

ton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (c)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Act of August 27, 1894, referred to in subsec. (c), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, which are classified to sections 8 and 9 of Title 15.

Executive Documents

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1771. Coordination of applications

Applicants before Federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-of-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other Federal department or agency.

(Pub. L. 94-579, title V, §511, Oct. 21, 1976, 90 Stat. 2782.)

Executive Documents

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1772. Vegetation management,¹ facility inspection, and operation and maintenance relating to electric transmission and distribution facility rights of way

(a) Definitions

In this section:

(1) Hazard tree

The term “hazard tree” means 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 Secretary concerned or the owner or operator of a transmission or distribution facility to be—

(A) 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—

(i) cause substantial damage or disruption to a transmission or distribution facility; or

(ii) come within 10 feet of an electric power line.

¹ So in original. Probably should be “management.”

(2) Owner; operator

The terms “owner” and “operator” include contractors or other agents engaged by the owner or operator of an electric transmission or distribution facility.

(3) Plan

The term “plan” means a vegetation management, facility inspection, and operation and maintenance plan that—

(A) is prepared by the owner or operator of 1 or more electric transmission or distribution facilities to cover 1 or more electric transmission and distribution rights-of-way; and

(B) provides for the long-term, cost-effective, efficient, and timely management of facilities and vegetation within the width of the right-of-way and abutting Federal land, including hazard trees, to enhance electric reliability, promote public safety, and avoid fire hazards.

(4) Secretary concerned

The term “Secretary concerned” means—

(A) the Secretary, with respect to public lands; and

(B) the Secretary of Agriculture, with respect to National Forest System land.

(b) Guidance

(1) In general

To enhance the reliability of the electric grid and reduce the threat of wildfire damage to, and wildfire caused by vegetation-related conditions within, electric transmission and distribution rights-of-way and abutting Federal land, including hazard trees, the Secretary concerned 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, regardless of the means by which the rights-of-way are established (including by grant, special use authorization, and easement).

(2) Limitation

The guidance issued under paragraph (1) shall be compatible with mandatory reliability standards established by the Electric Reliability Organization.

(3) Considerations

The guidance issued under paragraph (1) shall take into account—

(A) all applicable law, including fire safety and electric system reliability requirements (including reliability standards established by the Electric Reliability Organization under section 824o of title 16); and

(B) the Memorandum of Understanding on Vegetation Management for Powerline Rights-of-Way between the Edison Electric Institute, Utility Arborist Association, the Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency signed in 2016.

(4) Requirements

The guidance issued under paragraph (1) shall—

(A) be developed in consultation with the owners of transmission and distribution facilities that hold rights-of-way;

(B) seek to minimize the need for case-by-case approvals for—

(i) routine vegetation management, facility inspection, and operation and maintenance activities; and

(ii) utility vegetation management activities that are necessary to control hazard trees; and

(C) provide for prompt and timely review of requests to conduct vegetation management activities that require approval of the Secretary concerned, especially activities requiring expedited or immediate action.

(c) Vegetation management, facility inspection, and operation and maintenance plans

(1) Development and submission

Consistent with subsection (b), the Secretary concerned shall provide owners and operators of electric transmission or distribution facilities located on public lands and National Forest System land, as applicable, with the option to develop and submit a plan.

(2) ERO 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 the plan.

(3) Plan requirements

A plan developed under paragraph (1) shall—

(A) identify the applicable transmission or distribution facilities to be maintained;

(B) take into account operations and maintenance plans for the applicable transmission or distribution line;

(C) describe the vegetation management, inspection, and operation and maintenance methods that may be used to comply with all applicable law, including fire safety requirements and reliability standards established by the Electric Reliability Organization;

(D) include schedules for—

(i) the applicable owner or operator to notify the Secretary concerned about routine and major maintenance;

(ii) the applicable owner or operator to request approval from the Secretary concerned about undertaking routine and major maintenance; and

(iii) the Secretary concerned to respond to a request by an owner or operator under clause (ii); and

(E) describe processes for—

(i) identifying changes in conditions; and

(ii) modifying the approved plan, if necessary.

(4) Review and approval process

(A) In general

The Secretary concerned shall jointly develop a consolidated and coordinated process for the review and approval of plans submitted under paragraph (1) that—

(i) includes timelines and benchmarks for—

(I) the submission of agency comments on the plans and schedules for final decision; and

(II) the timely review of modifications of the plans in cases in which modifications are necessary;

(ii) is consistent with applicable law; and¹

(iii) includes a process for modifications to a plan in a prompt manner if changed conditions necessitate a modification to a plan; and

(iv) ensures, to the maximum extent practicable, a prompt review and approval process not to exceed 120 days.

(B) Plan modification

Upon reasonable advance notice to an owner or operator of an electric transmission or distribution facility of any changed conditions that warrant a modification to a plan, the Secretary concerned shall—

(i) provide an opportunity for the owner or operator to submit a proposed plan modification, consistent with the process described under subparagraph (A)(iii), to address the changed condition identified by the Secretary concerned;

(ii) consider the proposed plan modification consistent with the process described under paragraph (4)(A); and

(iii) allow the owner or operator to continue to implement any element of the approved plan that does not directly and adversely affect the condition precipitating the need for modification.

(5) Categories of actions not requiring environmental analysis

With respect to the development and approval of plans submitted under paragraph (1), as well as with respect to actions carried out under such plans, the Secretary concerned shall identify categories of actions for which neither an environmental impact statement nor an environmental assessment shall be required under section 1508.4 of title 40, Code of Federal Regulations (or a successor regulation).

(d) Certain owners and operators

(1) In general

The owner or operator of an electric transmission or distribution facility that is 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 enter into an agreement with the Secretary concerned in lieu of a plan under subsection (c).

(2) Minimum requirements

The Secretary concerned shall ensure that the minimum requirements for an agreement under paragraph (1)—

¹ So in original.

(A) reflect the relative financial resources of the applicable owner or operator compared to other owners or operators of an electric transmission or distribution facility;

(B) include schedules as described in subsection (c)(3)(D);

(C) are subject to modification requirements as described in subsection (c)(4)(B); and

(D) comply with applicable law.

(e) Emergency conditions

If vegetation or hazard trees have contacted or present an imminent danger of contacting an electric transmission or distribution line from within or adjacent to an electric transmission or distribution right-of-way, the owner or operator of the electric transmission or distribution lines—

(1) may prune or remove the vegetation or hazard tree—

(A) to avoid the disruption of electric service; and

(B) to eliminate immediate fire and safety hazards; and

(2) shall notify the appropriate local agent of the Secretary concerned not later than 1 day after the date of the response to emergency conditions.

(f) Activities that require approval

(1) In general

Except as provided under paragraph (3), the owner or operator of an electric transmission or distribution facility may conduct vegetation management activities that require approval of the Secretary concerned in accordance with a plan approved under subsection (c) or an agreement entered into under subsection (d) only with the approval of the Secretary concerned.

(2) Requirement to respond

The Secretary concerned shall respond to a request for approval to conduct vegetation management activities in accordance with the applicable schedules in a plan approved under subsection (c) or an agreement entered into under subsection (d).

(3) Authorized activities

The owner or operator of an electric transmission or distribution facility may conduct vegetation management activities that require approval of the Secretary concerned in accordance with a plan approved under subsection (c) or an agreement entered into under subsection (d) without the approval of the Secretary concerned if—

(A) the owner or operator submitted a request to the Secretary concerned in accordance with the applicable schedule in a plan approved under subsection (c) or an agreement entered into under subsection (d);

(B) the vegetation management activities, including the removal of hazard trees, proposed in the request under subparagraph (A) are in accordance with a plan approved under subsection (c) or an agreement entered into under subsection (d); and

(C) the Secretary concerned fails to respond to the request under subparagraph (A)

in accordance with the applicable schedule in a plan approved under subsection (c) or an agreement entered into under subsection (d).

(g) Liability

(1) In general

The Secretary concerned shall not impose strict liability for damages or injury resulting from—

(A) the Secretary concerned unreasonably withholding or delaying—

(i) approval of a plan under subsection (c); or

(ii) entrance into an agreement under subsection (d); or

(B) the Secretary concerned unreasonably failing to adhere to an applicable schedule in a plan approved under subsection (c) or an agreement entered into under subsection (d).

(2) Damages

For the period ending 10 years after March 23, 2018, the Secretary concerned shall not impose strict liability in an amount greater than \$500,000 per incident for damages or injury resulting from activities conducted by an owner or operator in accordance with an approved agreement under subsection (d).

(3) Rule of construction

Nothing in paragraph (2) shall be construed to effect¹ any liability imposed by the Secretary concerned under section 251.56(d) of title 36, Code of Federal Regulations (as in effect on March 23, 2018) and section 2807.12 of title 43, Code of Federal Regulations (as in effect on March 23, 2018), for activities conducted by an owner or operator in accordance with an approved plan under subsection (c).

(h) Reporting requirement

(1) Activities that require approval

The Secretary concerned shall report requests and actions made under subsection (f) annually on the website of the Secretary concerned.

(2) Liability

Not later than four years after March 23, 2018, the Secretary concerned shall prepare and submit a report to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate that describes the effect on the Treasury of the strict liability limitation established by subsection (g)(2).

(i) Training and guidance

In consultation with the electric utility industry, the Secretary concerned is encouraged to develop a program to train personnel of the Department of the Interior and the Forest Service involved in vegetation management decisions relating to electric transmission and distribution facilities to ensure that the personnel—

(1) understand electric system reliability requirements as the requirements relate to vegetation management of transmission and distribution rights-of-way on Federal land, including reliability standards established by the Electric Reliability Organization and fire safety requirements;

(2) assist owners and operators of electric transmission and distribution facilities in complying with applicable electric reliability and fire safety requirements;

(3) encourage and assist willing owners and operators of electric transmission and distribution facilities to incorporate on a voluntary basis vegetation management practices to enhance habitats and forage for pollinators and for other wildlife if the practices are compatible with the integrated vegetation management practices necessary for reliability and safety; and

(4) understand how existing and emerging unmanned technologies can help electric utilities, the Federal Government, State and local governments, and private landowners—

(A) to more efficiently identify vegetation management needs;

(B) to reduce the risk of wildfires; and

(C) to lower ratepayer energy costs.

(j) Implementation

The Secretary concerned shall—

(1) not later than 1 year after March 23, 2018, propose regulations, or amend existing regulations, to implement this section; and

(2) not later than 2 years after March 23, 2018, finalize regulations, or amend existing regulations, to implement this section.

(k) Existing vegetation management, facility inspection, and operation and maintenance plans

Nothing in this section requires an owner or operator to develop and submit a new plan under this section if a plan consistent with this section has already been approved by the Secretary concerned before March 23, 2018.

(Pub. L. 94-579, title V, §512, as added Pub. L. 115-141, div. O, title II, §211(a), Mar. 23, 2018, 132 Stat. 1068.)

Statutory Notes and Related Subsidiaries

UTILITY INFRASTRUCTURE RIGHTS-OF-WAY VEGETATION MANAGEMENT PILOT PROGRAM

Pub. L. 115-334, title VIII, §8630, Dec. 20, 2018, 132 Stat. 4865, provided that:

“(a) DEFINITIONS.—In this section:

“(1) NATIONAL FOREST SYSTEM LAND.—

“(A) IN GENERAL.—The term ‘National Forest System land’ means land within the National Forest System, as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

“(B) EXCLUSIONS.—The term ‘National Forest System land’ does not include—

“(i) a National Grassland; or

“(ii) a land utilization project on land designated as a National Grassland and administered pursuant to sections 31, 32, and 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010, 1011, 1012).

“(2) PASSING WILDFIRE.—The term ‘passing wildfire’ means a wildfire that originates outside of a right-of-way.

“(3) PILOT PROGRAM.—The term ‘pilot program’ means the pilot program established by the Secretary [of Agriculture] under subsection (b).

“(4) RIGHT-OF-WAY.—The term ‘right-of-way’ means a special use authorization issued by the Forest Service allowing the placement of utility infrastructure.

“(5) UTILITY INFRASTRUCTURE.—The term ‘utility infrastructure’ means electric transmission lines, natural gas infrastructure, or related structures.

“(b) ESTABLISHMENT.—

“(1) IN GENERAL.—To encourage owners or operators of rights-of-way on National Forest System land to partner with the Forest Service to voluntarily conduct vegetation management projects on a proactive basis to better protect utility infrastructure from potential passing wildfires, the Secretary may establish a limited, voluntary pilot program, in the manner described in this section, to conduct vegetation management projects on National Forest System land adjacent to those rights-of-way.

“(2) APPLICATION.—The pilot program shall not apply in a right-of-way described in paragraph (1).

“(c) ELIGIBLE PARTICIPANTS.—

“(1) IN GENERAL.—A participant in the pilot program shall be the owner or operator of a right-of-way on National Forest System land.

“(2) SELECTION PRIORITY.—In selecting participants for the pilot program, the Secretary shall give priority to an owner or operator of a right-of-way that has developed the utility infrastructure protection prescriptions of the owner or operator in coordination with Forest Service fire scientists or fire managers.

“(d) VEGETATION MANAGEMENT PROJECTS.—

“(1) IN GENERAL.—A vegetation management project conducted under the pilot program shall involve only limited vegetation management activities that—

“(A) shall create the least ground disturbance and least disturbance to wildlife reasonably necessary to protect utility infrastructure from passing wildfires based on applicable models, including Forest Service fuel models;

“(B) may include thinning and treatment of surface fuels, ladder fuels, and activity fuels to create or maintain shaded fuel breaks or other appropriate measures recommended by Forest Service fire scientists or fire managers;

“(C)(i) shall only be conducted on National Forest System land; and

“(ii) shall not—

“(I) extend for more than 150 feet from the electric transmission line for which the applicable participant has a right-of-way; or

“(II) comprise an overall width, for both sides of that electric transmission line, that totals more than 200 feet; and

“(D) shall not be conducted on—

“(i) a component of the National Wilderness Preservation System;

“(ii) a designated wilderness study area;

“(iii) an inventoried roadless area; or

“(iv) Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited.

“(2) APPROVAL.—Each vegetation management project described in paragraph (1) shall be subject to approval by the Forest Service in accordance with this section.

“(3) FIRE PREVENTION.—In carrying out a vegetation management project under the pilot program, a participant shall adhere to—

“(A) Forest Service regulations relating to spark arresting devices;

“(B) Forest Service regulations limiting and prohibiting certain activities conducted by contractors in an area, based on weather conditions and fire danger;

“(C) Forest Service regulations that apply to contractors removing vegetation on National Forest System land pursuant to a timber sale or stewardship contract, including regulations relating to—

“(i) protection of residual trees and timber damaged by contractors;

“(ii) protection measures needed for plants, animals, cultural resources, and cave resources;

“(iii) streamcourse protection and erosion control;

“(iv) fire plans, precautions, and precautionary periods;

“(v) fire suppression costs; and
 “(vi) employment of eligible workers; and
 “(D) State regulations relating to the prevention of wildfires and contractors removing vegetation.
 “(4) TREATMENT OF SLASH.—In carrying out a vegetation management project under the pilot program, a participant shall treat any activity fuels in a manner that—

“(A) is satisfactory to the Forest Service;
 “(B) does not result in a fire hazard; and
 “(C) reduces the risk of an insect or disease outbreak.

“(e) PROJECT COSTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (f)(2), a participant in the pilot program shall be responsible for all costs, as determined by the Secretary, incurred in participating in the pilot program.

“(2) FEDERAL FUNDING.—The Secretary may contribute funds for a vegetation management project conducted under the pilot program if the Secretary determines that the contribution is in the public interest.

“(f) LIABILITY.—

“(1) ACTIVITIES WITHIN RIGHTS-OF-WAY.—Participation in the pilot program shall not affect any legal obligations or liability standards that arise under the right-of-way for activities in the right-of-way.

“(2) WILDFIRES.—

“(A) OPERATIONS FIRES.—

“(i) IN GENERAL.—With respect to fire suppression costs for a wildfire caused by the operations of a participant in the pilot program (other than an operation or activity of a participant described in subparagraph (B) or (C)), the participant shall reimburse the Forest Service for those costs, subject to a maximum dollar amount to which the Forest Service and the participant shall agree prior to the commencement of the project.

“(ii) CREDIT FOR ACTIONS BY PARTICIPANTS.—

“(I) IN GENERAL.—If a participant in the pilot program provides actions, supplies, or equipment for use to suppress a wildfire described in clause (i) or at the request of the Forest Service, the cost of those actions, supplies, or equipment shall be credited toward the maximum dollar amount described in that clause.

“(II) REIMBURSEMENT.—If the actual cost of a participant described in subclause (I) exceeds the maximum dollar amount described in clause (i), the Forest Service shall reimburse the participant for the excess.

“(B) NEGLIGENCE FIRES.—

“(i) IN GENERAL.—Subject to clause (ii), if a wildfire is caused by the negligence of a participant in the pilot program, or an agent of the participant, including a wildfire caused by smoking by persons engaged in the operations of the participant, the participant shall bear the cost of damages to Forest Service resources and the fire suppression costs resulting from the wildfire.

“(ii) LIMITATION.—Except as provided in clause (i), the costs borne by a participant under clause (i) shall not exceed \$500,000.

“(iii) FAILURE TO COMPLY.—If the start or spread of a wildfire described in clause (i) is caused by the failure of the participant to comply with specific safety requirements expressly imposed by the Forest Service as a condition of conducting a vegetation management project under the pilot program or by this section, the participant shall bear the cost of damages to Forest Service resources and the fire suppression costs resulting from the wildfire.

“(C) EXCEPTIONS.—This paragraph shall not apply in the case of a wildfire caused by the felling of a tree by a participant in the pilot program, or an agent of the participant, onto an electric transmission line.

“(3) EFFECT.—Nothing in this subsection relieves a participant in the pilot program of any liabilities to which the participant is subject—

“(A) under State laws; or

“(B) with regard to damages to property other than Forest Service property.

“(g) IMPLEMENTATION.—

“(1) IN GENERAL.—Except as provided in paragraph (3), the Secretary shall use the authority of the Secretary under other laws (including regulations) to carry out the pilot program.

“(2) COMPLIANCE WITH EXISTING LAWS.—Except as provided in paragraph (3), a vegetation management project under the pilot program shall be—

“(A) consistent with the applicable land management plan for the area in which the project is located; and

“(B) carried out in accordance with all applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

“(3) MODIFICATION OF REGULATIONS.—In order to implement the pilot program in an efficient and expeditious manner, the Secretary may waive or modify specific provisions of the Federal Acquisition Regulation, including waivers or modifications to allow for the formation of contracts or agreements on a non-competitive basis.

“(h) TREATMENT OF PROCEEDS.—Notwithstanding any other provision of law, the Secretary may—

“(1) retain any funds provided to the Forest Service by a participant in the pilot program; and

“(2) use funds retained under paragraph (1), in such amounts as may be appropriated, to carry out the pilot program.

“(i) REPORT TO CONGRESS.—Not later than December 31, 2020, and 2 years thereafter, the Secretary shall submit a report describing the status of the pilot program and vegetation management projects conducted under the pilot program to—

“(1) the Committees on Agriculture, Nutrition, and Forestry and Energy and Natural Resources of the Senate; and

“(2) the Committees on Agriculture and Natural Resources of the House of Representatives.

“(j) DURATION.—The authority to carry out the pilot program, including any vegetation management project conducted under the pilot program, expires on October 1, 2023.”

SUBCHAPTER VI—DESIGNATED MANAGEMENT AREAS

§ 1781. California Desert Conservation Area

(a) Congressional findings

The Congress finds that—

(1) the California desert contains historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plant¹ to

¹ So in original. Probably should be “plan”.