

WESTERN STATES SHERIFFS' ASSOCIATION



474 Rogers Canyon Road
Laramie, Wyoming 82072
Telephone: 307 760 4075
www.westernsheriffs.org

2023 EXECUTIVE BOARD:

PRESIDENT
Sheriff Corey Helton
Lea County, NM

VICE PRESIDENT
Sheriff Gary Bettencourt
Gilliam County, OR

SECRETARY
Sheriff Ray Del Bosque
Zapata County, TX

TREASURER
Sheriff Mark Dannels
Cochise County, AZ

SGT AT ARMS
Sheriff Tracy Glover
Kane County, UT

PAST PRESIDENT
Sheriff Brett Schroetlin
Grand County, CO

EXECUTIVE DIRECTOR
JAMES F. POND

State Representatives

Arizona
Sheriff David Clouse

California
Sheriff Tex Dowty

Colorado
Sheriff Kevin Armstrong

Idaho
Sheriff Sam Hulse

Kansas
Sheriff David Groves

Montana
Sheriff Leo Dutton

Nebraska
Sheriff Gene Samuelson

Nevada
Sheriff Ron Unger

New Mexico
Sheriff David Black

North Dakota
Sheriff Dean Wyckoff

Oklahoma
Sheriff Chris West

Oregon
Sheriff John Gautney

South Dakota
Sheriff Fred Lamphere

Texas
Sheriff Gerald Yezak

Utah
Sheriff Tracy Glover

Washington
Sheriff Clay Myers

Wyoming
Sheriff Ken Blackburn

Director of Operations
Dave Brown, Sheriff (Ret.)

Send via Federal e-Rulemaking Portal

December 2, 2023

Tracy Perry
Director, USFS LE&I
Washington D.C.

Subject: RIN 0596-AD57: United States Forest Service Law Enforcement; Criminal Prohibitions

Dear Director:

The Western States Sheriffs' Association is a member driven organization representing over 1100 Sheriffs across 18 western states. The mission of the WSSA is *"to assist Sheriffs and their offices with federal and state legislative issues, address policy and procedural matters, develop guidelines to promote uniformity in matters that are important to Sheriffs of the western United States and to work together to keep the Office of Sheriff strong."*

The leadership within the WSSA has reviewed RIN 0596-AD57, the proposed changes to 36 CFR 261 Forest Service Law Enforcement and Criminal Prohibitions. Having reviewed the proposed changes, the WSSA appreciates the opportunity to respond to these proposed changes and hereby submits the following comments.

History

The membership of the WSSA is intimately familiar with the history of these proposed rule changes. As an organization committed to the safety and security of the public we serve in the vast and largely rural regions of the western United States, the WSSA found substantial reason to oppose the previous attempt to expand the law enforcement authority of the USFS. We recognize this most recent document, published on the federal register, has eliminated the changes that proposed to extend USFS LE authority to areas adjacent to National Forest System (NFS) lands. Even with this language removed, the WSSA finds that it is strongly opposed to the current list of proposed rule changes for the following reasons.

Cooperative Law Enforcement Funding

Within the published document under the title of "Protection of persons on NFS lands" the author purports that State and local law enforcement are often understaffed and unable to respond to crimes against persons and property when occurring at NFS campgrounds and trailhead parking areas. The document asserts that that even with cooperative law enforcement funding, local law enforcement is unable to respond due to the remoteness and seasonal use of these areas. Sheriffs across the west disagree with this assertion. It has been our experience that USFS law enforcement is less likely to respond on a consistent basis largely due to the practice of detailing USFS LEO's to many other identified national priorities.

Western Sheriffs recognize their responsibility to the enforcement of the law on NFS lands and our priority for the past several years has been to seek congressional approval for substantial increases to the cooperative law enforcement contract dollars. The roughly \$5 million dollars allocated across the nation is less than 5% of the annual USFS LE&I total budget.

This amount of cooperative funding seriously fails to adequately support the rising costs of providing services to NFS lands and there has been no increase in cooperative law enforcement funding for nearly 20 years. The tremendous decline in natural resource revenue from public lands has severely impacted counties and their ability to adequately fund basic government services. The shift in management of our public lands from a focus on natural resource management to recreation management has brought a tremendous number of users to the lands. With the increased public use comes the increased need for services provided by the Sheriff, yet there continues to be little to no recognition by the federal government of their responsibility to appropriately fund the costs of the increased services.

Assimilation

Many of the proposed changes appear to take a direct route toward assimilating state law into the Code of Federal Regulation. Through this assimilation and, by channeling a large portion of Subpart B orders to the category of Subpart A orders, the nationalization of enforcement of rules becomes troubling. While we recognize that Congress provided the USFS with the authority to create needful rules and regulations to effectively manage NFS lands, we stand firm in the belief that the law prohibits assimilation of state law on those lands held under proprietary interest. Most lands managed by the USFS in the western United States fall under the definition of proprietary interests. We oppose this effort to bolster the federal enforcement tool chest through the assimilation of state law and in fact, we believe by doing so, the USFS may create significant legal challenges across the lands they manage in the western United States. The County Sheriff, working within the legal systems in each of the western states, is best suited to address crimes against persons and property. The various legal ramifications for any person charged with alcohol and drug offenses in a state are designed to carry long term impacts associated with not only a citation, but several other requirements related to rehabilitation of the offender and long-term consequences that State legislatures have implemented to increase the safety to the public. The federal government has not legislated in the same manner and is therefore not designed to effectively address these lesser offenses.

Occupancy and Use

Specifically, the WSSA has deep concerns with the occupancy and use changes. We feel the 24-rule as it relates to abandoned property is not well defined and could lead to inadvertent removal of property that is within the 14-day legal limit. The term "abandoned property" is subjective in nature and could lead to varying degrees of interpretation of those LEO's in the field. The taking of any personal property without due process is in direct conflict with an individual's constitutional guarantee and will most likely result in a complaint to the County Sheriff who must then act on behalf of the property owner who has been deprived.

Sheriffs across the west work together with federal partners daily to enforce state laws and regulations. It is not necessary to broaden the role of USFS law enforcement thereby duplicating the role of state and local law enforcement. Tools already exist that allow federal and local law enforcement to work in a collaborative manner while maintaining the balance that is expected by the residents of our counties.

Fire/Recreational shooting

Collectively, we find common ground in those specific proposed rule changes that seek to address the use of fireworks on NFS lands as well as use of exploding targets as a commonsense approach to the safety of persons and the public lands they use. However, we urge caution in a global approach that may lead to the creation of national ban on the practice of recreational shooting on public lands. Further, we hold some reservations that the banning of these practices will lead to arbitrary enforcement through traffic stops on county and state highways that traverse NFS lands.

Special Orders

The proposed change to amend CFR 261.50 (a) and (b) to expressly authorize persons holding positions that are specified in the paragraph, to delegate the authority to persons serving in an acting capacity or to their deputies, appears to contradict and exceed the opinion of the 9th circuit court of appeals. As stated in the document published on the federal register, the court interpreted in *United States vs. True* 946 f.2d 682, 687 that only those persons *holding* the position, or *acting* in the position, can issue orders under 36 CFR 261 subpart B. By amending this definition, it opens the door to a plethora of individuals who could potentially have authority to issue special closure orders. Sheriffs have long recognized the negative impacts of special closures on public lands, and we have argued that Counties should be afforded all opportunities for

coordination in these decisions. Great strides should be taken to ensure those who have authority to limit the public use of public lands should be provided with a level of understanding of the impacts of restrictions through the actions of special closure orders. In most cases, the County Sheriff and legislative bodies of the county can provide perspective and alternatives that will least impact the ability to provide public safety services and continue to allow for public access.

National Memorandum of Agreement 13-MU-11136015-507

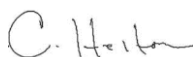
In 2013, a National Memorandum of Agreement was promulgated through a joint effort of the WSSA and USFS LE&I. It was through this document that the USFS ultimately recognized the Sheriff as the Chief Law Enforcement Office of the county. Through the document, several avenues were created to provide the County Sheriff the ability to utilize USFS LEO's within the county to assist with many of the issues spelled out in the proposed rule change now being considered. We are convinced that this document continues to provide the necessary means for the Sheriff to obtain the needed assistance from the USFS law enforcement resources while at the same time retaining the legal obligation to the Office we are elected to serve.

We believe it is imperative that the USFS LE&I take substantial steps to expand their cooperative and coordinating efforts with the County Sheriff. All steps taken to isolate the USFS LE&I component as a distinct and separate law enforcement agency with the appearance of concurrent jurisdiction is harmful to the USFS, Sheriffs and the public we serve.

The MOU should stand as the guiding document moving forward and a concerted effort should be made by both the WSSA and the USFS to expand its use to serve more effectively those whose utilize the public lands of the western U.S.

The WSSA values the relationship that has been built with the USFS LE&I division. We share a common commitment to addressing the issues arising on public lands that affect the use and enjoyment of these lands. We will continue to advocate for the Office of Sheriff and the responsibilities each Sheriff has on all lands within their respective jurisdiction. The transition of management priorities of the USFS over the past 30 years is evident when viewing the transformation of the congressionally approved original charter of the USFS LE&I division. Created for the purpose of enforcing rules and regulations related to fire and resource management, the division has evolved into a more traditional "policing" function. We continue to monitor, with great concern, this deviation from its original mission and feel it should be the subject of a great deal of scrutiny moving forward.

Thank you for your consideration of these comments. We ask that as you move forward with this process, should you find you have questions, please feel free to contact us.



Sheriff Corey Helton
Lea County, NM
President, WSSA



Sheriff Tracy Glover
Kane County, UT
Chair, WSSA Public Lands



Sheriff Matt English
Hood River County, OR
Co-Chair, WSSA Public Lands