

BACKGROUND

This paper clarifies the law enforcement responsibilities and responsibilities of concessionaires, state and local law enforcement agencies, and the Forest Service at concession operated facilities. The paper is based on a December 15, 1993, memorandum issued by the Office of the General Counsel (OGC) and an April 26, 1996, letter issued by Region 5 on the same subject. This paper has been reviewed and approved by OGC.

ROLES AND RESPONSIBILITIES

Concessionaires

In responding to violations of Federal, state, and local laws, ordinances, and regulations, concessionaires have the same authority as a private citizen. Concessionaires generally cannot enforce Federal, state, or local laws or regulations, including 36 CFR Part 261, Prohibitions on National Forest System (NFS) lands. Concessionaires should be knowledgeable of applicable Federal, state, and local laws and regulations, including 36 CFR Part 261, and should report violations of these laws and regulations to the appropriate law enforcement authorities.

Conduct that violates rules of use may also violate Federal, state, or local laws. When such conduct occurs, the concessionaire should report those violations to the appropriate law enforcement authority. For example, violation of a rule of use may constitute a disturbance of the peace in violation of state law, or disorderly conduct in violation of Forest Service regulations at 36 CFR 261.4

To minimize confusion between criminally enforceable Federal, state, and local laws and concessionaire-established rules of use, each may be posted separately at the facility.

State and Local Law Enforcement Agencies

Generally, state and local law enforcement agencies have authority to enforce applicable state and local laws, ordinances, and regulations on NFS lands. Under 16 U.S.C. 480, states retain their civil and criminal jurisdiction over persons on the National Forests. Thus crimes involving persons and their property are generally the primary responsibility of state and local law enforcement authorities.

Where a concessionaire has established rules of use, there is no authority for a state or local law enforcement agency to take enforcement action, unless the conduct giving rise to the violation of a rule of use also constitutes a violation of state or local law.

There is no authority for the Forest Service to allow state and local law enforcement personnel to enforce Federal laws and regulations, including 36 CFR Part 261. Some conduct may be

Appendix 7 – FSM 2342.1, Exhibit 01, Law Enforcement at Concession Facilities
2018 Prairie Portage Prospectus

prosecuted under Federal or state law because the conduct violates both. State and local law enforcement officers may enforce only state and local law, however.

Forest Service

*Substitute “Concession operated facility” where the following mentions “Concession operated campground” for the following;

The Forest Service retains all its authorities and responsibilities for enforcing Federal laws and regulations related to administration of NFS lands. The role and responsibilities of the Forest Service do not change simply because the Forest Service has issued a special-use permit to a concessionaire. Forest Service personnel should continue to enforce all Federal laws and regulations related to the administration of NFS lands within concessionaire-operated campgrounds.

Forest Service personnel should not assume, however, that all laws and regulations applicable to facilities operated by the Forest Service are also applicable to sites operated by concessionaires. For example, as a matter of policy the Forest Service does not interpret failure to pay a camping fee charged by a concessionaire to be a violation of 36 CFR 261.15 because the camping fee charged by the concessionaire is not an admission or recreation use fee for “a site, facility...or service furnished by the United States.” The agency construes “furnished by the United States” to mean “owned and operated by the United States.” Therefore the Forest Service would not cite someone for failure to pay a camping fee at a concession campground, because the site is operated by a concessionaire, rather than the Forest Service, and the concessionaire, rather than the Forest Service, retains the campground fees.

The regulations at 36 CFR Part 261, Subpart A, apply at both Forest Service and concessionaire-operated campgrounds and other concession operated facilities. In contrast, orders issued under 36 CFR Part 251, Subpart B, may or may not apply at concession campgrounds. A Subpart B order must clearly state the area to which it applies 36 CFR 261.50(c)(1). If the order is Forestwide, it applies to all campgrounds, including concession campgrounds within that Forest. Operating Plans for concession campground permits should be consistent with any orders that apply. A concessionaire may not allow an activity prohibited by an order. A concessionaire's rule of use may be stricter than an order, however.

The Regional Forester or Forest Supervisor may exempt concession campgrounds from an order, and may want to exempt them to place more of the responsibility for the site on the concessionaire. Rules of use, rather than the order, would then govern. This approach is consistent with one of the purposes of the campground concession program, which is to reduce expenditure of limited Forest Service resources on administering developed recreation sites. When issuing a Subpart B order, the Regional Forester or Forest Supervisor should consider whether the order should apply at concession campgrounds.

If concession campgrounds are exempted from a Subpart B order, the rules of use established by concessionaires may differ from the restrictions contained in the order that apply elsewhere. For example, the restriction established by an order on the number of vehicles

Appendix 7 – FSM 2342.1, Exhibit 01, Law Enforcement at Concession Facilities
2018 Prairie Portage Prospectus

allowed per campsite at an Forest Service-operated campground may differ from the same type of restriction adopted as a rule of use at a concession campground. Forest Service personnel should ensure that they enforce only those Subpart B orders that apply to concession campgrounds.

36 CFR Part 261, Subpart C regulations should be handled the same way as Subpart B orders. Subpart C regulations are issued by the Chief or Regional Forester to prohibit acts or omissions in all or any part of an area over which the Chief or Regional Forester has jurisdiction.

Forest Service law enforcement personnel should cooperate with state and local agencies to the extent authorized by Forest Service policy (FSM 5360) and state and Federal law, such as 16 U.S.C. 559g(c), which authorizes acceptance of a law enforcement designation from states, and 16 U.S.C. 553, which authorizes the Forest Service to aid in the enforcement of state laws in certain respects.

Prospectuses and permits for concession campgrounds should clearly describe the respective responsibilities of Forest Service law enforcement personnel, local law enforcement authorities, and concessionaires.

SUMMARY

Crimes involving persons and property are generally violations of state law. State and local law enforcement agencies have jurisdiction to enforce state laws at concession campgrounds. Forest Service personnel have the responsibility to enforce Federal laws and regulations related to the administration of NFS lands. Concessionaires may establish and enforce rules of use that are subordinate to Federal, state, and local laws and regulations. Rules of use are not enforceable by Federal, state, or local law enforcement authorities unless violations of rules of use constitute violations of Federal, state, or local laws.

Concessionaires should contact Federal, state, and local law enforcement authorities to address criminal violations under their respective jurisdictions. Concessionaires may also consider hiring a private security firm or contracting with off-duty state or local law enforcement personnel to address day-to-day public-safety concerns at concession campgrounds.