

**FSH 5309.11 - LAW ENFORCEMENT HANDBOOK
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CHAPTER 300 - TRANSPORTATION SYSTEM VIOLATIONS

310 - ENFORCEMENT. Implementing a closure or restriction by order on a road or trail requires enforcement action by Forest Officers. The Forest Service has no authority to contract or enter into cooperative agreements with State or local law enforcement agencies to enforce these restrictions. Refer to FSM 5385.3, Traffic Control Equipment.

320 - WEIGHT AND SIZE RESTRICTIONS. Load, weight, height, length, width, or other limitations imposed on Forest development roads may require specialized equipment or procedures to affect enforcement. Refer to FSM 5385.3, Traffic Control Equipment.

Forest Service weighing locations must be established on National Forest System lands and must be set up in a proper and safe manner. State law may be used as a guideline in setting up weighing locations.

330 - PERMIT ISSUANCE. Load, weight, height, length, width, or other limitation restrictions are normally accompanied by a permit system to authorize necessary exceptions to the restrictions. The permit system must be developed in conjunction with a plan for enforcing these regulations prior to the imposition of the restrictions. FSM 7774 outlines the permit system to be used. In certain areas, the right to exceed the limitations (called off-highway haul) are contained in easements. Officers should be aware of such easements where they exist.

340 - BARRICADES. To close a road or trail, or a segment of a road or trail, it is desirable to erect barricades, gates, or similar structures to accompany the required signing. FSM 7731.41d states Forest Service policy on such structures. It is extremely important that barricades and related structures must be marked as stated in FSM 7731.41d.

350 - ROAD OR TRAIL DAMAGE. Damaging any road or trail, and leaving any road or trail in a damaged condition, is a violation of law. However, the Forest Officer must be alert to obtain evidence that clearly establishes that damage resulted to the road or trail. On paved surface roads, it is sometimes difficult to establish from a particular user activity that a particular overloaded vehicle is damaging the road, unless the vehicle actually punctures or breaks the road surface (36 CFR 261.9, 261.12, 261.55).

360 - VEHICLE CHECKPOINTS. Law enforcement personnel may establish vehicle checkpoints to stop vehicles temporarily at a particular point on roads or trails which traverse National Forest System lands.

Stopping a vehicle (even briefly) and detaining its occupants at a checkpoint constitutes a "seizure" of those persons within the meaning of the Fourth Amendment of the United States Constitution. Therefore, law enforcement personnel should give careful consideration to the following criteria in deciding whether to establish a checkpoint:

1. The importance of the interests the checkpoint is intended to serve and the extent to which those interests relate to the Forest Service mission, particularly resource protection and public safety.
2. The likelihood that the checkpoint would effectively serve those interests.
3. The extent to which the checkpoint would intrude upon law-abiding motorists, including the delay imposed.

361 - General Requirements Applicable to Checkpoints. The following requirements apply to establishing and conducting checkpoints:

1. The safety of the public and law enforcement personnel is a primary consideration when establishing a checkpoint.
2. Any planned checkpoint initiated by the Forest Service must be conducted on National Forest System lands or administrative sites under Forest Service jurisdiction.
3. If a cooperating agency is conducting a checkpoint on National Forest System lands and Forest Service participation would serve the agency's interests, Forest Service law enforcement personnel may participate with the approval of a Supervisory Law Enforcement Officer or Supervisory Special Agent, as appropriate.
4. If a planned checkpoint is located on other than National Forest System lands, the Forest Service cannot be the lead agency. However, if another agency is conducting a checkpoint on any other lands and Forest Service participation would serve the agency's interests, Forest Service law enforcement personnel may participate to the extent authorized by law, with the approval of a Supervisory Law Enforcement Officer or Supervisory Special Agent, as appropriate.
5. Once a planned checkpoint operation has begun, the law enforcement officer(s) must stop all vehicles arriving at the site from the targeted direction(s), unless the checkpoint supervisor (sec. 362.1, para. 5.b.) has expressly approved another non-discriminatory method (such as stopping every second or fifth vehicle). The checkpoint may be suspended at any time based on an identified need, such as alleviating traffic congestion.

6. Vehicles stopped at a checkpoint must not be detained beyond the need to fulfill the purposes of the checkpoint, unless there is reasonable suspicion or probable cause that a violation of law or regulation has been, is about to be, or is being committed.

362 - Planned Checkpoints.

1. Compliance Checkpoints. A compliance checkpoint is a planned action by law enforcement personnel to stop vehicles temporarily at a fixed location to conduct checks to ensure compliance with laws and regulations that aim to protect natural resources under the jurisdiction of the Forest Service, as well as to protect the public. Among these authorities are 7 U.S.C. 1011(f); 16 U.S.C. 551, 559; 18 U.S.C. 7 and 13, where applicable; and 36 CFR Parts 212, 242 and 261, which cover such topics as forest products, game and fish, fire prevention, vehicle safety requirements, vehicle licensing requirements, use of Forest Service roads and trails, the operation of motor vehicles, archaeological resources, and controlled substances. Examples of compliance checkpoints include checking for log truck load tickets or firewood permits.

2. Public Information Checkpoint. A public information checkpoint is a planned action by law enforcement personnel to stop vehicles temporarily at a fixed location for the purpose of providing information to the public regarding public health and safety issues and/or applicable forest laws and regulations. The information may be provided in written or oral form.

362.1 - Planned Checkpoint Requirements and Procedures. Law Enforcement personnel are to adhere to the following requirements and procedures when establishing and conducting planned checkpoints:

1. Checkpoint Requests. Before a checkpoint can be conducted, a written request to establish the checkpoint along with a checkpoint plan must be submitted to and approved by a Supervisory Law Enforcement Officer or a Supervisory Special Agent. The checkpoint plan must address the following:

- a. The reasons and purpose for establishing the checkpoint.
- b. The location of the checkpoint.
- c. The approximate time and duration of the checkpoint.
- d. The personnel to be assigned to the checkpoint.
- e. In the case of a compliance checkpoint, the specific inquiries or demands that will be made of the driver and/or occupants of the vehicle.
- f. In the case of a public information checkpoint, the information that will be provided.

2. Site Selection. Base the selection of sites on standard enforcement factors that consider time of day, day of week, roadway or trail location, history of violations in the area, and any special activities in the area. Also, each site selected must have a safe area for stopping vehicles and afford oncoming traffic sufficient sight distance, depending on the road surface, for the driver to stop safely. The site must have adequate space to divert vehicles if further law enforcement action is needed.

3. Timing. Checkpoints may be conducted at any time of day or night. However, checkpoints are not to be conducted at night, unless adequate lighting, warning, and safety equipment are used.

4. Publicizing Location and Purpose. The specific location and purpose of checkpoint may be publicized to serve as a deterrent to potential violators.

5. Personnel. The checkpoint plan must ensure adequate staffing and supervision.

a. Staffing. The plan must provide for a sufficient number of law enforcement personnel to maintain a safe and effective operation and to avoid traffic congestion. At a minimum, two law enforcement personnel are required to be present at the same time at each checkpoint site. One of these may be an officer from a cooperating Federal, State, or local agency.

b. Supervisory Controls. All checkpoints are to be conducted under the supervision of a checkpoint supervisor who is present at the checkpoint site. The checkpoint supervisor may be a Supervisory Law Enforcement Officer, Supervisory Special Agent, or other law enforcement personnel who is designated to act as the checkpoint supervisor by the appropriate authorizing official (FSM 5304.41 & 5307).

6. Checkpoint Approval. Written authorization from a Supervisory Law Enforcement officer or Supervisory Special Agent, is required to approve a planned checkpoint.

a. In the case of a compliance checkpoint request, the authorization must explicitly authorize the specific inquiries or demands that are to be made of the driver and/or occupants of the vehicle.

b. In the case of a public information checkpoint request, the authorization must specify the information that is to be provided.

7. Apparel. Law enforcement personnel must be in uniform while conducting checkpoints. While engaged in a nighttime checkpoint operation, law enforcement personnel must wear high-visibility apparel (FSM 5388.21).

8. Signing and Warning Devices. Use signing and warning devices at planned checkpoints as follows:

- a. At the entrance to the checkpoint, place a standard red stop sign on the center line of the highway or road.
- b. On all paved surfaced roads or highways, place a sign displaying the words "Stop Ahead" at a sufficient distance ahead to alert motorists of the upcoming checkpoint.
- c. Depending on the visibility and road conditions of gravel or dirt surfaced roads, provide signing in advance of the stop, if necessary, to alert motorists to the upcoming checkpoint.
- d. Use an adequate number of flares, lights, reflectors, or cones to illuminate the site and to aid traffic direction.
- e. Do not use barricades to block oncoming traffic.
- f. Activate emergency lights at compliance checkpoints if preferred but do not activate emergency lights at public information checkpoints, unless they are needed for safety reasons.

9. Initial Stop. Upon initial contact, law enforcement personnel must inform the occupants of the vehicle of the reason for the checkpoint. The initial inquiries or demands that are made of the driver and/or occupants of the vehicle at a checkpoint must be within the scope of the purposes for which the checkpoint is authorized and must be within the statutory or regulatory authorities enforceable by the Forest Service, or other jurisdiction if the checkpoint is a cooperative operation. After an initial stop and completion of the objectives of the checkpoint, a vehicle may not be involuntarily detained, unless law enforcement personnel have reasonable suspicion or probable cause to conduct further law enforcement action.

10. Secondary Stop. Other activities, facts, or circumstances observed as the vehicle approaches or is stopped at the checkpoint site may present reasonable suspicion or probable cause to justify diverting vehicles to a secondary site. Further law enforcement action at the secondary site may be taken to the extent justified by the reasonable suspicion or probable cause for the secondary stop. Keep careful records of all secondary stops.

11. Removal of Persons from vehicle. During a checkpoint stop, do not require the driver and/or occupants to exit the vehicle unless one or more of the following circumstances exist:

- a. There is reasonable belief by law enforcement personnel that the driver and/or occupants or the circumstances present some danger to law enforcement personnel or others.
- b. Probable cause exists to suspect that a violation of law and/or regulation has been, is about to be, or is being committed.

- c. A consensual search of the vehicle is being conducted.
- d. Removal of the driver and/or occupants is needed to effect an arrest or prevent the escape of an occupant.

362.2 - Planned Checkpoint Reports. Checkpoint records must be accurately collected. The checkpoint supervisor must submit a report to the Supervisory Law Enforcement Officer, Supervisory Special Agent, or other appropriate authorizing official within 5 calendar days from the termination of the checkpoint. The report must include the following information:

- a. A record of all personnel assigned to the checkpoint and their tours of duty.
- b. The specific location, dates, and hours of the checkpoint operation.
- c. The approximate number of vehicles stopped.
- d. The approximate average time delay to motorists.
- e. The number and type of secondary stops made based on reasonable suspicion or probable cause.
- f. The number and types of violations discovered and actions taken; for example, arrests, State or Federal citations, warning, impoundments, or seizures.
- g. Any unusual events or any other information relevant to the checkpoint operation.

363 - Emergency Checkpoints. An emergency checkpoint is an emergency action taken by law enforcement personnel to stop vehicles temporarily at a fixed location when a risk to public safety exists and immediate law enforcement action must be taken. [*S.P. note; Rainbow Gathering*]

363.1 - Establishment. An emergency checkpoint may be established in the following circumstances:

- a. During incident that may involve endangerment or protection of public health and safety, accidents, natural disasters, fire, or other situations in which law enforcement personnel must restrict the traffic into a given area, detour traffic onto another roadway, or divert traffic around a particular area.
- b. During the apprehension of potentially dangerous suspects or fugitives.
- c. When a risk to public safety exists as a result of the unsafe actions of others and immediate law enforcement action must be taken.

363.2 - Authorization. Law Enforcement personnel shall make every attempt to seek written authorization from a Supervisory Law Enforcement Officer or a Supervisory Special Agent, prior to establishing an emergency checkpoint. However, time is also a primary consideration. For this reason, law enforcement personnel may make a decision to establish an emergency checkpoint without prior authorization. In all cases, a Supervisory Law Enforcement Officer or, as appropriate, a Supervisory Special Agent, must be notified of the situation as soon as possible.

363.3 - Emergency Checkpoint Procedures.

- a. Vehicles used to partially block any portion of the roadway must be unoccupied, marked law enforcement vehicles. Do not use privately owned vehicles as barricades, except in circumstances of compelling need.
- b. Vehicles used as stationary barricades must be placed at an angle which reveals their enforcement emblems on the door to oncoming traffic.
- c. Law enforcement vehicles not being used to block the roadway should be off the roadway in a safe position to initiate pursuit should it become necessary.
- d. The roadway must not be completely blocked by vehicles or objects under any circumstances. Construct the emergency checkpoint in such a manner as to leave a route through the area, but design the route so that it would be necessary to proceed slowly through the checkpoint.
- e. Law enforcement personnel should always place themselves in a position of safety. If the emergency checkpoint is established for the purpose of apprehending potentially dangerous suspects or fugitives, law enforcement personnel should position themselves to apprehend them at the checkpoint.
- f. A minimum of two law enforcement personnel should be present at the site of an emergency checkpoint when law enforcement action is anticipated. One of these may be an officer from a cooperating Federal, State, or local agency.
- g. Law enforcement personnel conducting emergency checkpoints must be in uniform or clearly identified by wearing appropriate distinctive clothing.
- h. Signing and warning devices may be used at emergency checkpoints if available and practical.
- i. Emergency lights may be activated.

363.4 - Emergency Checkpoint Report. The law enforcement officer or checkpoint supervisor must submit a report on the emergency checkpoint to the appropriate official within 5 calendar days from the termination of the checkpoint. Include the following information in the report:

- a. The reasons for establishing any checkpoints without prior written authorization.
- b. A record of all personnel assigned to the checkpoint and their tours of duty.
- c. The approximate number of vehicles stopped, if practicable.
- d. The specific location, date, and hours of the checkpoint operation.
- e. The number and type of violations discovered and responsive actions taken, for example, arrests, State or Federal citations, warnings, impoundments or seizures.
- f. Any unusual events or any other information relevant to the checkpoint operation.

363.5 - Cooperative Law Enforcement Emergency Checkpoint. In the event that Forest Service law enforcement personnel are requested to implement an emergency checkpoint at the request of another law enforcement agency under 16 U.S.C. 551a, Forest Service law enforcement personnel must first ascertain from the requesting agency the reasons for establishing the emergency checkpoint; for example, apprehension of potentially dangerous suspects or fugitives; emergency or disaster; or a risk to public safety from the unsafe actions of others. Where cooperating agency emergency checkpoint procedures conflict or vary from those of the Forest Service, enforcement personnel must conduct the emergency checkpoint in accordance with established Forest Service policy and procedures.

370 - DRIVING UNDER THE INFLUENCE OF INTOXICANTS. Within Forest boundaries, 36 CFR 261.13e allows Forest Officers to enforce Driving Under the Influence of Intoxicants (DUI) violations off Forest roads on the National Forests. State and local law enforcement officers have primary authority for DUI enforcement on Forest roads and trails. Forest Officers may have authority to enforce DUI violations on Forest Service roads or trails, if a subpart B special closure order under 36 CFR 261.54(e) or (f) is written to prohibit operating a vehicle while under the influence of intoxicants on Forest roads or trails. If a Forest Officer has occasion to stop a vehicle when the driver appears to be intoxicated, the Forest Officer should generally detain the driver until a State or local law enforcement officer can arrive or transport the driver to the county jail, unless there is another person who is in a condition to drive in the vehicle and who agrees to do so. It is Forest Service policy not to permit an intoxicated driver to continue driving while in that condition. Forests may issue supplemental procedures at this code for stopping vehicles with intoxicated operators.