not be included in sponsorship recognition.

Paragraph 12(c) – Events. The title of this paragraph has been revised from “Special Events,” and the content of this paragraph has been revised to clarify that events are conducted by the holder with the support of sponsors; to eliminate the provision that allowed the authorized officer temporarily to waive the prohibition on exterior advertising; to delete the reference to agency symbols, since this restriction is included earlier in paragraph 12; and to limit sponsor recognition at events to sponsor names and trademarks.

4. Regulatory Certifications

Environmental Impacts

Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment (EA) or environmental impact statement (EIS) “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Agency has concluded that these final directives fall within this category of actions and that no extraordinary circumstances exist that would require preparation of an EA or EIS.

Regulatory Impact

The final directive has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant directive. The final directive will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. The final directive will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, the final directive will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of those programs. Accordingly, the final directive is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, the Forest Service has considered the final directive in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The Agency has determined that the final directive will not have a significant economic impact on a substantial number of small entities as defined by the Act because the final directive will not impose recordkeeping requirements on them; will not significantly affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. The benefits of the final directive cannot be quantified and are not likely substantially to alter costs to small businesses.

No Takings Implications

The Agency has analyzed the final directive in accordance with the principles and criteria contained in Executive Order 12630. The Agency has determined that the final directive does not pose the risk of a taking of private property.

Civil Justice Reform

The Agency has reviewed the final directive under Executive Order 12988 on civil justice reform. Upon adoption of the final directive, (1) all State and local laws and regulations that conflict with the final directive or that impede its full implementation will be preempted; (2) no retroactive effect will be given to the final directive; and (3) administrative proceedings will not be required before parties can 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), the Agency has assessed the effects of the final directive on State, local, and tribal governments and the private sector. The final directive 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.

Federalism

The Agency has considered the final directive under the requirements of Executive Order 13132 on federalism and has determined that the final directive conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination with Indian Tribal Governments

No comments were received from Indian tribes on the interim directive, and no comments regarding the interim directive were submitted to the Agency in the years since its publication. The Agency believes that most advertising and sponsorship projects that will occur under the final directive will be in areas of the NFS that already support fairly extensive development for recreation. Proposals for sponsored events, projects, and programs will be subject to review, as appropriate, under NEPA, which will offer further opportunity for consultation with Indian tribes. Accordingly, the final directive does not have tribal implications as defined by Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments.”

Energy Effects

The Agency has reviewed the final directive under Executive Order 13211 of May 18, 2001, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” The Agency has determined that the final directive does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

The final directive does not contain any recordkeeping or reporting requirements or other 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.

5. Access to the Final Directive

The Forest Service organizes its Directive System by alphanumeric codes and

subject headings. The intended audience for this direction is Forest Service employees charged with issuing and administrating concession special use permits involving privately owned improvements. To view the full text of the final directive, visit the Forest Service's web site at <http://www.fs.fed.us/im/directives/>.

_____ March 29, 2013 _____
Date

Thomas L. Tidwell
Chief, Forest Service.

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