

E. Law Enforcement

Forest Service Law Enforcement and Investigations (LEI) personnel are responsible for protecting the public, employees, natural resources, and other property under the agency's jurisdiction. Additionally, LEI investigates and enforces applicable laws and regulations that affect the National Forest System (NFS) lands, and prevents criminal violations. The new Travel Management Rule (TMR) is one such regulation.

Subpart B 212.51 of the TMR requires designation of roads, trails, and areas open to motor vehicle use, and the prohibition of cross-country wheeled motorized vehicle travel by the public. In addition, this section of the rule requires identifying season of use and type of vehicle use. This is a considerable change in public motorized access management from previous conditions where most Forests were managed as "open to cross-country travel." The implementation of designated routes and areas for motorized vehicles will be the responsibility of all agency employees, especially in the area of education and enforcement. The law enforcement program is primarily responsible for issuing violations to enforce Subpart B 212.51 of the rule.

The national LEI budget is funded by appropriated dollars from Congress to provide law enforcement services on the NFS lands. The Travel Management program is one of many Forest programs to benefit from federal law enforcement funding. For the past few years, law enforcement funding increased and that translated into an increase in field law enforcement personnel¹. Stanislaus patrol staffing has recently increased from three officers to five officers. LEI staff work in co-operation with National Forest line officers to accomplish their resource management objectives, yet LEI is administratively separated to maintain legal and investigatory independence.

To enhance enforcement of CFR 212.51, Region 5 Forest Recreation Programs applied for and received grant dollars (green sticker funding) from the State of California Off-Highway Motor Vehicle Recreation Division Grants Program. These State funds are earmarked specifically for enforcement of off-highway vehicle laws and regulations on the various Forests, and are performed primarily by Forest Protection Officers (FPOs). In addition, Law Enforcement Officers (LEOs) support the FPOs as needed, especially if serious violations occurred. In recent years, State law enforcement grants ranged from 3-4 million dollars annually with similar funding anticipated for the 2008-2009 grant cycle. In the past three years, the Stanislaus NF has received a total of \$436,000 for OHV and OSV law enforcement from the State of California.

Authority and Jurisdiction

The Forest Service exercises its law enforcement authority when violation of laws or regulations occurs on NFS lands or when incidents affect the NFS. The existing authorities for enforcement are completely adequate and no new laws will be needed to enforce CFR 212.51.

Every National Forest annually updates a law enforcement plan. All Forest Service employees have a duty to know and understand their authorities and responsibilities, and to properly enforce laws and regulations relating to the Forest within their authority and capability. LEI and agency personnel provide a regular and recurring presence on vast amounts of public land, roads, trails, and areas taking appropriate action if illegal activity is discovered. Violations involving motorized vehicles are primarily enforced FPOs, which patrol off-highway use roads, trails, and areas. These include violations such as operating a motor vehicle in violation of federal regulations and California Vehicle Code (CVC), parking improperly, resource damage to soils, vegetation or wildlife, and disorderly or

¹ Region 5 Law Enforcement budget figures increased for the past 4 years and the number of law enforcement officers increased by 65.

unruly behavior. LEOs use discretion when deciding what type of action to initiate when handling violations to the following federal laws that pertain specifically to motor vehicle use.

- The Act of June 4, 1897 (Title 16 United States Code 551) is the authority for issuing regulations at Title 36 Code of Federal Regulations, Part 261 (36 CFR 261). Specific OHV travel management regulations are in sections 261.9 – Property, 261.13 –Motor Vehicle Use, and 261.15 Use of Vehicles Off-Road. These CFRs cover a wide array of misdemeanor infractions.
- The Act of March 3, 1905 (Title 16 United States Code 559) authorizes all employees of the Forest Service to make arrests for violation of the laws and regulations pertaining to National Forests. Normally, arrest authority is limited to trained law enforcement personnel. (Any employee may take immediate action when necessary to protect life and prevent serious damage to or destruction of property, escape of a suspect, or loss of material evidence when such action can be done with reasonable safety.)

The legal foundation for enforcement on the Stanislaus National Forest was established by Congress as “proprietary jurisdiction”. This term means that the Federal Government has acquired some degree of right or title to an area in a State, but has not obtained any measure of the State’s authority over the area. The legal scope of the Forest Service is limited to laws established for that property, or National Forest. However, enforcement agencies with State authority in California retain their full legal authority on the Stanislaus Forest. Notably, for enforcement of violations committed by motor vehicle operators, the California Highway Patrol and the four county Sheriffs have separate authority and jurisdiction to enforce OHV laws under the California Vehicle Code.

In November of 2008, the Regional Forester signed a new regional order that allows Forest Service officers to enforce the OHV section (CVC 38000) of the California Vehicle Code on National Forest Roads.

Cooperation

The Forest Service shares responsibility and cooperates with local, State, and other Federal agencies in the execution of its law enforcement program. The authority for cooperation among agencies, especially as it pertains to CFR 212.51, is within the following laws:

- The Act of August 10, 1971 (Title 16 United States Code 551a) authorizes the Secretary of Agriculture to cooperate with, and provide reimbursement to, any State or political subdivision thereof, for the enforcement of their laws within NFS. This law does not deprive any State or local law enforcement agency from exercising its criminal and civil jurisdiction on lands that are part of the NFS.
- The California Penal Code, Section 830.8 provides that Forest Service law enforcement personnel may exercise State Peace Officer authority where the sheriff of the county wherein the officer works provided specific written permission for the officer.
- The CVC, Section 38301 allows State law enforcement officer to enforce any of the Federal CFRs related to motor vehicles on NFS lands.²

Each Forest maintains close working relationships with many State and local law enforcement agencies with law enforcement responsibilities in or adjacent to the Forest boundary. Significant cooperating agencies relative to enforcing CFR 212.51 include the local county sheriff departments, the California Department of Fish and Game, California Highway Patrol, California Department of Forestry and Fire Protection, and occasionally one or more Federal agencies depending on the

² CVC Section 38301. (a) It is unlawful to operate a vehicle in violation of special regulations which have been promulgated by the governmental agency having jurisdiction over public lands, including, but not limited to, regulations governing access, routes of travel, plants, wildlife habitat, water resources and historical sites.

violation. Forest Service law enforcement personnel cooperate fully with these agencies in carrying out their law enforcement responsibilities by providing assistance; liaison, advice, and information.

Forests maintain Cooperative Law Enforcement Agreements with their respective county sheriff's office. In Region 5, the total cost for the 2008 Cooperative Law Enforcement Agreements is \$891,397.³ These dollars are for performance of duties in addition to the normal activities in which the sheriff's deputies handle crimes against persons and their property that may occur within the NFS boundary. In these agreements, both parties recognize that public use of NFS lands is usually located in areas that are remote or sparsely populated and the enforcement of State and local law is related to the administration and regulation of NFS lands. Within the Cooperative Law Enforcement Agreements, an Operating Plan is developed outlining the supplemental work to be performed by the cooperating agency. Operating plans may provide:

- Supplemental patrols in areas of high use.
- Supplemental patrols on weekends or during particular months of high use.
- Additional officers for large group gatherings or events (enduros)
- Vehicle checkpoints for vehicle registration spark arrestors, and other miscellaneous items.

Implementation and Tracking

Implementation of the Forest Service law enforcement program is continually adapting as law enforcement personnel assess the changing patterns of visitor use and attitudes, and the trends in violations, especially for property and resource damage. One method of assessment is the analysis of Law Enforcement and Investigations Management Attainment Reporting System (LEIMARS) data. LEIMARS tracks all known violations of criminal law or regulation on NFS lands (FSH 5309.11, chapter 40 and FSM 5340). Additionally, imbedded in LEIMARS is the Case Tracking System, which tracks all felony and serious misdemeanor cases. These tracking systems:

- Capture and record information on location, volume, damages, and type of violations occurring on NFS lands.
- Provide a retrieval system of data on incidents and violations that is responsive to the needs of all organizational levels.
- Provide agency managers with a means to identify and monitor law enforcement activities.
- Specifically identify problem areas and periods of activity.
- Provide a method to record and analyze incidents involving violations or suspected violations on NFS lands.

Trends in violations can be analyzed and appropriate action(s) taken, if needed. Appropriate action(s) may involve one or more techniques or adaptive strategies. In the law enforcement community, this is often referred to as the "three E strategy" of engineering, education, and enforcement. With the changes to how the public accesses and travels on NFS lands, it is anticipated that the law enforcement program will use a combination of strategies, especially during the first five years of implementation of the MVUM.

³ Region 5 Law Enforcement Cooperative Agreement 2008 spreadsheet.

Implementation Strategy

Engineering - Education - Enforcement

The Engineering strategy is designed to prevent or reduce inadvertent violations, resource damage, and crime vulnerability. The strategy's goal is to remove the opportunity to commit a violation. LEI personnel work with each Forest, particularly the recreation and engineering programs, to implement some or all of the following specific tactics:

- Proper design of improvements and facilities.
- Facility security measures such as installation of barricades, gates, and other natural obstacles.
- Forest signing, both directional and informational, to assist the public to ensure they stay on designated trails, and out of the wilderness and other sensitive areas.
- Physically close and rehabilitate decommissioned roads and trails.

The Educational strategy focuses on specific user groups, school groups, recreation users, and the public. The goal is to develop responsible and concerned public land use attitudes in forest users; it's violation prevention. Forest LEOs and FPOs make regular contacts in the field informing the users of the regulations and need for the prohibition. The LEI personnel work with each Forest, particularly the recreation and public information programs, to identify and implement some or all of the following specific tactics.

- Motor vehicle use maps (MVUMs) are easily available to public.
- Post route markers and signs.
- Distribute maps and brochures promoting responsible use.
- Conduct environmental interpretation activities in local communities, at schools, and with special interest groups.
- Use of all forms of the media (television, radio, and newspapers), especially prior to, and during, the high use periods.
- Ensure all employees understand the Travel Management Rule.
- Utilize high visibility prevention patrols and public information checkpoints, especially during the peak use periods.
- Encourage cooperating law enforcement agencies to make visitor contacts and provide violator information to Forest Officers.
- Ride with other agency officers to demonstrate solidarity to the public.
- Issue news releases of arrests and successful prosecutions, including offender names, criminal penalties, and court ordered restitution.

The Enforcement strategy is to affect crime prevention measures that are designed to reduce specific criminal activity, deter potential and repeat offenders, maximize enforcement actions and visibility, and increase prosecutorial successes. All enforcement actions should result in a better understanding of regulations pertaining to the management of NFS lands. LEI personnel work with each Forest, to identify and implement some or all of the following specific tactics:

- Schedule officers to work during the identified problem periods, including holidays and weekends.
- Utilize high profile "saturation patrols" and stationary surveillance posts in the identified problem areas.

- Utilize the most effective and efficient means of patrol, including foot, horseback, all-terrain vehicle, snowmobile, watercraft, and aircraft.
- Aerial over-flights to enforce restriction under CFR 212.51.
- Enlist the aid of volunteers.
- Initiate an awards program.
- Supplement patrols with cooperating law enforcement agencies in areas of concern.
- Use technical investigative equipment (cameras, monitors, sensors) to assist officers with detecting and monitoring violations at known or suspected violation sites.
- Conduct planned and approved compliance checkpoints.
- Follow-up on complaints to document violations, damages, and identify suspect vehicles or persons.
- Require cooperating law enforcement agencies to assist with reporting and/or enforcing violations within their authority.
- Patrol with other cooperating law enforcement agency officers.
- Conduct unpredictable patrol schedules.
- Conduct special enforcement actions (unmarked vehicle deployment, surveillance, traffic checkpoints).
- Utilize LEIMARS and Central Violations Bureau databases along with the State motor vehicle data, to identify repeat offenders for enhanced prosecution.
- Pursue court ordered restitution or civil collections for resource and property damages.
- Encourage prosecutorial and judicial support.
- Execute bench warrants related of off-highway vehicle violations.

Assumptions

Based on many years of enforcing off-highway vehicles, implementing change in access and enforcement of CFR 212.51, from a law enforcement perspective, assumes the following to be true. Additionally, these assumptions are based on several case studies in R5 (see Case Example below). These assumptions may change in time with analysis of the LEIMARS database.

Enforcement Assumptions

- Enforcement of the laws and regulations related to CFR 212.51 are enforced equally in authority and weight as with all other Federal laws and regulations.
- As with any change in a regulation on NFS lands, there is usually a transitional period for the public to understand the changes. It is anticipated there will be a higher number of violations to CFR 212.51 in the first couple of years and the number of violations will decline as the users understand and comply with the rules.
- Users in communities adjacent to the Forest will comply within 1-2 years.
- Frequent users but further in distant from the Forest will comply within 2-3 years.
- Infrequent users regardless of distant may take up to 5 years to comply.
- Law enforcement officer and agency personnel's presence and enforcement actions will positively affect OHV users' behaviors and attitudes.

- The MVUM clearly defines the designated routes, season of use, and type of use; therefore, making violations unequivocal.
- Once the MVUM is published, the designated network of roads and trails with signs, and user education programs, will reduce the number of violations.
- FPOs spend a large percentage of their time on Travel Management issues, and depending on the Forest the estimate range from 30 to 50 percent. LEOs spend approximately 10-20% of their time on enforcement of off-highway vehicle issues.⁴

Agency Funding Assumptions

- Appropriated program funding levels and number of law enforcement personnel does not affect enforcement of CFR 212.51. All laws and regulations are enforced equally.
- Appropriated funds will remain level or increase slightly in the next five years.
- The State of California Off-Highway Motor Vehicle Recreation Division Grants Program (green sticker funding) enhances and provides additional law enforcement presence in the field at the Forest level.

Public Attitude and Compliance Assumptions:

- Forest users want to do the right thing and will obey the rule⁵, once they understand the rule and motor vehicle use map.
- User compliance⁶ is based on the State of California Off-Highway Motor Vehicle Recreation Division data and is anticipated to be:
 - 95% of the users are fully compliant.
 - 2-3% of the users thinks about and may violate a law.
 - 1-2% of the users will violate the law.

Measure of Success

Measuring the success of the compliance with CFR 212.51 will be done using the LEIMARS database. An analysis of the data may alert a Forest to a particular problem area for violations such as a group campsite area that may be surrounded by flat meadow areas inviting riders to potentially violate the regulation. A successful program will see a positive change in the following measures:

- Measure 1: A reduction in the number of off-route travel violations.
- Measure 2: A reduction in the number of resource damage violations

⁴ Barnett, G. 2004-2005 Law Enforcement Workload Analysis.

⁵ Tyler, Tom R. *Why People Obey the Law*, Princeton University Press, 2006, p. 320

⁶ User compliance was computed by using the State Vehicular Recreation Area Fiscal year 2006/2007 data: 4.2M SVRA visitors divided by the 210,000 citations written, is approximately 5 percent non-compliant, and 95% compliant.

Case Example

Law Enforcement History of the Interface OHV Area

The Interface OHV use area is an area of Forest Service land that is within a mile or two of the mountain communities of Avery, Hathaway Pines, Arnold, and White Pines. In the late 1990s and early 2000s, this area experienced an increase in use by OHV riders originating from these communities. In some cases the riders would start from their residence and ride onto National Forest land. Sometimes they would trailer their machines a short ways to the end of a road to begin riding. Because of this use, many nearby residents who had moved to the area because of the solitude of the forested area and the nearby National Forest began to object to the OHV use, especially the noise.

After a series of contentious meetings, the Forest Service completed an EIS, signed by Forest Supervisor Tom Quinn in late 2003. He selected a compromise alternative that closed the area nearest to the residential area to OHV use (Penny Pines), provided for use in an interim area (Valley View), until such time that an area that was more acceptable to all parties (Summit Level area above White Pines) was prepared with trails, signs and trailheads. In the spring of 2006, the trails on Summit Level became available to OHV riders and the Valley View area was closed to motorized use. Riders had about 2½ years to adjust to the decision and move to the new area. During the several years of transition, the area was actively patrolled by Forest Service FPOs and LEOs and by an OHV deputy from Calaveras S.O. The Calaveras OHV manager spent a lot of time and money installing trail signs, posting information signs, maintaining gates and closing closed routes.

Thus, over a period of about 2½ years OHV users had to adapt to 3 significant changes in the location of the riding areas and designated routes, yet the users became compliant with the new system. Initially there remained strong feeling against the decision to close Valley View to motorized use. There was a backlash against those who had supported the closure, and continued to be problems with local residents riding on closed trails, signs destroyed and gates torn down⁷. By 2007, OHV users adapted to the new system of trails and roads with few enforcement issues. The Penny Pines and Valley View areas area became a quiet place for hiking, biking and exercising animals.

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⁷ The person who apparently orchestrated much of the resistance moved out of the area in about early 2007.

