

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 251**

RIN 0596-AD36

Land Uses; Special Uses; Procedures for Operating Plans and Agreements for Vegetation Management Within and Along Powerline Rights-of-Way**AGENCY:** Forest Service, USDA.**ACTION:** Proposed rule.

SUMMARY: The U.S. Department of Agriculture, Forest Service (Agency) is proposing to amend its existing regulations, for the Agency's special uses to implement Section 512 of the Federal Land Policy and Management Act, as added by section 211 of division O, Consolidated Appropriations Act, 2018 (hereinafter "Section 512"). This section governs the development and approval of operating plans and agreements for vegetation and facility management on National Forest System (NFS) lands within rights-of-way for electric transmission and distribution facilities (powerlines) and on their abutting lands.

DATES: Comments must be received in writing by November 25, 2019.

ADDRESSES: Submit comments electronically by following the instructions at the Federal eRulemaking portal at <http://www.regulations.gov>. Comments also may be submitted by mail to the USDA Forest Service, Lands and Realty Staff, 201 14th Street SW, Mailstop 1124, Washington, DC 20250-1125. If comments are sent electronically, duplicate comments should not be sent by mail. Comments should be confined to issues pertinent to the proposed rule, and the reasons for any recommended changes should be explained. The specific section and wording being addressed should be referenced, where possible. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the Lands and Realty Management Staff, 1st Floor Southwest, 201 14th Street SW, Washington, DC 20250-1125, on business days between 8:30 a.m. and 4:00 p.m. Those wishing to inspect comments are encouraged to call ahead at 202-205-1196 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Reggie Woodruff, Energy Program Manager, Lands and Realty Management staff, (202) 205-1196.

SUPPLEMENTARY INFORMATION:**Background and Need for the Proposed Rule**

The proposed rule is being promulgated pursuant to Section 512 (43 U.S.C. 1772), which is an amendment to Title V of FLPMA (43 U.S.C. 1761-1772). Section 501(a)(5) of FLPMA (43 U.S.C. 1761(a)(5)) authorizes the Forest Service to issue or reissue right-of-way authorizations for powerlines on NFS lands. Section 501(b)(1) of FLPMA (43 U.S.C. 1761(b)(1)) provides that prior to issuing or reissuing a special use authorization for a right-of-way, the Forest Service must require that the applicant submit any plans, contracts, or other information related to the proposed or existing use of the right-of-way that the Agency deems necessary to determine, in accordance with FLPMA, whether to issue or reissue the authorization and the terms and conditions that should be included in the authorization.

Section 503(c) of FLPMA (43 U.S.C. 1763(c)) provides that right-of-way authorizations must be issued or reissued pursuant to Title V of FLPMA and its implementing regulations and must also be subject to such terms and conditions as the Forest Service may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Section 505 of FLPMA (43 U.S.C. 1765) gives the Forest Service broad discretion to establish terms and conditions in right-of-way authorizations, including terms and conditions that will effectuate the purposes of FLPMA and its implementing regulations and minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment (43 U.S.C. 1765(a)(i)-(ii)). In addition, Section 505(b) (43 U.S.C. 1765(b)) requires the Forest Service to include terms and conditions in right-of-way authorizations that the Agency deems necessary to protect federal property and economic interests; efficiently manage the lands which are subject or adjacent to the right-of-way; protect lives and property; protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and otherwise protect the public interest in the lands traversed by or adjacent to the right-of-way.

Consistent with this statutory authority, the Forest Service regulates the occupancy and use of NFS lands for powerline rights-of-way through issuance of a special use authorization under 36 CFR part 251, subpart B. The Forest Service must include in special use authorizations terms and conditions the Agency deems necessary to effectuate the purposes of FLPMA and its implementing regulations (36 CFR 251.56(a)(1)(i)(A)); minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment (36 CFR 251.56(a)(1)(i)(B)); protect federal property and economic interests (36 CFR 251.56(a)(1)(ii)(A)); efficiently manage the lands subject and adjacent to the authorized use (36 CFR 251.56(a)(1)(ii)(B)); protect lives and property (36 CFR 251.56(a)(1)(ii)(D)); protect the interests of individuals living in the general area of the authorized use who rely on resources of the area (36 CFR 251.56(a)(1)(ii)(E)); and otherwise protect the public interest (36 CFR 251.56(a)(1)(ii)(G)).

Based on these statutory and regulatory requirements, the Forest Service issues special use authorizations for powerline rights-of-way that require the holder, in consultation with the Forest Service, to prepare an operating plan that includes provisions governing vegetation and facility management on NFS lands within and abutting the right-of-way. Right-of-way authorizations for powerlines on NFS lands also require Forest Service approval of the operating plan before it is implemented.

In 2018, Congress amended FLPMA to add Section 512, which establishes requirements for the development and approval of operating plans and agreements for vegetation and facility management on NFS lands within powerline rights-of-way and on their abutting lands. Consistent with the definitions in Section 512(a), the Forest Service is proposing to amend its regulations at 36 CFR 251.51 to add definitions for "hazard tree," "operating plan or agreement for an electric transmission or distribution line," and "owner or operator." The proposed rule would define an operating plan or agreement for a powerline on NFS lands as a plan or agreement that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance and vegetation management of the powerline within the right-of-way and on abutting NFS lands, including management of hazard trees, to enhance electric reliability, promote public safety, and avoid fire hazards.

In addition, the Forest Service is proposing to revise 36 CFR 251.56, which governs terms and conditions in special use authorizations, to add a new paragraph (h), entitled *Operating plans and agreements for electric transmission and distribution facilities*. Consistent with Section 512(c), this new paragraph would include requirements for operating plans and agreements for powerlines. Per Section 512(c)(1) and (c)(4)(A), paragraph (h) of the proposed rule would provide for the operating plan or agreement to be prepared by the owner or operator of the powerline, approved by the authorized officer, and incorporated by reference into the corresponding special use authorization. Consistent with Section 512(d), paragraphs (h)(1) and (h)(2) of the proposed rule would specify when an agreement instead of an operating plan may be used. Consistent with Section 512(k), paragraph (h)(3) would provide that an existing operating plan must, at the holder's initiative, be revised consistent with Section 512 and submitted to the Forest Service for approval. Paragraph (h)(4), per Section 512(c)(1), would provide that an operating plan or agreement may be prepared by the owner or operator alone or in consultation with the Forest Service.

Per Section 512(c)(3) and (c)(4), (e), and (f), paragraph (h)(5) of the proposed rule would address the contents of an operating plan or agreement for a powerline, including:

- Coordination between the owner or operator and the Forest Service;
- Compliance with applicable law; applicable reliability and safety standards; the applicable land management plan; environmental compliance; resource protection; fire control; routine, non-routine, and emergency maintenance of the powerline; and road and trail construction, reconstruction, and maintenance in support of the powerline;
- Best management practices for vegetation management, procedures for marking timber, and road and trail standards and best management practices;
- Types of activities that require prior written approval from the Forest Service, including construction, reconstruction, and non-routine maintenance of the powerline; non-emergency vegetation management; and road and trail construction and reconstruction in support of the powerline; and
- Timeframes for:
 - The owner or operator to notify the Forest Service of routine, non-routine,

and emergency maintenance of the powerline and non-emergency and emergency vegetation management for the powerline;

- The owner or operator to request approval from the Forest Service of non-routine maintenance of and non-emergency vegetation management for the powerline; and

- The authorized officer to respond to a request by the owner or operator for approval of non-routine maintenance of and non-emergency vegetation management for the powerline.

- Procedures for prior Forest Service approval of non-emergency vegetation management and emergency vegetation management of the powerline without prior Forest Service approval; and

- Procedures for modification of an approved operating plan or agreement.

Per Section 512(c)(4)(A), paragraph (h)(6) of the proposed rule would require proposed operating plans and agreements to be reviewed and approved in accordance with procedures developed jointly by the Forest Service and the United States Department of the Interior, Bureau of Land Management. Paragraph (h)(6), consistent with Section 512(c)(4), would require these procedures to specify timeframes for:

- Submission of agency comments on a proposed operating plan or agreement;
- Approval of a proposed operating plan or agreement, to the maximum extent practicable, within 120 days from the date the proposed operating plan or agreement was submitted; and
- Approval of any necessary modifications to an approved operating plan or agreement.

Per Section 512(c)(1) and (c)(4)(A), proposed paragraph (h)(7) would provide that when an approved operating plan or agreement expires before termination of the corresponding special use authorization, the owner or operator must prepare a new proposed operating plan or agreement, either solely or in consultation with the authorized officer, and submit it to the authorized officer for review and approval in accordance with the procedures described in proposed paragraph (h)(6).

Consistent with Section 512(h)(1), proposed paragraph (h)(8) would require the Forest Service to report annually on its website requests for approval of activities to be conducted under operating plans and agreements and the response to those requests.

Proposed paragraph (h)(9)(i), per Section 512(g)(1), would provide that strict liability in tort may not be imposed on an owner or operator for injury or damages resulting from the

Forest Service's unreasonably withholding or delaying approval of an operating plan or agreement or unreasonably failing to adhere to an applicable schedule in an approved operating plan or agreement. Consistent with Section 512(g)(2), proposed paragraph (h)(9)(ii) would provide that for 10 years from the effective date of Section 512, strict liability in tort for injury or damages resulting from activities conducted by an owner or operator under an approved agreement may not exceed \$500,000 per incident.

Consistent with Section 512(b), proposed paragraph (h)(10) would require the Forest Service to issue and periodically update guidance to ensure that operating plans and agreements for powerline authorizations are appropriately developed, approved, and implemented. Proposed paragraph (h)(10) would require that the guidance:

- Be developed in consultation with owners of powerlines;
- Be compatible with mandatory reliability standards established by the Electric Reliability Organization;
- Consider all applicable law, including fire safety and electrical system reliability requirements, such as reliability standards established by the Electric Reliability Organization;
- Consider the 2016 Memorandum of Understanding on Vegetation Management for Powerline Rights-of-Way Among the Edison Electric Institute, Utility Arborist Association, the National Park Service, the United States Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the United States Environmental Protection Agency, and any successor memorandum of understanding;

- Seek to minimize the need for case-by-case approvals for non-emergency vegetation management (including hazard tree removal), facility inspection, and operation and maintenance of powerlines; and

- Provide for prompt and timely review of requests to conduct non-emergency vegetation management of powerlines.

Per Section 512(c)(5), the Forest Service's current regulations implementing the National Environmental Policy Act (NEPA) at 36 CFR 220.6(d)(10) and (e)(2) exclude categories of actions covered by an operating plan or agreement for a powerline authorization from documentation in an environmental assessment (EA) or an environmental impact statement (EIS). Section 220.6(d)(10) establishes a categorical exclusion from documentation in an EA or EIS (CE) for reissuance of an existing

special use authorization that involves only administrative changes and does not involve changes in the authorized facilities or increase in the scope or intensity of authorized activities, or extension to the term of the authorization, when the holder is in full compliance with the terms and conditions of the existing authorization. Section 220.6(e)(2) establishes a CE for additional construction or reconstruction of existing powerlines in a designated corridor, including reconstructing a powerline by replacing poles and wires.

Proposed revisions to the Forest Service's NEPA regulations at 36 CFR 220.5 (84 FR 27544) would enhance the Agency's ability to rely on a CE in approving activities covered by an operating plan or agreement for a powerline authorization. Proposed § 220.5(d)(11) would establish a new CE that does not require a project or case file and decision memo for reissuance of special use authorizations to reduce the backlog of expired and expiring authorizations. One of the examples for this CE would be issuance of a new authorization to replace a powerline authorization that is at the end of its term. In addition, the proposed revisions to the Agency's NEPA regulations would expand the current CE for special use authorizations at § 220.5(e)(3) from 5 to 20 acres and would remove the qualifier "minor." One of the examples for this CE would be approval of up to a 40-foot-wide, 4-mile-long utility corridor on NFS lands.

As provided by Section 512(j)(2), the Forest Service will publish a final rule by March 31, 2020. The Agency anticipates that implementation of the rule would promote the reliability of the United States' electrical grid and would reduce the threat of damage to powerlines, natural resources, and nearby communities by streamlining approval for routine and emergency vegetation management within and abutting powerline rights-of-way on NFS lands.

Regulatory Certifications

Executive Order 12866

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13771

The proposed rule has been reviewed in accordance with E.O. 13771 on reducing regulation and controlling

regulatory costs and has been designated as an "other action" for purposes of the E.O.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

This proposed rule would establish procedures for the development and approval of operating plans and agreements for vegetation and facility management within and abutting powerline rights-of-way on NFS lands. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The Agency has concluded that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environment assessment or environmental impact statement.

Regulatory Flexibility Act Analysis

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This proposed rule would not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The proposed rule would not impose recordkeeping requirements on small entities; would not affect their competitive position in relation to large entities; and would not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Forest Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Agency has considered this proposed rule under the requirements of E.O. 13132, *Federalism* and has determined that the proposed rule conforms with the Federalism principles set out in the E.O.; would not impose any compliance costs on the states; and would not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further

assessment of Federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

The Agency has determined that national tribal consultation is not necessary for this proposed rule. This proposed rule, which would implement statutory requirements governing operating plans and agreements for powerline rights-of-way on NFS lands, is programmatic and would not have any direct effects on tribes. Tribal consultation will occur as appropriate in connection with specific applications for powerline rights-of-way on NFS lands.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protect Property Rights*. The Agency has determined that the proposed rule would not pose the risk of a taking of private property.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 U.S.C. 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Energy Effects

This proposed rule has been reviewed under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Agency has determined that this proposed rule does not constitute a significant energy action as defined in the E.O.

Civil Justice Reform

This proposed rule has been reviewed under E.O. 12988, *Civil Justice Reform*. If the proposed rule were adopted, (1) all state and local laws and regulations that conflict with the proposed rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to the proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this proposed rule on state, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of \$100 million or more by any state, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National Forests, Rights-of-way, and Water resources.

Therefore, for the reasons set out in the preamble, the Forest Service proposes to amend part 251, subpart B, of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

■ 1. Revise the authority citation for part 251, subpart B, to read as follows:

Authority: 16 U.S.C. 460l–6a, 460l–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1772.

■ 2. In § 251.51, add definitions for “hazard tree,” “operating plan or agreement for an electric transmission or distribution facility,” and “owner or operator,” in alphabetical order, to read as follows:

§ 251.51 Definitions.

* * * * *

Hazard tree—for purposes of vegetation management for an electric transmission or distribution line, any tree or part thereof (whether located inside or outside a right-of-way) that has been designated, prior to tree failure, by a certified or licensed arborist or forester under the supervision of the Forest Service or the owner or operator (a) to be dead, likely to die within the routine vegetation management cycle, or likely to fail within the routine vegetation management cycle; and (b) if the tree or part of the tree failed, likely to cause substantial damage or disruption of a transmission or distribution facility or come within 10 feet of an electric power line.

* * * * *

Operating plan or agreement for an electric transmission or distribution facility—a plan or an agreement prepared by the owner or operator of an electric transmission or distribution facility, approved by the authorized officer, and incorporated by reference

into the corresponding special use authorization that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of the electric transmission and distribution facility within the right-of-way and on abutting National Forest System lands, including management of hazard trees, to enhance electric reliability, promote public safety, and avoid fire hazards.

* * * * *

Owner or operator—for purposes of an electric transmission or distribution facility, the owner or operator of the facility or a contractor or other agent engaged by the owner or operator of the facility.

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■ 3. In § 251.56, add paragraph (h), to read as follows:

§ 251.56 Terms and conditions.

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(h) *Operating plans and agreements for electric transmission and distribution facilities (hereinafter, and for purposes of this paragraph only, “operating plans” and “agreements”)*. An operating plan or agreement consistent with 36 CFR 251.56(h) is required for new and reauthorized electric transmission and distribution facilities on National Forest System lands. Operating plans and agreements must have prior written approval from the authorized officer.

(1) *Use of operating plans*. Operating plans, rather than agreements, are required for electric transmission and distribution facilities that are subject to the mandatory reliability standards established by the Electric Reliability Organization and that sold more than 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately preceding March 23, 2018.

(2) *Use of agreements*. Electric transmission and distribution facilities that are not subject to the mandatory reliability standards established by the Electric Reliability Organization or that sold less than or equal to 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately preceding March 23, 2018, may be subject to an agreement, instead of an operating plan.

(3) *Existing operating plans*. Existing operating plans shall be modified at the owner’s or operator’s initiative as necessary to be consistent with 36 CFR 251.56(h) and submitted to the authorized officer for approval. Existing operating plans that are consistent with 36 CFR 251.56(h) do not have to be

submitted for re-approval by the authorized officer.

(4) *Development of proposed operating plans and agreements*. Owners and operators may develop a proposed operating plan or agreement on their own or in consultation with the authorized officer.

(5) *Content of operating plans and agreements*. At a minimum, operating plans and agreements shall:

(i) Identify the electric transmission or distribution facility covered by the operating plan or agreement (hereinafter “covered line”);

(ii) Consider preexisting operating plans and agreements for the covered line;

(iii) Address coordination between the owner or operator and the Forest Service and specify their points of contact;

(iv) Address compliance with applicable law; applicable reliability and safety standards (owners and operators subject to mandatory reliability standards established by the Electric Reliability Organization or superseding standards may use those standards as part of their operating plan); the applicable land management plan; environmental compliance; resource protection; fire control; routine, non-routine, and emergency maintenance of the covered line; and road and trail construction, reconstruction, and maintenance in support of the covered line;

(v) Identify best management practices for vegetation management, procedures for marking timber, and road and trail standards and best management practices;

(vi) Address the types of activities conducted under the operating plan or agreement that require prior written approval from the authorized officer under 36 CFR 251.61, including construction, reconstruction, and non-routine maintenance of the covered line; non-emergency vegetation management; and road and trail construction and reconstruction in support of the covered line;

(vii) Specify timeframes for:

(A) The owner or operator to notify the authorized officer of routine, non-routine, and emergency maintenance of the covered line and non-emergency and emergency vegetation management for the covered line;

(B) The owner or operator to request approval from the authorized officer of non-routine maintenance of and non-emergency vegetation management for the covered line; and

(C) The authorized officer to respond to a request by the owner or operator for approval of non-routine maintenance of

and non-emergency vegetation management for the covered line;

(viii) Include the following procedures with regard to authorized officer approval of vegetation management:

(A) *Non-emergency vegetation management.* Non-emergency vegetation management must have prior written approval from the authorized officer, unless all 3 of the following conditions are met:

(1) The owner or operator has submitted a request for approval to the authorized officer in accordance with the specified timeframe in the approved operating plan or agreement;

(2) The proposed vegetation management is in accordance with the approved operating plan or agreement; and

(3) The authorized officer has failed to respond to the request in accordance with the specified timeframe in the approved operating plan or agreement.

(B) *Emergency vegetation management.* If vegetation or hazard trees have contacted or, as specified in the operating plan or agreement, present an imminent danger of contacting the covered line from within or adjacent to the right-of-way for the covered line, the owner or operator may, without prior written approval from the authorized officer, prune or remove the vegetation or hazard trees to avoid the disruption of electric service and eliminate immediate fire and safety hazards. The owner or operator shall notify the authorized officer in writing of the location and quantity of the pruning or removal within 24 hours of the pruning or removal;

(ix) Include the following procedures for modification of an approved operating plan or agreement:

(A) The authorized officer shall give the owner or operator of the covered line prior notice of any changed conditions that warrant a modification of the approved operating plan or agreement;

(B) The authorized officer shall give the owner or operator an opportunity to submit a proposed modification of the approved operating plan or agreement, consistent with the procedures described in paragraph (h)(6) of this section, to address the changed conditions;

(C) The authorized officer shall consider the proposed modification consistent with the procedures described in paragraph (h)(6) of this section; and

(D) The owner or operator may continue to implement the approved operating plan or agreement to the extent it does not directly and adversely

affect the conditions prompting the modification; and

(x) For agreements only, reflect the relative financial resources of the owner or operator of the covered line compared to other owners or operators of an electric transmission or distribution facility.

(6) *Review and approval of proposed operating plans and agreements.*

Proposed operating plans and agreements shall be submitted to the authorized officer for review and approval in writing before they are implemented. Proposed operating plans and agreements shall be reviewed and approved in accordance with procedures developed jointly by the Forest Service and the United States Department of the Interior, Bureau of Land Management. These procedures shall be consistent with applicable law and shall specify timeframes for:

(i) Submission of applicable agency comments on a proposed operating plan or agreement;

(ii) Approval of a proposed operating plan or agreement that, to the maximum extent practicable, is within 120 days from the date the proposed operating plan or agreement was submitted; and

(iii) Approval of any necessary modifications to an approved operating plan or agreement.

(7) *Expiration of approved operating plans and agreements before termination of the corresponding special use authorization.* Upon expiration of an approved operating plan or agreement before termination of the corresponding special use authorization, the owner or operator must prepare a new proposed operating plan or agreement, either solely or in consultation with the authorized officer, and submit it to the authorized officer for review and approval in accordance with the procedures described in paragraph (h)(6) of this section.

(8) *Reporting of requests and responses to requests for non-emergency vegetation management.* The Forest Service shall annually report on its website requests for approval of non-emergency vegetation management pursuant to paragraph (h)(5)(viii)(A) of this section and responses to those requests.

(9) *Strict Liability.* (i) Notwithstanding paragraph (d)(2) of this section, strict liability in tort may not be imposed on an owner or operator for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of an operating plan or agreement or unreasonably failing to adhere to an applicable schedule in an approved operating plan or agreement.

(ii) Notwithstanding paragraph (d)(2) of this section, for 10 years from March 23, 2018, strict liability in tort for injury or damages resulting from activities conducted by an owner or operator under an approved agreement may not exceed \$500,000 per incident.

(10) *Guidance.* To enhance the reliability of the electric grid and to reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution rights-of-way and abutting NFS lands, including hazard trees, the Forest Service shall issue and periodically update guidance to ensure that provisions are appropriately developed and implemented for utility vegetation management, facility inspection, and operation and maintenance of rights-of-way. The guidance shall:

(i) Be developed in consultation with owners;

(ii) Be compatible with mandatory reliability standards established by the Electric Reliability Organization;

(iii) Consider all applicable law, including fire safety and electrical system reliability requirements, such as reliability standards established by the Electric Reliability Organization;

(iv) Consider the 2016 Memorandum of Understanding on Vegetation Management for Powerline Rights-of-Way Among the Edison Electric Institute, Utility Arborist Association, the National Park Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the Forest Service, and the U.S. Environmental Protection Agency, and any successor memorandum of understanding;

(v) Seek to minimize the need for case-by-case approvals for non-emergency vegetation management (including hazard tree removal), facility inspection, and operation and maintenance of electric transmission and distribution facilities; and

(vi) Provide for prompt and timely review of requests to conduct non-emergency vegetation management.

Dated: September 5, 2019.

Daniel James Jiron,

Acting Deputy Under Secretary, Natural Resources and Environment.

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