

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

Forest Service Handbook 5309.11 – Law Enforcement Handbook

Chapter 30 – Violations

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Superseded Directive: 5309.11,30, Amendment 5309.11-2008-2, 03/07/2008

Approved by: Tina J. Terrell, Acting Deputy Chief, NFS

Date approved: April 07, 2021

Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 5309.11-2008-2 to 5309.11_30.

34: Removes code, caption, and direction for “Issuing Regulations under Title 36, Code of Federal Regulations, Part 261, Subpart C” and replaces with “Closure of National Forest System Lands to Hunting, Fishing, or Recreational Shooting” and sets forth direction to implement section 4103 of the John D. Dingell, Jr., Conservation, Management, and Recreation Act, Pub. L. No. 116-9, Title IV.

35: Establishes code, caption and sets forth direction for “Issuing Regulations under Title 36, Code of Federal Regulations, Part 261, Subpart C”, direction previously set out at 34.

March 7, 2008 Digest:

30.1: Adds new direction regarding authorization for the Secretary of Agriculture to issue regulations.

30.41: Removes direction and caption “Supervisory Special Agents and Supervisory Law Enforcement Officer” and replaces with direction and caption “Director, Law Enforcement and Investigations.”

30.42: Removes direction and caption “Forest Protection Officers” and replaces with direction and caption “Special Agents in Charge.”

30.43: Removes direction and caption “Forest Officers” and replaces with direction and caption “Supervisory Special Agents” that was previously set out in section 30.41.

30.44: Establishes new code and recodes to this section direction and caption “Supervisory Law Enforcement Officers” previously set out in section 30.41.

30.45: Establishes new code, caption and adds direction for “Law Enforcement Officers.”

30.46: Establishes new code and recodes to this section caption and direction for “Forest Protection Officers” that was previously set out in section 30.42.

30.47: Establishes new code and recodes to this section caption and direction for “Forest Officers” that was previously set out in section 30.43.

30.48: Establishes new code, caption and adds direction for “Law Enforcement and Investigations Management Attainment Reporting System Data Steward.”

31: Modifies and adds new direction for clarity to violation documentation.

31.11: Modifies direction regarding warning notices.

31.12: Clarifies direction regarding incident reports.

31.13: Clarifies direction regarding incident report court disposition.

31.2: Clarifies direction regarding violation notices.

31.21: Clarifies and adds new direction on violation notices.

31.22: Removes code, caption, and direction for instructions for completing violation notice.

31.22a: Removes code, caption, and direction for statement of probable cause, reverse side of Central Violations Bureau copy.

31.22b: Removes code, caption, and direction for instructions for completing statement of probable cause.

31.23: Removes code, caption, and direction for instructions for completing violation notice disposition update form for criminal action.

32.21: Establishes new code, caption, and adds direction for “Order Case Files.”

32.22: Establishes new code, caption, and adds direction for “Maps.”

32.23: Establishes new code, caption, and adds direction for “Compliance with the National Environmental Policy Act of 1969.”

32.24: Establishes new code, caption, and adds direction for “Civil Rights Impact Analysis.”

32.25: Establishes new code, caption, and direction for “Assessment of Need and Enforcement Plans” for closure orders.

32.26: Establishes new code, caption, and direction for “Draft Order Preparation and Review.”

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This chapter provides direction for the documentation of incidents and violations; issuance of Form [FS-5300-1](#), Law Enforcement Incident Report, and Form FS-5300-4, Violation Notice; and the development, review, and implementation of orders under Title 36, Code of Federal Regulations (CFR), Part 261, Subpart B (36 CFR 261.50-261.58) and regulations under 36 CFR Part 261, Subpart C (36 CFR 261.70-261.78).

30.1 - Authority

1. Title 36, CFR, section 242.2 authorizes the Secretary of Agriculture to issue regulations for the purposes set out in the section.
2. Title 36, Code of Federal Regulations (CFR), sections 261.50(a) and 261.50(b) authorize the Chief, Regional Foresters, Station Directors, the Administrator of the Lake Tahoe Basin Management Unit, and Forest Supervisors to issue orders.
3. Title 36, CFR, section 261.70(a) authorizes the Chief and Regional Foresters to issue regulations for the purposes set out in the section.
4. Title 16, United States Code, section 559 authorizes employees of the Forest Service to enforce laws and regulations pertaining to the National Forest System.

30.2 - Objective

To implement and enforce laws and regulations pertaining to the National Forest System (NFS); and to document violations of law occurring on or threatening NFS lands, facilities and users.

30.3 - Policy

Forest officers shall document all violations of law occurring on or affecting National Forest System lands, facilities, and users by completing Form FS-5300-1, Law Enforcement Incident Report, or by providing the information necessary to complete Form FS-5300-1 to law enforcement personnel or forest protection officers. Only law enforcement personnel or forest protection officers (operating within the authorities and limitations set forth in FSM 5304.6 and FSM 5304.61) shall issue a Form FS-5300-4, Violation Notice.

30.4 - Responsibility

30.41 - Washington Office Director, Law Enforcement and Investigations

It is the responsibility of the Washington Office Director, Law Enforcement and Investigations to:

1. Issue instructions for the proper completion of [FS-5300-1](#) Incident Report and [FS-5300-4](#) Violation Notice forms.
2. Issue instructions for maintenance and use of the Law Enforcement and Investigations Management Attainment Reporting System (LEIMARS).

30.42 - Special Agents in Charge

It is the responsibility of special agents in charge to:

1. Ensure reports of violations are entered into the Law Enforcement and Investigations Management Attainment Reporting System (LEIMARS).
2. Assist National Forest System line officers in the preparation, review, and implementation of orders and regulations issued under the authorities in Title 36, CFR, Part 242, 261, Subparts B and C.
3. Authorize and train an appropriate number of LEIMARS data stewards to ensure proper functioning of the LEIMARS system.

30.43 - Supervisory Special Agents

It is the responsibility of supervisory special agents to review all incident reports which have been entered into LEIMARS which meet the criteria for case designation. This includes all felonies, serious misdemeanors, and instances of property loss where the value exceeds \$1,000.

30.44 - Supervisory Law Enforcement Officers

It is the responsibility of supervisory law enforcement officers to:

1. Ensure that all Violation Notice and Incident Report forms are received, reviewed, and entered into LEIMARS promptly.
2. Provide direction and training to law enforcement officers (LEOs) and forest protection officers (FPOs) on the correct utilization of Violation Notice and Incident Report forms.
3. Ensure all incidents which meet the criteria for case designation are properly referred to investigations personnel.

30.45 - Law Enforcement Officers

It is the responsibility of law enforcement officers and reserve law enforcement officers to:

1. Take action on violations they observe or investigate; crimes committed in their presence; or through information provided by a fellow officer's observation.
2. Accurately and completely document incidents involving criminal violations on the proper Violation Notice and Incident Report forms.
3. Provide direction and training to reserve law enforcement officers and forest protection officers on the correct utilization of Violation Notice and Incident Report forms.

30.46 - Forest Protection Officers

It is the responsibility of forest protection officers to take action on observed violations within the limitations set forth in FSM 5304.6.

30.47 - Forest Officers

It is the responsibility of all employees, as forest officers, to ensure that violations of law are reported to law enforcement personnel in a timely manner. When properly trained to do so, forest officers should document such incidents on Form FS-5300-1, Incident Report, and immediately forward the information to law enforcement personnel.

30.48 - Law Enforcement and Investigations Management Attainment Reporting System Data Steward

It is the responsibility of the Law Enforcement and Investigations Management Attainment Reporting System (LEIMARS) data steward at the Washington Office and each region to:

1. Control, grant, and revoke the authorized levels of access to LEIMARS for Law Enforcement and Investigations employees and other Forest Service employees or contractors.
2. Perform regular audit procedures and data analysis to ensure data integrity.
3. Ensure data from the Washington Office LEIMARS repository is transmitted to the regional LEIMARS database on a regular basis to facilitate data searches for people and vehicles on a national scale.

31 - Violation Documentation

Violations of laws pertaining to National Forest System lands and facilities are documented to:

1. Provide information on potential trends in occurrences.
2. Help determine where possible violation prevention efforts may be needed.
3. Provide statistical information through the Law Enforcement and Investigations Management Attainment Reporting System (sec. 41.1).
4. Record information that may be helpful if a potential violator is later identified.
5. Provide a basis for identifying repeat offenders.
6. Provide data necessary for making future resource protection allocations.

31.1 - Law Enforcement Incident Report (Form FS-5300-1)

31.11 - Warning Notice

A warning notice (Form FS-5300-1, page 1) may be issued when in the mind of the officer issuing it, the violation occurred because of inadvertence, lack of understanding, or misinformation. The name and address of the person receiving the warning notice should be obtained with reasonable effort being made to verify personal identification information, such as a name, address, driver's license, date of birth, etc.

When a warning notice is issued, an Incident Report (Form FS-5300-1, page 2) must also be completed. Directions for completing Form FS-5300-1 must be approved by the Director, Law Enforcement and Investigations and posted at http://fsweb.wo.fs.fed.us/im/forms/fs_forms/index.htm.

31.12 - Incident Report

When a warning notice is issued, an Incident Report (Form FS-5300-1, page 2) must be completed.

An Incident Report (Form FS-5300-1, page 2) is a written record of a violation of law when generally the violator is unknown or when incidents may result in civil claims for or against the Government, for example an accident resulting in personal injury or property damage. Documenting information related to any violation provides the basis for follow-up action including case initiation when appropriate and provides statistical information. Many times, violations are observed after the fact. Each time a forest officer observes where a violation of law or regulation has occurred, the forest officer should document the incident on page 2 of form FS-5300-1.

Directions for completing form FS-5300-1 shall be approved by the Director, Law Enforcement and Investigations and posted at http://fsweb.wo.fs.fed.us/im/forms/fs_forms/index.htm.

31.13 - Incident Report Court Disposition - Update Form

The Law Enforcement Incident Report, form FS-5300-1, reverse side of page 2 is designed to provide a final disposition of, or an update to, cases that originate with an incident report and result in court action.

31.2 - Violation Notice (Form FS-5300-4)

Form FS-5300-4, Violation Notice, is issued to a violator when an act or omission of an act violates Forest Service regulations. Form FS-5300-4, Violation Notice, serves as:

1. A citation under the local rules of the United States District Court.
2. A law enforcement report.
3. A data-processing input document.

The Violation Notice is a multi-part form composed of three pages. All applicable blocks of the violation notice must be completed. Directions for completing form FS-5300-4 are approved by the Director, Law Enforcement and Investigations and posted at http://fsweb.wo.fs.fed.us/im/forms/fs_forms/index.htm. The Law Enforcement and Investigations Management Attainment Reporting System program rejects the form if the information is not entered properly.

4. Form FS-5300-4, Violation Notice, should be issued only to an individual unless specifically authorized by an order pursuant to 36 CFR 261.58(g) or with consultation with the Department of Justice.
5. Designated forest officers shall arrange with the local U.S. magistrate judge, clerk of U.S. district court, or Central Violations Bureau to receive disposition reports on violation notices. Initiate final disposition of a case by completing the court disposition-update blocks on the reverse side of the officer's copy, Form FS-5300-4, page 2, pink copy.

31.21 - Policy

Law enforcement personnel and forest protection officers (FPOs) may use discretion when issuing a form FS-5300-4, Violation Notice, for offenses listed in Title 36, CFR, Sections 242 and 261 except in the following circumstances (FSM 5303.12, para. 1 and FSM 5320.3, para. 1):

1. Violations are the types that are normally referred to the Department of Justice for prosecution based upon local established protocol.
2. Acts are clearly malicious, willful, or deliberate.
3. The safety or rights of others are in jeopardy.
4. Where a violation has resulted in loss or damage of public property and/or may result in a claim for or against the Government, FPOs should consult with law enforcement personnel prior to issuance of a Violation Notice whenever practical.

32 - Issuing Orders Under Title 36, Code of Federal Regulations, Part 261, Subpart B

32.1 - Scope of Orders

Orders issued under the authority provided in Title 36, CFR, sections 261.50(a) and (b) are for the purpose of closing or restricting an area or National Forest System road or trail in which the Chief, each Regional Forester, each Station Director, the Administrator of the Lake Tahoe Basin Management Unit, and each Forest Supervisor has jurisdiction. These sections require the signature of the named line officer; therefore, neither deputies nor actings should sign orders. Where the line officer position is vacant or exigencies exist, coordinate designation or delegation needs with the Office of the General Counsel (OGC).

Prohibitions contained within 36 CFR Part 261, Subpart B orders may not prohibit more than what is specified in the cited regulation. They may however be less restrictive, by either dropping a restriction or making an exception. Exercise care when changing wording to assure that the prohibition is not being made more restrictive and to avoid changing the concept or purpose of the basic prohibition. Assistance in modifying such prohibitions may be requested from the OGC.

32.11 - Exemptions

An order may exempt any of the following persons from any of the prohibitions contained in the order:

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.
2. Owners or lessees of land in the area.
3. Residents in the area.
4. Any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.
5. Persons engaged in a business, trade, or occupation in the area.
6. Any other person meeting exemption requirements specified in the order.

32.2 - Legality of Orders

Each order must be drafted properly so that it can withstand legal challenge. Violation of a regional or forest order constitutes a criminal offense and has the potential result of placing a citizen in jail; specific justification and documentation must support each order. To ensure that future orders can withstand court challenges, an order review process should be implemented by the originating unit that will involve forest resource staff, law enforcement personnel, and the Office of the General Counsel.

32.2 - Exhibit 01

Example of a Properly Formatted Order

CHUGACH NATIONAL FOREST

Glacier Ranger District

Girdwood, Alaska

Order No. 10-07-10-00-01

FOREST ORDER

Use of Motorized Vehicle off National Forest System Roads

Pursuant to 36 CFR 261.50(a), the following acts are prohibited on the Chugach National Forest:

Possession or use of a motorized vehicle off road in the Bear Valley area as shown on the attached map. (36 CFR 261.56)

Pursuant to 36 CFR 261.50(e), the following persons are exempt from this Order:

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.
2. Any Federal, State or Local Law Enforcement Officer or member of an organized rescue or fire fighting force in the performance of an official duty.

These prohibitions are in addition to the general prohibitions in 36 CFR Part 261, Subpart A.

Executed in Anchorage, Alaska, this 13th day of February 2007.

Jane Doe
Forest Supervisor
Chugach National Forest

Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. (16 U.S.C. 551 and 18 U.S.C. 3559 and 3571).

32.2 - Exhibit 02

Content of Assessment of Need and Enforcement Plan

1. **Background** - Description of problem, why the Order is proposed, and what should be accomplished by implementation of the Order.
2. **Intent of Subpart B Order** - The rationale behind the order and what should be accomplished. Defines the affected area, road, and trail, the regulated use or user group, exempted persons, and the duration of the order. Any necessary attachments or exhibits shall be prepared by the appropriate staff and included in this plan.
3. **Enforcement Plan** - Describes action to be taken to inform the affected public and effectively implement the provisions of the order in a manner that results in public acceptance, compliance, and safety (for example, planned patrol dates and locations, staffing needs, enforcement strategies, media contacts, and coordination with local public agencies).

32.2 - Exhibit 03

SAMPLE ORDER CHECKLIST

<u>Action</u>	<u>Responsible Official(s)</u>	<u>Initials/Date</u>
Prepare proposed Order	Appropriate staff(s)	_____
NEPA requirements completed	Appropriate staff	_____
CRIA requirements completed	Appropriate staff	_____
Prepare enforcement plan	LEI with appropriate staff input	_____
Review proposed Order & approve enforcement plan	Patrol Captain or Special Agent in Charge	_____
Review by OGC (as needed)	Regional OGC	_____
Approve Order	Forest Supervisor or Regional Forester (Deputy or Acting Should Not Sign)	_____
Post Order (36 CFR 261.51)	District Ranger/Forest Supervisor	_____
Prepare news releases for Order describing the order and management objectives Describe implementation/action taken for order, such as planned patrols, enforcement strategies, tolerance, contacts to local public agencies.	PAO (with Appropriate Staff/LEI)	_____
Implement plan	LEO/field going personnel	_____
Complete Case File Filing	Order Records Officer	_____
Update Regional Order Database	Special Agent in Charge	_____

32.21 - Order Case Files

An order case file must be maintained for each proposed or issued order. The case file should contain an Assessment of Need and Enforcement Plan (sec. 32.4, ex. 01), appropriate National Environmental Policy Act (NEPA) and Civil Rights Impact Analysis (CRIA) documentation and order checklist. Each National Forest System line officer authorized to issue orders shall designate a unit records custodian for all orders issued by that officer. The records custodian is responsible for compiling and maintaining a complete case file for each order, maintaining an original of all signed orders, providing certified authentic copies of orders and relevant case file documents for court or litigation purposes, maintaining the integrity of the case file and ensuring the records, for both current and terminated orders, are kept in a secure file in compliance with FSH 6209.11, section 41. The order case file must be retained in open agency files until the order is terminated, all civil and criminal cases related to the order are resolved, and all appeal periods have expired. Then normal record retention requirements may be followed.

32.22 - Maps

Clear, concise and legible maps should be attached to the proposed order to depict a designated area, road, or trail whenever appropriate and possible. The maps should be of high quality, and computer generated when possible.

32.23 - Compliance with the National Environmental Policy Act of 1969

Follow procedural guidance in FSH 1909.15 for implementing the National Environmental Policy Act of 1969 (NEPA) relative to regional and forest orders. Orders typically fall within a category of actions that the Secretary of Agriculture and the Chief of the Forest Service have determined may be categorically excluded from documentation in an Environmental Impact Statement (EIS) or Environmental Assessment (EA) (FSH 1909.15, sec. 31). These actions include routine administrative, maintenance, and other actions which normally do not individually or cumulatively have a significant effect on the quality of the human environment (FSH 1909.15, sec. 31.12, category 1). Examples include but are not limited to:

1. Closing a road to protect bighorn sheep during lambing season.
2. Closing an area during a period of extreme fire danger.

If scoping indicates there may be extraordinary circumstances related to and affected by the proposal, further analysis may be necessary. A project file and decision memo are not required but may be prepared for the categories of actions set forth in section 31.12 at the discretion of the responsible official (Forest Supervisor or Regional Forester). Although “short-term” is not defined, orders intended to be in effect permanently or over a long term should receive careful consideration for law enforcement.

While preparation of a NEPA project file and decision memo is discretionary, responsible officials must prepare an order case file that includes documentation in support of issuing an order. Documentation of completion of requirements in sections 32.21 should be included.

32.24 - Civil Rights Impact Analysis

A Civil Rights Impact Analysis (CRIA) must be completed when required per FSM 1730 and FSH 1709.11. Responsible Forest Service officers shall examine proposed policy actions for civil rights implications (FSM 1730.3). A CRIA is required for actions such as decisions affecting program delivery which will not be published in the Federal Register. Normally routine orders are not policy actions with civil rights implications; however, documentation of the civil rights assessment and determination should be kept in the order case file. A CRIA is integral with the procedures for the social impact analysis included in an EIS or EA, when required (FSH 1709.11, section 31.11).

32.25 - Assessment of Need and Enforcement Plan

Ensure an Assessment of Need and Enforcement Plan is completed and approved containing these actions. See section 32.2, exhibit 02 for an example.

32.26 - Draft Order Preparation and Review

The appropriate resource staff at the unit level in which the order will be signed shall prepare the draft order and ensure that all other required documentation, as set forth above, is included for the specific case file.

Orders should be prepared in the following sequence:

1. Describe the area to which the order applies in such a manner that a person can clearly recognize the area. Utilize rivers, streams, marshes, lakeshores, roads, geographic names, and other natural or constructed features, in addition to legal land descriptions.
2. Describe the road or trail to which the order applies as indicated in paragraph 1.
3. Specify the times during which the prohibitions apply; for example, May through August.
4. State clearly each prohibition that is applied.

An example of a properly formatted forest order (sec. 32.2, ex. 01) follows. Each proposed order should be routed to the appropriate staff which will perform its respective duty, sign off on the checklist and forward the materials to the next staff area. The checklist should accompany the proposed order throughout the process to ensure that proper documentation and review is completed. Any National Environmental Policy Act and Civil Rights Impact Analysis documentation prepared by the responsible official must accompany the proposed order.

A copy of the proposed order case file and order checklist shall be submitted to the unit's assigned Law Enforcement and Investigations patrol captain (PC) for a forest supervisor's order, or to the special agent in charge (SAC) for a Regional Forester's order. The PC or SAC shall review the proposed order to ensure that:

1. The proposed order is formatted properly;
2. The correct 36 CFR Part 261, Subpart B regulation is applied and properly cited;
3. The text of the order describing the prohibited act, exemptions, and applicable locations are sufficient, understandable, enforceable, and all necessary exhibits and attachments are clear, concise and defensible;
4. The order meets the local prosecutorial guidelines; and
5. The order complies with the Assessment of Need and Enforcement Plan and 36 CFR 261.50 (a)-(e).

After review by the appropriate PC or SAC, law enforcement personnel will facilitate any necessary legal review by Office of the General Counsel, coordinate any necessary edits or correction with the proposing unit, and track the timely return of the proposed order to the originating forest or regional staff.

After the review process is completed and the draft order returned to the proposing unit, it shall be executed and dated by the applicable line officer for implementation and posting as required by 36 CFR 261.51. The unit records custodian shall keep the original approved order in the order case file for maintenance and protection. A database of all orders should be maintained by the SAC to ensure consistency and accuracy with an order's status region wide (that is, active, superceded, or terminated). A consistent numbering format shall be established by each region. The suggested national standard is: Order # 10-05-20-07-01, where:

1. 10 is the Region, regional orders will designate forest and district as 00.
2. 05 is the forest.
3. 20 is the district.
4. 07 is the fiscal year.
5. 01 is the sequential numbering of the order for the issuing officer.

In the event of emergency conditions that may threaten public or employee safety, natural resources, or Government property, an order may be approved by the responsible line officer without prior completion of the above requirements. However, any interdisciplinary review and required supporting documentation for the relevant case file must be completed as soon as practicable.

32.3 - Posting of Orders

Place a copy of the order imposing each prohibition in all Forest Service administrative offices affected by the order. Orders must be posted in a location accessible to the general public (for example, front desk). Display each prohibition imposed by an order in such locations and manner to reasonably bring the prohibition to the attention of the public (36 CFR 261.51).

32.4 - Enforcement of Orders

Do not issue an order that applies a prohibition to a unit unless it is clearly needed, and a unit is prepared to implement it. Implementing an order requires enforcement action by forest officers authorized to do so. The issuing officer shall coordinate with appropriate law enforcement personnel to ensure implementation and ongoing updates of the enforcement plan for the order. Unit law enforcement planning (FSM 5310) may also be used to identify order enforcement needs and priorities on each unit.

33 - Renewals and Termination of Existing Orders

The issuing line officer shall review each issued order annually to determine if there is a continuing need for the prohibition or exemptions listed in the order, and that the order is not in conflict with other issued orders or current regulations under 36 CFR Part 261, Subpart A.

If an order is to be terminated, the affected staff shall prepare a Termination of Order. This document must declare the prohibition is removed on a specific date and must be executed and dated by the line officer position that issued the original order. See exhibit 01 for an example of a termination of an order. The Termination of Order must be attached to the original order and included in the case file. The complete case file must be maintained for at least 3 years after the date the original order is rescinded.

If an order has expired under its own terms, the appropriate staff officer shall be responsible for:

1. Determining if there is a need for continuance of the order.
2. Proposing necessary revisions.
3. Submitting the revised order to the line officer for approval following the checklist.
4. Ensuring a complete and properly executed revised order is included in the case file.
5. Ensuring that revised orders are reflected in agency records and public information signs, etc., and ensuring all forest officers are notified and provided a copy.

Existing orders should be reviewed promptly after expiration to ensure the need for each order remains. If the order remains necessary, the forest or region should ensure that the documentation identified in the policy for newly proposed orders already exists or is prepared for the existing order to ensure it is defensible and an administrative record exists that supports the order.

Regional and forest law enforcement plans (FSM 5310) may establish protocol deviating from the above review process for recurring orders that must be renewed on a periodic basis. Once such a protocol is established and approved, orders may be renewed without a comprehensive review. However, even with this streamlined process, it is recommended the responsible line officer execute and date a justification memo addressing the continuing need for the order and establishing new effective dates. The memo should then be included in the case file.

33 - Exhibit 01

Example of Termination of an Order

Termination of an Order

Chugach National Forest

Pursuant to Title 36 CFR 261.50(a) [and/or (b)], the prohibition listed in Order number 10-07-10-00-01, applicable to the Chugach National Forest, dated February 13, 2007, and signed by Jane Doe is hereby terminated.

Executed in Anchorage, Alaska, this 20th, day of March 2008 and effective as of this date.

Jane Doe
Forest Supervisor
Chugach National Forest

34 - Closure of National Forest System Lands to Hunting, Fishing, or Recreational Shooting

This section implements the public notice and public comment requirements for temporary or permanent closures of National Forest System lands to hunting, fishing, or recreational shooting through issuance of a forest order. This section does not apply to the issuance of a forest order for any other purposes.

34.01 - Authority

The principal laws and regulations governing the closure of National Forest System lands to hunting, fishing, or recreational shooting are:

1. John D. Dingell, Jr. Conservation, Management, and Recreation Act (Public Law No. 116-9, Title IV (Sportsmen's Access and Related Matters)). This act sets forth the national policy for hunting, fishing, and recreational shooting on National Forest System lands and provides that National Forest System lands are open to hunting, fishing, and recreational shooting unless closed by the Forest Service in accordance with the public notice and comment requirements specified in the act.
2. Organic Administration Act (16 U.S.C. 551). This act authorizes the Forest Service to regulate the occupancy and use of national forests.
3. Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(f)). This act authorizes the Forest Service to regulate the use and occupancy of national grasslands.
4. Title 36, Code of Federal Regulations, Part 261, Subpart B. This subpart authorizes prohibitions in areas designated by order.
 - a. 36 CFR 261.50. This section contains procedures for issuance of a forest order.
 - b. 36 CFR 261.51. This section contains requirements for posting of a forest order.
 - c. 36 CFR 261.58(m). This section authorizes issuance of forest orders prohibiting discharge of a firearm, air rifle, or gas gun.
 - d. 36 CFR 261.58(v). This section authorizes issuance of forest orders prohibiting hunting or fishing.

34.02 - Objective

To implement the statutory requirements for providing public notice and comment before temporarily or permanently closing an area of National Forest System lands to hunting, fishing, or recreational shooting through issuance of a forest order under title IV of the John D. Dingell, Jr. Conservation, Management, and Recreation Act.

34.03 - Policy

1. In accordance with the Forest Service's mission and applicable law:
 - a. Facilitate the expansion and enhancement of hunting, fishing, and recreational shooting opportunities on National Forest System lands, in consultation with the Hunting and Shooting Sports Conservation Council, the Sport Fishing and Boating Partnership Council, State and Tribal fish and wildlife agencies, and the public;
 - b. Conserve and enhance aquatic systems and the management of game species and the habitat of those species on National Forest System lands, including through hunting and fishing, in a manner that respects State management authority over wildlife resources and private property rights; and
 - c. Consider hunting, fishing, and recreational shooting opportunities as part of all land management plans and motor vehicle use designation decisions.
2. National Forest System lands must be open to hunting, fishing, and recreational shooting unless:
 - a. An area is closed to one or more of these uses by issuance of a forest order issued under 36 CFR 261.58(m) or 261.58(v) in accordance with the public notice and comment requirements in section 34 of this handbook;
 - b. The area is closed because of an emergency or in connection with a short-term special use permit as provided in section 34.2, paragraph 2; or
 - c. The entire area is closed to entry for another purpose by issuance of a forest order issued under 36 CFR Part 261, Subpart B.

34.04 - Responsibility

34.04a - Associate Deputy Chief, National Forest System

The appropriate Associate Deputy Chief, National Forest System, is responsible for approving all proposed hunting, fishing, or recreational shooting orders that will be temporary, all proposed and final hunting, fishing, or recreational shooting orders that will be permanent, and accompanying documents.

34.04b - Washington Office Director of Recreation, Heritage, and Volunteer Resources

The Washington Office Director of Recreation, Heritage, and Volunteer Resources is responsible for preparing, posting, and submitting the report identified in section 34.4.

34.04c - Washington Office Director of Law Enforcement and Investigations

The Washington Office Director of Law Enforcement and Investigations is responsible for:

1. Ensuring the appropriate Special Agent in Charge reviews all proposed and final hunting, fishing, or recreational shooting orders that will be temporary or permanent, emergency orders, short-term orders, and accompanying documents.
2. Coordinating with the Washington Office Director of Recreation, Heritage, and Volunteer Resources to prepare the report identified in section 34.4.

34.04d - Regional Foresters

The appropriate Regional Forester is responsible for approving and submitting all proposed and final hunting, fishing, or recreational shooting orders that will be temporary or permanent and accompanying documents to the appropriate Washington Office Associate Deputy Chief for approval.

34.04e - Responsible Officials

Responsible Officials are responsible for:

1. Ensuring that all proposed and final hunting, fishing, or recreational shooting orders that will be temporary or permanent, emergency orders, short-term orders, and accompanying documents comply with FSH 5309.11, chapters 32 and 34.
2. Ensuring that the appropriate Special Agent in Charge and local USDA Office of the General Counsel concurs with all proposed and final hunting, fishing, or recreational shooting orders that will be temporary or permanent, emergency orders, short-term orders, and accompanying documents.
3. Submitting the documents approved under section 34.04e, paragraph 2, to the appropriate Regional Forester.
4. Submitting all hunting, fishing, or recreational shooting orders, emergency orders, and short-term orders to the Washington Office Director of Recreation, Heritage, and Volunteer Resources for purposes of preparing the report identified in section 34.4.

34.05 - Definitions

Administrative Unit. A national forest, a national grassland, a purchase unit, a land utilization project, Columbia River Gorge National Scenic Area, Land Between the Lakes, Lake Tahoe Basin Management Unit, Midewin National Tallgrass Prairie, or other comparable unit of the National Forest System (36 CFR 212.1).

Advance Notice of Intent. A notice to inform the public that the Forest Service will be publishing a proposed temporary or permanent hunting, fishing, or recreational shooting order for public comment at a future date.

Emergency. For purposes of section 34 only, when hunting, fishing, or recreational shooting in an area of National Forest System lands is:

- a. Directly causing significant adverse effects on public health or safety, natural resources, or cultural resources; or
- b. Highly likely to directly cause significant adverse effects on public health or safety, natural resources, or cultural resources.

Emergency order. A hunting, fishing, or recreational shooting order that needs to be issued immediately to mitigate the adverse effects of an emergency. Examples of when issuance of an emergency order prohibiting hunting, fishing, or recreational shooting is justified include but are not limited to:

- a. Fire Conditions. When the Responsible Official determines that a shooting prohibition under 36 CFR 261.58(m) should be included in a fire restriction order issued under 36 CFR 261.52 because of the increased risk of igniting a wildfire from discharging a firearm.
- b. Natural Resource Damage. When a forest order is needed to prohibit shooting in or around the habitat of a sensitive or endangered species because of the high probability of imminent and irreversible damage to the species.
- c. Shooting-Involved Incident or Death. When a forest order is needed to prohibit shooting in the vicinity of a shooting-involved incident or death for purposes of allowing investigation and remediation.
- d. Public Safety. When a forest order is needed to prevent potentially imminent harm caused by shooting in the wildland-urban interface, or near developed recreation sites, National Forest System trails, or recreation residences on National Forest System lands.

Fishing. Recreational fishing, other than the harvesting of fish in whole or in part for commercial sale.

Forest Order. An order issued under 36 CFR Part 261, Subpart B, to close an area on National Forest System lands to entry or to restrict use of an area of National Forest System lands.

Hunting. The pursuit of wild animals or game.

Hunting, Fishing, or Recreational Shooting Order. A forest order issued under 36 CFR 261.58(m) prohibiting the discharge of a firearm or under 36 CFR 261.58(v) prohibiting hunting or fishing.

Indian Tribe. Has the same meaning as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), which defines “Indian tribe” to include a federally recognized Indian tribe, and includes an Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

Notice of Opportunity for Public Comment. A notice of the opportunity for public comment on a proposed temporary or permanent hunting, fishing, or recreational shooting order.

Permanent Hunting, Fishing, or Recreational Shooting Order. A hunting, fishing, or recreational shooting order that is in effect for more than 180 days, including an order that remains in effect until rescinded or an order that is in effect for 180 days or less and recurs annually in accordance with its terms.

Recreational Shooting. Target shooting using a firearm (including an antique firearm or replica), air rifle, or gas gun at random locations and times, at an ad hoc site, or at a range, which may include trap, skeet, or sporting clays.

Responsible Official. The Forest Service official authorized to issue a forest order under 36 CFR 261.50(a) and (b).

Short-Term Order. A hunting, fishing, or recreational shooting order that is issued in connection with an activity authorized by a special use permit that is less than 14 days in duration, such as a recreation event (36 CFR 251.51) or a bicycle or other sport race, a noncommercial group use, or commercial filming.

Temporary Hunting, Fishing, or Recreational Shooting Order. A hunting, fishing, or recreational shooting order that is in effect for 180 days or less, does not recur annually in accordance with its terms and is not an emergency order or a short-term order.

34.1 - Scope

1. Applicable Prohibitions. This section applies only to the issuance of a hunting, fishing, or recreational shooting order.

2. Area Closures. Forest orders that close an area of National Forest System lands to entry for other purposes and that do not specifically prohibit recreational shooting under 36 CFR 261.58(m) or hunting or fishing under 261.58(v) are not subject to the public notice and comment process in this section. Examples include but are not limited to an area closure to:

- a. Protect public safety during a fire;
- b. Prevent fire ignition and protect public safety during periods of extreme fire danger;
- c. Protect the public from construction activities; and
- d. Protect natural resources after a flood.

3. Existing Forest Orders. A hunting, fishing, or recreational shooting order that was in effect on March 12, 2019, will remain in effect for the period specified in the order.

34.2 - Public Notice and Comment Requirement

1. Except as provided in this section, public notice and comment are required in accordance with section 34 of this handbook before issuance of a hunting, fishing, or recreational shooting order.

2. Public notice and comment are not required before issuing a hunting, fishing, or recreational shooting order that is:

- a. An emergency order, as provided in section 34.21.
- b. A short-term order:

(1) The Responsible Official shall ensure that the appropriate Special Agent in Charge and the local Office of the General Counsel reviews the basis for the exception and justification for a short-term order before it is issued.

(2) Before issuing a short-term order that prohibits hunting or fishing, the Responsible Official shall coordinate with the appropriate State Fish and Wildlife agency and any affected Indian tribe.

34.21 - Emergency Hunting, Fishing, or Shooting Orders

1. Exception. As provided in section 34.2, paragraph 2, public notice and comment are not required under section 34 of this handbook before issuing an emergency order to prohibit hunting, fishing, or recreational shooting.

2. Emergency Order. The Responsible Official shall ensure that an emergency order:

- a. Applies to the smallest area of National Forest System land necessary to meet its purpose;
- b. Applies for the least amount of time necessary to meet its purpose. The duration of an emergency order must be:
 - (1) Only for so long as needed to mitigate the adverse effects that resulted in the emergency;
 - (2) Except for an emergency order issued in response to fire conditions, if the adverse effects that resulted in the need to issue an emergency order last longer than 180 days, the Responsible Official shall initiate the notice and comment process in section 34.3 to reissue the emergency order as a temporary or permanent order; and
 - (3) If reissuance of the hunting, fishing, or recreational shooting prohibition is necessary under clause (2), the Responsible Official shall consider whether to issue the order as a recurring order as described in section 34.35, paragraph 3.
- c. Complies with the directives generally applicable to forest orders in FSH 5309.11, chapter 32.

3. Justification. Before issuance of an emergency order, the Responsible Official shall prepare a detailed justification for the emergency order that is supported by scientific or other evidence, including but not limited to:

- a. The basis for a determination that an emergency exists and the need for the emergency order;
- b. The basis for the geographic scope of the emergency order;
- c. The basis for the duration of the emergency order;
- d. A map of the area of National Forest System lands that would be closed, as appropriate; and
- e. Any accompanying exhibits.

4. Review. Before issuing an emergency order, the Responsible Official shall ensure that the appropriate Special Agent in Charge and local Office of the General Counsel review the emergency order and justification.

5. Coordination. Before issuing an emergency order that prohibits hunting or fishing, the Responsible Official shall coordinate with the appropriate State Fish and Wildlife agency and any affected Indian tribe. When issuing an emergency order that prohibits

recreational shooting, the Responsible Official shall give prompt notice to the appropriate State Fish and Wildlife agency and any affected Indian tribe.

6. Notification. After issuing an emergency order, the Responsible Official shall promptly notify the Washington Office Director of Recreation, Heritage, and Volunteer Resources.

7. Posting. In addition to complying with the posting requirements in section 32.3, the Responsible Official shall also post the emergency order, the justification for the emergency order, and any accompanying map on the website of the affected administrative unit.

34.22 - Documentation for Hunting, Fishing, or Recreation Shooting Orders

When public notice and comment are required under section 34 of this handbook to issue an order to prohibit hunting, fishing, or recreational shooting, the Responsible Official shall prepare the following documentation:

1. Proposed Order. The Responsible Official shall ensure that the proposed hunting, fishing, or recreational shooting order:

- a. Applies to the smallest area of National Forest System land necessary to meet its purpose;
- b. Applies for the least amount of time necessary to meet its purpose; and
- c. Complies with the directives generally applicable to forest orders in FSH 5309.11, chapter 32.

2. Proposed Justification. The Responsible Official shall prepare a detailed justification for the proposed hunting, fishing, or recreational shooting order that is supported by scientific or other evidence, including but not limited to:

- a. The basis for the need for the order;
- b. The basis for geographic scope of the order;
- c. The basis for the determination that the order needs to be permanent or temporary;
- d. A map of the area of National Forest System lands that would be closed, as appropriate; and
- e. Any accompanying exhibits.

3. Regulatory Certifications for Proposed Permanent Order. If the proposed hunting, fishing, or recreational shooting order will be permanent, the Responsible Official shall

ensure that the regulatory certifications for a proposed order are completed. The template for the regulatory certifications for proposed orders that will be permanent are posted on the Forest Service recreation webpage. Regulatory certifications are not required for a proposed hunting, fishing, or recreational shooting order that will be temporary, an emergency order, or a short-term order.

4. Review. The Responsible Official shall ensure that the appropriate Special Agent in Charge and the local Office of the General Counsel review:

- a. The proposed hunting, fishing, or recreational shooting order;
- b. The proposed justification; and
- c. The regulatory certifications if the proposed order will be permanent.

5. Significance Designation for Proposed Permanent Order.

- a. If the proposed hunting, fishing, or recreational shooting order will be permanent, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget shall designate the proposed order as significant or as not significant based on the criteria listed in Forest Service Handbook 1109.12, section 31.11, paragraph 1.
- b. To obtain a significance designation from OIRA, the appropriate Regional Forester shall request that the Forest Service Washington Office, Directives and Regulations Branch, Strategic Planning, Budget & Accountability include the proposed hunting, fishing, or recreational shooting order on the list provided to OIRA as required by Forest Service Handbook 1109.12, section 31.11, paragraph 2.
- c. If OIRA designates the proposed hunting, fishing, or recreational shooting order as significant, the Forest Service Office of Directives and Regulations will submit the proposed order to OIRA for review.
- d. The Responsible Official shall include in the regulatory certifications required by section 34.22, paragraph 3, a certification that OIRA has designated the proposed order as significant or as not significant.

34.3 - Public Notice and Comment Process for Hunting, Fishing, or Recreational Shooting Orders

To provide an opportunity for public notice and comment on a temporary or permanent hunting, fishing, or recreational shooting order, the Responsible Official shall complete the following six-step process:

- 1. Coordinate with the appropriate State Fish and Wildlife agency (sec. 34.31, para. 1).

2. Coordinate with affected Indian tribes, as appropriate (sec. 34.31, para. 2).
3. Publish and otherwise disseminate an advance notice of intent before publication of a notice of opportunity for public comment (sec. 34.31, para. 3-4).
4. Publish a notice of opportunity for public comment (sec. 34.32).
5. Publish a response to comments received during the comment period (sec. 34.33, para. 1).
6. Issue the final hunting, fishing, or recreational shooting order (sec. 34.33).

34.31 - Advance Notice of Intent

1. Coordination with the Appropriate State Fish and Wildlife Agency. Before publication of an advance notice of intent (as required by section 34.33), the Responsible Official shall seek input from the appropriate State Fish and Wildlife agency on the proposed order.
2. Coordination with Indian Tribes. The Responsible Official shall give not less than a 30-day notice to, and seek input from, an Indian tribe that would be affected by the proposed order as required by Forest Service Handbook, section 1509.13, paragraph 5d.
3. Publication of an Advance Notice of Intent. The Responsible Official shall ensure that an advance notice of intent is published at least 7 days before publication of a notice of opportunity to comment:
 - a. In the *Federal Register*;
 - b. On the Forest Service's Website;
 - c. On the website of the affected administrative unit; and
 - d. In a local newspaper.

To ensure that the 7-day minimum period of advance notice is provided, the advance notice of intent must be published in all these venues no later than the date the period of advance notice commences. The Responsible Official is encouraged to publish the advance notice of intent simultaneously in these venues.

4. Other Dissemination of an Advance Notice of Intent. In addition to publication pursuant to paragraph 1 of this section, before publication of a notice of opportunity to comment, the Responsible Official shall ensure that an advance notice of intent be provided to the liaison for the private organizations that are signatories to the memorandum of understanding entitled "Federal Lands Hunting, Fishing, and Shooting Sports Roundtable Memorandum of Understanding," (2006) who will disseminate the

notice of intent to local offices, chapters, and affiliate organizations of the signatories that are located in the vicinity of the proposed hunting, fishing, or recreational shooting order. This additional notification must be provided no later than the date the period of advance notice commences. The Responsible Official is encouraged to provide the additional notification simultaneously with publication of the advance notice of intent. (sec. 34.31, para. 1).

5. Contents of an Advance Notice of Intent. An advance notice of intent must contain the following:

a. Description of the Area to be Subject to the Proposed Hunting, Fishing, or Recreational Shooting Order. An advance notice of intent will briefly describe the proposed hunting, fishing, or recreational shooting order, including a description of the area of National Forest System lands that would be covered by the proposed order, the applicable prohibition that would be applied to the area of National Forest System lands (36 CFR 261.58(m), 261.58(v), or both), whether the proposed order would be temporary or permanent, and the duration of the proposed order.

b. Justification for the Proposed Order. The advance notice of intent will briefly describe the justification for the proposed hunting, fishing, or recreational shooting order, including an explanation of the reasons and necessity for the proposed order. The justification provided in the advance notice of intent may summarize the detailed rationale provided in the justification posted on the website of the affected administrative unit (sec. 34.31, para. 6).

c. Period of Advance Notice. An advance notice of intent must specify the period of advance notice. The period of advance notice shall be determined by the Responsible Official and shall be at least 7 days. The advance notice of intent will specify the date on which the public comment period is expected to begin and end for the proposed hunting, fishing, or recreational shooting order and the website on which the Agency will post the notice of opportunity for public comment.

d. Sample Federal Register Notice. A sample Federal Register Notice for the advance notice of intent is available on the Forest Service recreation webpage.

6. Review. The Responsible Official shall ensure that the appropriate Special Agent in Charge and local Office of the General Counsel review the description of and justification for a proposed hunting, fishing, or recreational shooting order.

7. Posting of Documentation. When an advance notice of intent is published in the *Federal Register*, the Responsible Official shall ensure that the following is posted on the website of the affected administrative unit:

a. A copy of the proposed hunting, fishing, or recreational shooting order prepared as required by section 34.22, paragraph 1.

- b. A detailed justification for the proposed hunting, fishing, or recreational shooting order prepared as required by section 34.22, paragraph 2.
- c. A map of the area of National Forest System lands that would be closed, as appropriate.
- d. Any accompanying exhibits.
- e. The regulatory certifications required by section 34.22, paragraph 3.

34.32 - Notice of Opportunity for Public Comment

The notice of opportunity for public comment must:

- 1. Specify the comment period for the proposed hunting, fishing, or recreational shooting order. For a proposed temporary order, the comment period shall be at least 30 days. For a proposed permanent order, the comment period shall be at least 60 days.
- 2. Provide directions for submitting comments, with a link to an electronic comment form on the Comment and Analysis Response Application (CARA) platform.

34.33 - Issuance of Final Hunting, Fishing, or Recreational Shooting Orders

- 1. Response to Public Comments. After the close of the comment period and before issuing a final hunting, fishing, or recreational shooting order, the Responsible Official shall prepare a response to comments received on the proposed order during the comment period. The response to comments must explain how:
 - a. Any significant issues raised by the comments were resolved; and
 - b. If applicable, how resolution of those issues affected the proposed order or the justification for the proposed order.
- 2. Final Order. The Responsible Official shall ensure that the final hunting, fishing, or recreational shooting order:
 - a. Applies to the smallest area of National Forest System land necessary to meet its purpose;
 - b. Applies for the least amount of time necessary to meet its purpose; and
 - c. Complies with the directives generally applicable to forest orders in FSH 5309.11, chapter 32.

3. Final Justification. The Responsible Official shall ensure that the justification for the final hunting, fishing, or recreational shooting order is supported by scientific or other evidence, including but not limited to:

- a. The basis for the need for the order;
- b. The basis for geographic scope of the order;
- c. The basis for the determination that the order needs to be permanent or temporary;
- d. A map of the area of National Forest System lands that would be closed, as appropriate; and
- e. Any accompanying exhibits.

4. Regulatory Certifications for Final Permanent Order. If the final hunting, fishing, or recreational shooting order will be permanent, the Responsible Official shall ensure that the regulatory certifications for a final order are completed. The template for the regulatory certifications for final orders are posted on the Forest Service recreation webpage. Regulatory certifications are not required for a final hunting, fishing, or recreational shooting order that will be temporary, an emergency order, or a short-term order.

5. Review. The Responsible Official shall ensure that the appropriate Special Agent in Charge and the local Office of the General Counsel review:

- a. The response to comments;
- b. The final hunting, fishing, or recreational shooting order;
- c. The final justification; and
- d. If the final order will be permanent, the regulatory certifications.

6. Significance Designation for Final Permanent Order. If the final hunting, fishing, or recreational shooting order will be permanent, the appropriate Regional Forester shall request that the Forest Service Washington Office, Directives and Regulations Branch, Strategic Planning, Budget & Accountability submit the final order to OIRA for re-designation of significance. If OIRA designates the final order as significant, the Forest Service, Directives and Regulations Branch shall submit the final order to OIRA for review. The Responsible Official shall include in the regulatory certifications required by section 34.33, paragraph 3, a certification that OIRA has designated the final order as significant or as not significant.

7. Posting of a Final Hunting, Fishing, or Recreational Shooting Order. After issuance of a final hunting, fishing, or recreational shooting order, the Responsible Official shall ensure that the following are posted on the website of the affected administrative unit:

- a. The final order;
- b. The justification for the final order;
- c. A map of the area of National Forest System lands that would be closed, if appropriate;
- d. Any accompanying exhibits;
- e. The response to comments on the proposed order; and
- f. The regulatory certifications required by section 34.33, paragraph 3.

8. Publication of the Notice of Availability for Final Permanent Order. After issuance of a final hunting, fishing, or recreational shooting order that is permanent, the Responsible Official shall request that the Forest Service, Directives and Regulations Branch submit a notice of availability of the final order to the Office of the Federal Register for publication.

34.34 - Concurrent Compliance with the Notice and Comment Processes under 36 CFR Parts 218 and 219

A hunting, fishing, or recreational shooting order may be issued as part of a larger, multi-faceted project that is documented in an environmental assessment or and environmental impact statement prepared under the National Environmental Policy Act (NEPA) and that is subject to the notice and comment and objection process under 36 CFR Part 218. A hunting, fishing, or recreational shooting order also may be carried out to implement a plan amendment that is subject to the notice and comment and pre-decisional review process under 36 CFR Part 219. In either case, the notice and comment requirements under NEPA and 36 CFR Parts 218 and 219 do not meet all elements of the public notice and comment process in section 34 of this handbook. The public notice and comment process in section 34 of this handbook for a hunting, fishing, or recreational shooting order that is part of a larger, multi-faceted project or that implements a plan amendment should be carried out separately but concurrently with the notice and comment process under 36 CFR Part 218 or 219, unless the Responsible Officer determines that carrying out the process concurrently is not advisable.

34.35 - Temporary Hunting, Fishing, or Recreational Shooting Orders

1. Reissuance of Temporary Orders. A temporary hunting, fishing, or recreational shooting order covering the same area of National Forest System lands and subject to the same activities may not be reissued more than 3 consecutive times. Each time the order is

reissued, the Responsible Official shall comply with the public notice and public comment procedures in section 34 of this handbook.

2. Conversion of a Temporary Order to a Permanent Order. Any temporary hunting, fishing, or recreational shooting order must not become permanent without additional public notice and opportunity to comment in accordance with section 34 of this handbook.

3. Recurring Orders. If a recurring hunting, fishing, or recreational shooting order is needed, for example, to protect a seasonal bird nesting area or in response to fire conditions, a temporary order may be issued for each recurrence, as needed, subject to paragraph 1 of this section. Alternatively, the order may be published for public comment as a permanent order in accordance with the requirements in section 34 of this handbook, which goes into effect when the need specified in the justification for the hunting, fishing, or recreational shooting order arises.

34.36 - Revisions to Hunting, Fishing or Recreational Shooting Orders

1. Revisions to Permanent Orders. A permanent hunting, fishing, or recreational shooting order that has been issued in compliance with the public notice and comment requirements in section 34 of this handbook may be revised or rescinded before its expiration. To implement a revision or rescission, the Responsible Official must comply with the public notice and comment requirements in section 34 of this handbook:

- a. If the proposed revision expands the scope of the order, such as by expanding the geographic area covered or the activities prohibited;
- b. If the proposed revision narrows the scope of the order, such as by decreasing the geographic area covered or the activities prohibited (for example by adding an exemption to the order); or
- c. If the provision revision rescinds the order in its entirety.

2. Revisions to Temporary Orders. A temporary hunting, fishing, or recreational shooting order that has been issued in compliance with the public notice and comment requirements in section 34 of this handbook may be revised or rescinded before its expiration.

- a. If the proposed revision expands the scope of the temporary order, such as by expanding the geographic area covered or the activities prohibited, the Responsible Official shall comply with the public notice and comment requirements in section 34 of this handbook to implement the revision
- b. If the proposed revision narrows the scope of the temporary order, such as by decreasing the geographic area covered or the activities prohibited (for example by adding an exemption to the order) or if the order is rescinded, the Responsible

Official does not need to comply with the public notice and comment requirements in section 34 of this handbook to implement the revision.

34.4 - Reporting Requirements

The Washington Office Director of Recreation, Heritage, and Volunteer Resources shall annually perform the following reporting requirements:

1. Post to the Forest Service's Website a list of all areas of National Forest System lands temporarily or permanently subject to a hunting, fishing, or recreational shooting order; and
2. Provide a report to the Committee on Energy and Natural Resources and the Committee on Agriculture, Nutrition, and Forestry in the Senate and the Committee on Natural Resources and the Committee on Agriculture in the House of Representatives that includes:
 - a. A list of each area of National Forest System lands temporarily or permanently subject to a hunting, fishing, or recreational shooting order;
 - b. The acreage of each order; and
 - c. A survey of:
 - (1) The aggregate areas and acreage subject to a temporary or permanent hunting, fishing, or recreational shooting order in each State; and
 - (2) The percentage of National Forest System lands in each State subject to a temporary or permanent hunting, fishing, or recreational shooting order.

35 - Issuing Regulations Under Title 36, Code of Federal Regulations, Part 261, Subpart C

Pursuant to Title 7 Code of Federal Regulations (CFR), Section 2.60, the Chief and delegated Regional Foresters may promulgate either permanent or interim Subpart C regulations for specific purposes identified in 36 CFR 261.70(a).

35.1 - Procedures

The format for regional regulations must be the same as set out in Title 36, Code of Federal Regulations (CFR), Part 261, Subpart B except that the Regional Forester shall sign the regional regulation. Only line officers defined in 36 CFR 261.70(a) may sign a regulation. This section requires the signature of the named line officer; therefore, neither deputies nor actings should sign regulations. Where the line officer position is vacant or exigencies exist, coordinate designation or delegation needs with the U.S. Department of Agriculture, Office of the General Counsel.

Prohibitions issued under this authority shall not be contrary to or duplicate any prohibition that is established under existing regulations. The broader or more permanent a Subpart B Order becomes, the more carefully the need for a regional regulation should be considered. Orders that are continually renewed and therefore practically “permanent”, or orders that establish prohibitions to be applied throughout a district, forest, or region, should be closely reviewed to determine whether promulgating permanent regulations is the appropriate mechanism to implement the prohibition. Orders should not be used to establish policy. Additionally, prohibitions in orders that deviate significantly or critically from the exact Subpart B prohibition should be considered for establishment as a regulation under this section.

Line officers, in determining the need for a prohibition under this authority, must consider other management alternatives to deal with the problem. Upon determining a need for a prohibitive regulation under this authority, line officers shall submit a proposed sample regulation along with supportive evidence to the Regional Forester when requesting issuance.

The Regional Forester will work jointly with the Special Agent in Charge in the review and processing of the proposed regulations and consultations with the originating unit, affected functional staff, and the Office of the General Counsel.

The regulation shall be submitted to the *Federal Register* over the Regional Forester's signature in accordance with the procedures set forth in Title 5, United States Code (U.S.C.), section 553 and agency policy and procedures in FSM 1010.

In a situation when the issuing officer determines that a notice of proposed rulemaking and public participation are impracticable, unnecessary, or contrary to the public interest, the issuing officer shall issue, with the concurrence of the Chief, an interim regulation containing expiration date. No interim regulation issued under 36 CFR 261.70(d) would be effective for more than 90 days unless adopted as a permanent rule after a notice of proposed rulemaking under 5 U.S.C. 553(b) and (c).

35.2 - Exemptions

Utilize exemptions as outlined in Title 36, Code of Federal Regulations, section 261.50(e).