



**FOREST SERVICE HANDBOOK
NATIONAL HEADQUARTERS (WO)
WASHINGTON, DC**

FSH 5309.11 – LAW

ENFORCEMENT HANDBOOK

CHAPTER 30 - VIOLATIONS

Effective Date:

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Posting Instructions: Post by document at the end of the chapter. Retain this transmittal as the first page(s) of this document. The last interim directive was 2709.11-2018-1 to chapter 30.

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| New Document | | X Pages |
| Superseded Document(s) (Interim Directive Number and Effective Date) | | X Pages |

Digest:

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.

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 Wildlife and Hunting Heritage 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 shall be open to hunting, fishing, and recreational shooting, unless 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 or unless the entire area is closed for another purpose by issuance of a forest order issued under 36 CFR Part 261, Subpart B.

34.04 – Responsibility

34.04a – 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.

34.04b – Washington Office Director of Law Enforcement and Investigations

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

1. Ensuring the Special Agent in Charge reviews all hunting, fishing, or recreational shooting orders before issuance to ensure compliance with sections 32 and 34 of this handbook.
2. Coordinating with the Washington Office Director of Recreation, Heritage, and Volunteer Resources to prepare the report identified in section 34.4.

34.04c – Responsible Officials

Responsible Officials are responsible for:

1. Ensuring that all hunting, fishing, or recreational shooting orders comply with sections 32 and 34 of this handbook.
2. Ensuring review and approval by the Special Agent in Charge of all hunting, fishing, or recreational shooting orders before:
 - a. the notice of intent is provided under section 34.31 and before posting of the order as required by section 34.33, paragraph 3; or
 - b. before issuance of an order in an emergency or under the exception in section 34.1, paragraph 2.
3. Ensuring review and approval by USDA Office of the General Counsel of all hunting, fishing, or recreational shooting orders before:
 - a. the notice of intent is provided under section 34.31 and before posting as required by section 34.33, paragraph 3; or
 - b. before issuance of an order in an emergency or under the exception in section 34.1, paragraph 2.
4. Submitting all hunting, fishing, or recreational shooting 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).

Emergency. For purposes of this section (34) only, when hunting, fishing, or recreational shooting in an area of National Forest System lands is directly causing or is highly likely to directly cause significant adverse effects on public health or safety, natural resources, or cultural resources, and a prohibition on hunting, fishing, or recreational shooting is needed immediately to mitigate or prevent those adverse effects. Examples of when issuance of an emergency hunting, fishing, or recreational shooting order 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.

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, air rifle, or gas gun, or under 36 CFR 261.58(v) prohibiting hunting or fishing.

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.

Notice of Opportunity for Public Comment. A notice requesting 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, 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).

Temporary Closure. A closure that is in effect for 180 days or less and does not recur annually in accordance with its terms.

34.1 – Public Notice and Comment Requirement

1. Except as provided in section 34.1, paragraph 2, 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:

a. In an emergency. The justification for the order shall document the basis for the determination that an emergency exists. The responsible official shall ensure that the local Office of the General Counsel reviews the emergency determination and justification for the order before it is issued.

b. 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. The responsible official shall ensure that the local Office of the General Counsel reviews the basis for the exception and justification for the order before it is issued.

34.2 – 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 four-step process:

1. Publish and otherwise disseminate a notice of intent before publication of a notice of opportunity for public comment (sec. 34.31, para. 1-2).
2. Coordinate with the appropriate state fish and wildlife agency (sec. 34.31, para. 3).
3. Publish a notice of opportunity for public comment (sec. 34.32).
4. Publish a response to comments received during the comment period (sec. 34.33).

34.3 – Scope

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

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

3. 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.

34.31 – Notice of Intent

1. Publication of a Notice of Intent. The responsible official shall ensure that a 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 for publication of a notice of intent, it shall 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 notice of intent simultaneously in these venues.

2. Other Dissemination of a 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 a 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," 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 shall 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 notice of intent. (sec. 34.31, para. 1).

3. Coordination with the Appropriate State Fish and Wildlife Agency. Before or during the period between publication of a notice of intent and the end of the comment period for a proposed hunting, fishing, or recreational shooting order, the responsible official shall seek input from the appropriate state fish and wildlife agency on the proposed order.

4. Contents of a Notice of Intent. A notice of intent shall contain the following:

a. Description of the Area to be Subject to the Proposed Hunting, Fishing, or Recreational Shooting Order. A notice of intent shall 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 notice of intent shall 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 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. A notice of intent shall 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 notice of intent shall 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. A sample Federal Register Notice for the notice of intent is available on the Forest Service recreation webpage.

5. Office of the General Counsel Review. The responsible official shall ensure that the local Office of the General Counsel reviews the description of and justification for a proposed hunting, fishing, or recreational shooting order.

6. Posting of Documentation. When a notice of intent is published, 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. The responsible official shall ensure that:

(1) The area of National Forest System lands that would be subject to the proposed order be no larger than necessary to meet its purpose; and

(2) The duration of the proposed order be no longer than necessary to meet its purpose.

b. A detailed justification for the proposed hunting, fishing, or recreational shooting order, including but not limited to the basis for determining that the order needs to be

permanent or temporary or the basis for determining that the order is necessary to address an emergency, and any accompanying exhibits; and

c. As appropriate, a map of the area of National Forest System lands that would be closed.

34.32 – Notice of Opportunity for Public Comment

The notice of opportunity for public comment shall:

a. 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.

b. 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 shall 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. Compliance with Directives. The responsible official shall ensure that issuance of a final hunting, fishing, or recreational shooting order comply with the directives generally applicable to forest orders in FSH 5309.11, Chapter 32.

3. 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 be posted on the website of the affected administrative unit:

a. The final order;

b. The justification for the final order; and

c. The response to comments on the proposed order.

34.34 – Use of the Public Notice and Comment Process for Proposed Orders to Meet the Public Involvement Requirement under the National Environmental Policy Act

If a determination is made to prepare an environmental assessment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) for a proposed hunting, fishing, or recreational shooting order, the notice and public comment process in section 34 of this handbook would meet the public involvement requirements for an environmental assessment.

34.35 – 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 an environmental impact statement prepared under 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 of the 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.

34.36 – 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 shall not become permanent without additional public notice and opportunity to comment in accordance with section 34 of this handbook.
3. Recurring Short-Term Orders. If a recurring, short-term hunting, fishing, or recreational shooting order is needed, for example, to protect a seasonal bird nesting area, 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.

34.37 – Revisions to Hunting, Fishing or Recreational Shooting Orders

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

1. If the proposed revision expands the scope of the order, such as by expanding the geographic area covered or the activities prohibited, the responsible official must comply with the public notice and public comment requirements in section 34 of this handbook to implement the revision.
2. 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), the responsible official does not need to comply with the public notice and public 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 annually shall:

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.