

***** NEW FOREST SERVICE RULES PROPOSED...**

NEW POLICE POWERS TO COME DOWN IN THE NATIONAL FORESTS ***

**"LAW ENFORCEMENT" AMENDMENTS, 36 CFR Parts 261, 262
{Federal Register, V. 59, No. 32, pp.7880-92; 2/16/94}**

[[NOTE: The new regs were reviewed in a 3/17 Council in Madison, and this analysis was prepared for fast outreach. This is a quick first look at the issues -- a useful introduction, but not to be taken as complete or definitive. Much research is to be done, all are encouraged to plug in knowledge & ideas.]]

You heard of "FrankenRegs"...

The 'Group Use' amendments to 36 CFR §251/261 were proposed in May '93 (*Fed.Reg.*, 58:86)... they would make it a crime to assemble peaceably and exercise First Amendment freedoms without a permit. Public comments were received through 8/4/93, and the review is nearly complete; publication of the revised rule is expected in May, and could be in effect by July '94. We are still fighting to stop it.

Now they got "Son of FrankenRegs"...

New rules have been proposed in the 2/16/94 Federal Register, amending 36 CFR §261/262. The Forest Service would vastly expand their powers in "Law Enforcement Support Activities", and extend Federal jurisdiction to areas previously reserved for State and local authority. As a further step toward abrogating the Bill of Rights on public land, these rules might ALSO be enacted by July.

*When the National Forest System was founded over 90 years ago, the USFS was given the mandate of Congress for stewardship of our land and resources... not control over individuals.
Now they are moving full-tilt into the POLICE BUSINESS!*

YOUR ACTION IS NEEDED... AN OUNCE OF PREVENTION, (a public comment letter), is worth a year in the courts. PLEASE HELP -- BE A PART OF THE SOLUTION!!

- WRITTEN COMMENTS MUST BE RECEIVED BY APRIL 18 TO BE CONSIDERED AS PART OF THE PUBLIC COMMENT IN THE FORMAL ADMINISTRATIVE RECORD. The more letters they receive, the better for delaying enactment and establishing the issues for legal actions and defenses against enforcement.
- REQUEST THAT THE COMMENT PERIOD BE EXTENDED. This would allow for the meaningful inputs of those who have not heard of this Federal Register publication. We did not get word until mid-March, nearly halfway through the 60-day comment period.

Note that Forest Service officials previously agreed to notify our people in DC of any new action relevant to the 'Group Use' issues already at stake... THEY DID NOT DO SO, nor did they reveal this new rulemaking to Congressional committee staff during their inquiry only 3 weeks before publication.

Formal comments and queries are directed as follows in the Federal Register...

- SEND WRITTEN COMMENTS TO:
Jack Ward Thomas, Chief (5300)*
Forest Service, USDA
P.O. Box 96090
Washington, DC 20090-6090
- FOR FURTHER INFORMATION CONTACT:
Jack Gregory (912-257-2471)
Law Enforcement & Investigations Staff
Kathryn Toffenetti (202-720-2651)
*Office of the General Counsel,
Natural Resources Division*

*(The FR actually names former Chief F. Dale Robertson, a Reagan appointee. This hints at the *political* agenda behind this rule.)

YOUR INQUIRIES ARE WELCOME. WE HAVE INFO AND IDEAS TO SHARE...

PEOPLE FOR COMPASSION AND UNDERSTANDING
Washington, DC: 202-462-0757 --- Chicago, IL: 312-561-8337

PROPOSED USFS "LAW ENFORCEMENT" RULES...
THE ISSUES

HERE ARE SOME THINGS YOU MIGHT FIND OBJECTIONABLE ABOUT THESE PROPOSED AMENDMENTS TO THE EXISTING REGULATIONS, 36 CFR Parts 261 & 262. (These can be found in the Federal Register of your local library):

- [] The Forest Service contends that this amendment is needed to fulfill authorities established under the Comprehensive Crime Control Act of 1984, and the National Forest System Drug Control Act of 1986. They assert that this authority "...allows regulating occupancy and use even if such regulation is not necessary for the protection of forest resources (United States v. Hymans, 463 F.2d 615 (10th Cir. 1972))." [p.7880].
- [] The Agency determined unilaterally that this is not a "significant rule" and therefore is "not subject to OMB review under Executive Order 12866". They also claim to comply with the 'maximum benefit / minimum cost' mandate of other Executive orders -- but the costs of overriding local authorities and undercutting the Bill of Rights are apparently not considered.
- [] The Agency's newly defined "Law Enforcement Officers" and "Special Agents" [§262.1, p.7691] are given vast new enforcement powers that override State and local authorities. The rules actually provide for "Purchase of information or evidence in furtherance of investigations" [§263.3; p.7891] -- in short, bribery for the sake of prosecution.
- [] By changing various charges previously classed as felonies into Class B Misdemeanors with jail penalties of less than 6 months, this regulation takes advantage of court rules which allow for jury trials to be bypassed in many such cases. This means that more cases would be handled faster, more defendants would waive rights, and more revenues would be generated by imposing criminal fines.

HERE ARE SOME POINTS TO LOOK AT MORE CLOSELY:

- §261.2 Definitions.
The rule newly defines "Controlled substance" in a way that "...possession of drugs may be handled through a United States Magistrate judge by the issuance of a violation notice, rather than by proceeding under the simple possession statute at 21U.S.C. 844, which provides either the filing of a complaint or information, or indictment by a Federal grand jury." [p. 7882]
Does this mean no jury, fast-track enforcement, or maybe a 'violation notice' issued in advance of a supposed crime?
- §261.4 Public Behavior.
If these regulations pass, 'public behavior' will become an activity the Forest Service could regulate [p.7889]. At the very least, let people be themselves in the woods! The rules would leave up to the discretion of an officer what should be considered to be "obscene" behavior (the actual wording of this prohibition -- "using language, an utterance, or act that is ...Obscene"), or construed to be "...Causing public inconvenience ... by making unreasonably loud noise." What activities might "...threaten the health, safety, rights or enjoyment of forest users", and how does a Forest Service officer decide?

They also prohibit "BEING under the influence of any controlled substance or alcohol..." (as opposed to DRIVING or WORKING 'under the influence'...). If people are just BEING THEMSELVES, does this constitute Probable Cause for search and seizure by Forest Service Police? Are they going to walk around the forest with breathalyzer devices? Now the Agency would take control over all laws on "controlled substances, alcoholic beverages, or contraband" on public land, without having to prove possession or impacts on public safety... and assert control over one of the few places left where people can go to express themselves freely.

- §261.10 Occupancy and Use.

These activities would now be subject to broad Agency authorities on public lands, and illegal without a permit:

"(a) ...any kind of road, trail, structure, fence, enclosure...

(b) ...Taking possession of, occupying, residing upon, or otherwise using the National Forest System ...for any purpose.

(e) Abandoning any personal property.

(f) Placing a vehicle or other object in such a manner that it is an Impediment or hazard to the safety or convenience of any person.

(g) Disseminating, posting, placing, or erecting any paper, notice, advertising material, sign, handbill, petition, or similar written and/or graphic material.

(h) ...using...any device which produces noise, such as, radio, television, musical instrument, motor or engine, in such a manner...so as to unreasonably disturb any person.

(j) Use or occupancy of the National Forest System when authorization is required.

(l) Failing to stop a vehicle when directed to do so by a Forest officer.

(n) Paying for any...special use authorization, fee, or service by check with insufficient funds.

(p) Failing to display special use authorization...or other document when such display is required." [p. 7890]

- §261.53 Special Closures.

Agents are given broad discretion to close off areas of the National Forests for reasons of environmental protection or public health and safety. In these instances the Forest Service must show that the ecological issues they raise are documented previously in approved studies or management plans, but no such stipulation is made. Moreover courts have ruled that Public Health concerns should remain the jurisdiction of qualified health authorities, NOT the Forest Service.

YOU ARE ENCOURAGED TO LOOK FURTHER ON YOUR OWN.

A major Issue: The regulatory grounds for all these new Forest Service powers.

There is already provision for "*Cooperation by Secretary of Agriculture with States and political subdivisions in law enforcement*" (16 USC § 551a). NO SIGNIFICANT INTEREST is offered for imposing centralized Federal authority, aside from claims that the existing rule provides "...an inadequate regulatory basis for conducting law enforcement activities" [p.7880], and that the prosecution should "...be practical" [p.7883].

Research and share what you learn: Comprehensive Crime Control Act of 1984, National Forest Drug Control Act of 1986, Executive Orders 12866, 12630, 12291, 12498... etc., etc.