

Forest Service Special Orders and Emergency Closure Orders

Land managers prefer helping visitors understand best practices to protect natural resources instead of restricting visitors with regulations and enforcement of regulations. However, sometimes either short-term or long-term regulations need to be applied to address changed conditions and protect resources or visitor experiences.

As the coronavirus pandemic canceled or changed most Americans' travel plans, people flocked to public lands in record numbers—many for the first time. Although the outdoor spaces we manage are a vital haven to visitors trying to cope with the pandemic, land managers are finding that there's a steep learning curve when it comes to these visitors' responsible use. Many wilderness areas experienced higher use in 2020 and, in some cases, with increased use comes increased problems: driving or parking in fragile locations, trampling vegetation, not packing out trash, camping in inappropriate locations, such as close to water or alongside trails, and not completely putting out campfires. Some of these problems present significant safety risks.

With increased visitation even at traditionally less frequented areas, public land managers have recognized the need to promote responsible recreation as well as place some restriction on use. To address these changes in use and impacts to the resource, land managers need to be aware of all the tools at their disposal. This document is intended to help managers understand how they can use regulations and special orders.

REGULATIONS

The rules described in 36 Code of Federal Regulations 261 (CFR) apply to all National Forests. These regulations have been made by the Secretary of Agriculture to insure the enjoyment of all users of the National Forest System. These CFRs provide commonsense rules meant to control actions that cause damage to natural resources and facilities, as well as actions that cause unreasonable disturbances or safety risks for National Forest visitors.

SPECIAL ORDERS

Regional Foresters and Forest Supervisors may issue additional special orders closing or restricting the use of certain areas, if the need arises to address particular management problems. The special orders signed by Regional Foresters and Forest Supervisors may vary in duration. Special orders are posted on forest websites and at Forest Service Ranger District offices and Forest Supervisor's offices in the office nearest to the area affected.

Some reasons for implementation of special orders include to protect public safety, prevent resource damage, preserve a particular area's setting (such as non-motorized access), and protect wildlife populations, among others. Special orders may prohibit a specific activity or impose permit requirements.

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 going through the sometimes-lengthy review process that a longer-term special order requires.

Forest Service Handbook 5309.11 – Law Enforcement Handbook, Chapter 30 outlines how to establish local special orders to address long-term concerns as well as immediate needs. The sections provided below are directly from Chapter 30 and apply to issuing long-term and short-term special orders. Some key information is highlighted. The Chapter 30 material is followed by examples of special orders from the Daniel Boone and Hoosier National Forests.

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 defendable;
4. The order meets the local prosecutorial guidelines;
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, superseded, 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.

Sample Emergency Closure Orders for Resource Protection

DANIEL BOONE NATIONAL FOREST
Cumberland Ranger District
Stanton, KY

ORDER NO. 08-02-12-20-070

EMERGENCY CLOSURE ORDER

"Red River Gorge Safety & Protection Closure"

Pursuant to the provisions of 16 U.S.C., Section 551, and Title 36 C.F.R., Section 261.50 (a) and 261.50 (b), the following prohibition applies to The "**Red River Gorge Geologic Area and Special Recreation Permit Boundary**" located on the Cumberland Ranger District of the Daniel Boone National Forest in Wolfe, Menifee, and Powell Counties. The area is signed closed from entering or being on national forest lands on any and all national forest lands that are part of the Red River Gorge Geological Area, Clifty Wilderness, and Red River Gorge Special Recreation Permit boundary, lands which lay west of Hwy 746, south of Hwy 460, East of FSR 165 "Hatton Ridge Road," and north/northeast of Hwy 11 and north of the portion of Bert T. Combs Mountain Parkway that lays east of the Slade exit. All the National Forest System roads and trails within the defined area are also closed with this order. The area is further indicated on the attached map and attached list of roads and trails in the Red River Gorge.

Going into or upon National Forest Lands within the Red River Gorge (36 C.F.R. 261 .53
(e)) See attached map and list of roads and trails.

Being on Closed Road (36 C.F.R. 261.54 (e))

Being on Closed Trail (36 C.F.R. 261.55 (a))

Entering or being in the Wilderness Area (36 C.F.R. 261.57 (a)), and

Entering or being upon any area which is closed for the protection of property (36 C.F.R. 261.53 (f)).

Pursuant to 36 C.F.R. 261.50(e) the following persons are exempt from the above Prohibitions:

Any Federal, State or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty

Any person with a permit specifically authorizing the act and or engaged in official administrative duties regarding National Forest Administration.

Prepared at Winchester, KY,

This 27 day of March, 2020



Dan Olsen
Forest Supervisor, DBNF

ORDER EXPIRES 120 DAYS FROM DATE OF SIGNATURE OR UNTIL RESCINDED BY THE APPROPRIATE OR AUTHORIZED PERSONNEL.



ORDER NO. 09-12-20-08

**EMERGENCY CLOSURE ORDER OF THE FOREST SUPERVISOR
RESTRICTING OCCUPANCY AND USE, TO WIT:
HOOSIER NATIONAL FOREST, INDIANA**

Under the authority of the Act of Congress dated June 4, 1897, as amended (16 U.S.C. 551), and pursuant to the Secretary of Agriculture's Regulations set forth as 36 CFR Part 261, Subpart B (36 CFR 261.50(a) and (b)), the following acts and omissions are prohibited on the Tell City Ranger District of the Hoosier National Forest located in Crawford County within the state of Indiana due to the hazards created by the COVID-19 pandemic. Said areas being described and designated as shown on the map set forth as Appendix A, which is attached hereto and made a part hereto:

1. **The following are prohibited:**
 - a. Being within an area or facility listed in this Order, and as shown on the map attached hereto and made a part hereof as Exhibit, as closed for reasons of public health and safety. 36 CFR § 261.53(e).

The following areas are ordered closed on the Hoosier National Forest:

 - The Hemlock Cliffs Trails System and surrounding area: Trail (including a 100 foot buffer around the trail), rockshelter, area above and below the waterfalls, associated parking area, and road leading to the parking lot;
 - The dispersed camping site located in the southeast portion of Section 8 of T3SR1W, Crawford County.
2. **Duration:** The prohibitions of this Order shall remain in effect until terminated by the Forest Supervisor.
3. **Exemptions:** Pursuant to 36 CFR §261.50 (e), the following persons are exempt from the prohibitions contained in this Order:
 - a. Persons with a permit specifically authorizing the otherwise prohibited act or omission (36 CFR 261.50(e)(1));
 - b. Any Federal, State, or local officer, or member of any organized rescue or fire fighting force in the performance of an official duty (36 CFR 261.50(e)(4)).
4. **General Prohibitions:** The General Prohibitions set forth in 36 CFR Part 261, Subpart A (§§261.1-261.23), remain in effect. The prohibitions set forth herein pursuant to 36 CFR Part 261, Subpart B (§§261.50-261.58) are in addition to the General Prohibitions.

Violation of these prohibitions is punishable by a fine of not more than \$5,000.00 for an individual or \$10,000.00 for an organization, or imprisonment for not more than six (6) months, or both (16 U.S.C. 551 and 18 U.S.C. 3559 and 3571).

Dated this 14th day of May 2020, at Bedford, Indiana.

MICHAEL CHAVEAS Digitally signed by MICHAEL CHAVEAS
Date: 2020.05.14 13:04:17 -04'00

Michael Chaveas
Forest Supervisor