FSH 5309.11 – LAW ENFORCEMENT HANDBOOK

CHAPTER 30 - VIOLATIONS

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Approved:  Tina J. Terrell
Acting Deputy Chief, NFS

Date Approved:

Posting Instructions  Directives are numbered consecutively by handbook number and calendar year.  Post by document at the end of the chapter.  Retain this transmittal as the first page(s) of this document.  The last directive was 5309.11-2008-2 to chapter 30.

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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.
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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 an 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).