Section 4103 of the John D. Dingell, Jr., Conservation, Management, and Recreation Act, Public Law 116–9 (Dingell Act) requires public notice and comment for issuance of orders that temporarily or permanently close National Forest System lands to hunting, fishing, or recreational shooting, except in an emergency. On August 17, 2020, the Agency published a notice that it was issuing directives to implement section 4103 of the Dingell Act and seeking public comment on the proposed definition of “emergency” in the directives.

The Agency received timely comments from 32 respondents, including members of the public, a for-profit organization, and local governments. Many of the responses received were not germane to the proposed definition of the term “emergency” and therefore are not addressed in this response. The comments are addressed below, organized by topic. The Agency also received comments from two Indian tribes during the 120-day tribal consultation period conducted in accordance with EO 13175 and Forest Service Handbook 1509.13.

**General Comments on the Proposed Directive**

**Comment:** Several commenters raised concerns about the clarity of the process for issuing an emergency order that prohibits hunting, fishing, or recreational shooting.

**Response:** FSH 5309.11, section 34, has been revised to include a new section 34.12 that specifies the process for issuance of an emergency order prohibiting hunting, fishing, or recreational shooting. Section 34.12 addresses the permissible geographic size and duration of an emergency order, the elements that must be addressed in the justification prepared for the emergency order, the requirement for review by the Special Agent in Charge and the Office of General Counsel, the requirement to coordinate with the appropriate state fish and wildlife agency and affected Indian tribes, and requirement to post an emergency order.

**Geographic Size of Emergency Closures**

**Comment:** Section 4103(a)(2) of the Dingell Act requires that a hunting, fishing, or recreational shooting closure shall be issued to cover the smallest area required for public safety, administration, or compliance with applicable laws. Several commenters noted that this requirement applies not only to hunting, fishing, and recreational shooting orders that are issued pursuant to the public notice and comment procedures in FSH 5309.11, section 34, but also to emergency orders that prohibit hunting, fishing, or recreational shooting.

**Response:** FSH 5309.11, section 34.21, paragraph 2(a), has been added to require that an emergency order be issued to cover the smallest area necessary to meet its purpose.

**Duration of Emergency Closures**

**Comment:** Section 4103(a)(2) of the Dingell Act requires that a hunting, fishing, or recreational shooting closure shall be in effect for the least amount of time required for public safety, administration, or
compliance with applicable laws. Several commenters noted that this requirement applies not only to hunting, fishing, and recreational shooting orders that are issued pursuant to the public notice and comment procedures in FSH 5309.11, section 34, but also to emergency orders prohibiting hunting, fishing, or recreational shooting closures.

Response: FSH 5309.11, section 34.21, paragraph 2(b), has been added to require that an emergency order be in effect for the least amount of time necessary to meet its purpose.

Comment: Other commenters recommended additional limitations on the duration of an emergency order. One commenter suggested that an emergency order should be limited to a duration of 180 days or less (the duration of a temporary order). Another commenter noted that there was no provision for re-evaluating or rescinding an emergency order even where the emergency itself is no longer ongoing. This commenter recommended that the Agency require that an emergency order be re-evaluated every 30 days. One commenter observed that an emergency calls for urgent action to address unforeseen circumstances but that, after a period of time, action is no longer urgently required, and the circumstances giving rise to the emergency are no longer unforeseen. This commenter suggested that the circumstances giving rise to the need for an emergency should not constitute an "emergency" for an indefinite period and recommended that the definition of "emergency" should include some time limitation (the least amount of time necessary to address the significant adverse effects or 90 days, whichever period is shorter) to ensure that the Dingell Act's requirement that emergency closures are limited to the least amount of time is met.

Response: The Agency agrees that a temporal limitation on emergency orders is warranted. FSH 5309.11, section 34.21(b), has been added to include limitations on the duration of an emergency order. An emergency order may remain in effect only as necessary to mitigate the adverse effects that resulted in the emergency and may not be in effect for longer than 180 days. By then, the Agency will need to rescind the emergency order or initiate the public notice and comment process in new section 34 so that it can reissue the order as a temporary or permanent order. If appropriate, the Agency will consider whether to reissue the emergency order as a permanent short-term recurring order as provided in section 34.36, paragraph 3.

Emergency Orders to Address Public Safety Concerns

Comment: One commenter recommended the removal of the authority to issue an emergency order to address public safety concerns on the basis that recreational shooting in the wildland-urban interface, or near developed recreation sites, National Forest System trails, or recreation residences on National Forest System lands should be known and therefore would not constitute an emergency.

Response: The Agency disagrees with the factual assumption made by the commenter. The authority to issue an emergency order to protect immediate threats to public health and safety is a primary concern of the Agency.

Emergency Orders to Protect Cultural Resources

Comment: One commenter questioned why the protection of a cultural resource would require the issuance of an emergency order.
Response: An emergency order to protect a cultural resource, such as an archeological resource, would be issued if there is an immediate threat that shooting will cause, or continue to cause, damage to the resource.

Coordination with State Fish and Wildlife Agencies

Comment: Four commenters recommended that the Agency should consult with State fish and wildlife agencies before issuing an emergency order hunting, fishing, or recreational shooting. One of these commenters stated that exclusion of state wildlife and fish agencies in the assessment of whether an emergency order is needed does not meet the purposes of creating enhanced public access to hunting, fishing, and recreational shooting on National Forest System lands. Two of the commenters focused on the impact of hunting closures on sportsmen and State-issued seasonal hunting licenses, particularly during hunting season. One commenter also noted that hunting closures also have the potential to greatly impact the State’s annual harvest needs for managing wildlife populations.

Response: The requirement in section 4103(b)(1)(A) of the Dingell Act to consult with State fish and wildlife agencies on a hunting, fishing, or recreational shooting order does not apply to emergency orders. Nonetheless, FSH 5309.11, section 34.21, paragraph 5, has been added to require coordination with State fish and wildlife agencies before an emergency order prohibiting hunting or fishing is issued. These orders are less common than orders prohibiting recreational shooting and have the potential to negatively impact the state's wildlife and fisheries management objectives and therefore impacting the local economy. Additionally, the Agency has revised the directives to require that prompt notice after-the-fact be given to State fish and wildlife agencies when an emergency order prohibiting recreational shooting is issued. Emergency orders prohibiting recreational shooting are needed to address public safety concerns that must be mitigated immediately, leaving no time to coordinate in advance of issuance.

Coordination with Other Entities

Comment: Two commenters recommended that the Agency coordinate with the local sheriff or other law enforcement agency in advance of issuing an emergency order prohibiting hunting, fishing, or recreational shooting. Another commenter recommended that the Agency coordinate with other affected State agencies.

Response: Although not required by section 4103(b)(1)(A) of the Dingell Act, FSH 5309.11, section 34.21, paragraph 5, has been added to require coordination with and notification of State fish and wildlife agencies for an emergency hunting, fishing, or recreational shooting order. The Agency has determined that this additional coordination is sufficient to meet the purposes of the Dingell Act.

Examples of Emergency Orders

Comment: One commenter raised a concern with the lack of a definition of wildland-urban interface in the example of when an emergency order would be justified to address public safety, namely, to prevent potentially imminent harm caused by shooting in the wildland-urban interface, near developed recreation sites, National Forest System trails, or recreation residences on National Forest System lands. The commenter recommended that the example be modified by removing the term wildland-urban interface and expanding the area in which a public safety concern may arise. Specifically, the commenter suggested modifying the example to cover an emergency order that is needed to
prevent the high probability of imminent harm caused by shooting more than 150 yards from a residence, building, campsite, developed recreation site, or occupied area on National Forest System lands.

Response:

The proposed definition of the term “emergency” contained four examples of when issuance of an emergency hunting, fishing, or recreational shooting order would be justified, namely, to address fire conditions, natural resource damage, a shooting-involved incident or death, and public safety. The examples are not intended to limit the circumstances when issuance of an emergency order would be appropriate. The examples highlight likely situations where issuance of an emergency order would be justified, but an emergency order may be justified in other situations. The Agency has modified the definition of the term “emergency” in FSH 5309.11, section 34, to include the definition of “emergency order.” Between the two definitions, the substantive provisions remain the same. The examples of when issuance of an emergency hunting, fishing, or recreational shooting order is justified are now in the definition of “emergency order.”

Emergency orders issued to address public safety concerns are more likely to be needed in areas where there are user conflicts such as the areas cited in the example, including the wildland-urban interface. Because the example is not intended to limit the circumstances when issuance of an emergency order would be appropriate to address public safety concerns, there is no need to define the term wildland-urban interface or to expand the areas in which user conflicts may present a public safety concern.

Comment: One commenter recommended adding another circumstance to the example of when an emergency order would be justified to address a public safety concern, namely, when shooting occurs near locations of individuals furnished protective services under federal law.

Response: For the reasons stated above, there is no need expand the example of when an emergency order may be needed to address a public safety concern.

Comment: One commenter raised a concern with the example of when an emergency order would be justified in response to fire conditions, namely, because of the increased risk of igniting a wildfire from discharging a firearm. The commenter found the example to be vague, noting that wildfire ignition danger depends on a variety of factors.

Response: The Agency considers a number of factors in determining when to issue a fire restriction order and whether to include a shooting probation in that order. These factors include prolonged periods of unusually high fire danger and severe burning conditions, fire weather, and local fire conditions.

Exemption for hunting and fishing orders

Comment: One commenter advocated that the authority to issue an emergency order should not apply to prohibitions on hunting and fishing. Another commenter, noting the lack of an example of an emergency fishing closure, supported exempting an emergency order prohibiting fishing. A third commenter noted that situations when a fishing prohibition would be necessary would likely require issuance of a general closure to entry.
Response: FSH 5309.11, section 34.21, implements the authority in the Dingell Act to issue an emergency order prohibiting hunting, fishing, or recreational shooting. As explained above, the Agency has gone beyond the statutory requirements in the Dingell Act to require advance coordination with State fish and wildlife staffs before issuing hunting or fishing emergency orders. Additionally, the need to issue an emergency order prohibiting fishing would arise only in rare instances. As noted, an emergency related to fishing would likely be addressed by general closure of entry to an area. For this reason, no example of an emergency order prohibiting fishing was given.

Tribal Concerns

Comment: One Indian tribe commented that a hunting, fishing, or recreational shooting order should not conflict with any treaty obligations of the United States. The Tribe requested that the directives clearly articulate that these preexisting rights cannot be suspended or abrogated by a hunting, fishing, or recreational shooting order and that any order affecting the rights and prerogatives of tribal citizens must have the concurrence of the tribes’ governing bodies.

Response: The Dingell Act does not expand the Agency’s pre-existing authorities to issue an order prohibiting hunting, fishing, or recreational shooting under 36 CFR 261, Subpart B. These authorities do not authorize issuance of a hunting, fishing, or recreational shooting order that conflicts with treaty obligations of the United States. Instead, the Dingell Act limits the Agency’s authority by imposing additional procedural requirements for issuance of an order prohibiting hunting, fishing, or recreational shooting. Consistent with the Agency tribal consultation guidance in Forest Service Handbook 1506-13, the Agency has revised the directives to add a requirement that the Agency give notice to, and seek input from, any Indian tribe affected by a proposed hunting, fishing, or recreational shooting order.

Comment: Another Indian tribe agreed that issuance of an emergency order prohibiting hunting, fishing, or recreational shooting may be necessary to protect cultural or historical sites because they are vulnerable to damage from shooting. The Tribe recommended that the term “cultural resources” used in the definition of emergency should be defined.

Response: The Agency gives the term cultural resources its broadest possible meaning and has determined that it is not necessary to define the term.