

**Forest Service Handbook  
National Headquarters - Washington Office  
Washington, DC**

**Forest Service Handbook 2709.11 – Special Uses Handbook  
Chapter 80 - Operating Plans and Agreements For Powerline Facilities**

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**Chapter 80:** Establishes chapter and sets forth direction for “Operating Plans and Agreements for Powerline Facilities.”

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## **80.1 – Authority**

The principal laws and regulations governing this directive include:

1. Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761-1772. This act establishes requirements for authorizing powerline facilities on National Forest System (NFS) lands, including the scope of and liability for special use authorizations for powerline facilities. Section 512 of FLPMA, 43 U.S.C. 1772, establishes requirements and procedures for operating plans and agreements for special use authorizations for powerline facilities on NFS lands, both within the linear right-of-way for powerline facilities and on NFS lands adjacent to either side of the linear right-of-way.
2. Special Uses Regulations, 36 CFR Part 251, Subpart B. These regulations govern issuance and administration of special use authorizations for use and occupancy of NFS lands, including review and approval of proposed operating plans and agreements for special use authorizations for powerline facilities in accordance with section 512 of FLPMA.

## **80.2 – Objective**

The objective of this directive is to implement the requirements in section 512 of FLPMA, as added by section 211 of division O, Consolidated Appropriations Act, 2018. FLPMA governs the development, review, and approval of proposed operating plans and agreements for vegetation management, inspection, and operation and maintenance of powerline facilities on NFS lands inside the linear right-of-way for powerline facilities and felling and pruning of hazard trees on NFS lands adjacent to either side of the linear right-of-way.

The goal of approved operating plans and agreements is to provide for long-term, cost-effective, efficient, and timely inspection, operation and maintenance, and vegetation management of powerline facilities on NFS lands. Operating plans and agreements should address inspection, operation and maintenance, and vegetation management within the linear rights-of-way for powerline facilities and felling and pruning of hazard trees on NFS lands adjacent to either side of the linear rights-of-way. Operating plans and agreements should also address electrical grid reliability, public safety, and avoidance of fire hazards.

As required by section 512 of FLPMA and the Forest Service’s implementing regulations, this directive:

1. Was developed in consultation with owners;
2. Is compatible with mandatory reliability standards established by the Electric Reliability Organization;

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3. Considers all applicable law, including fire safety and electrical system reliability requirements, such as the reliability standards established by the Electric Reliability Organization;
4. Considers 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 Bureau of Land Management, the Forest Service, and the U.S. Environmental Protection Agency (2016 MOU) and any memorandum of understanding (MOU) that succeeds it;
5. Includes procedures developed jointly with the United States Department of the Interior, Bureau of Land Management (BLM), for review and approval of proposed operating plans and agreements and proposed modifications to approved operating plans and agreements;
6. Minimizes the need for case-by-case approvals for routine vegetation management (including hazard tree felling and pruning), powerline facility inspection, and operation and maintenance of powerline facilities; and
7. Provides for prompt and timely review of requests to conduct routine vegetation management.

### **80.3 – Policy**

It is the Forest Service’s policy to require, review, and approve proposed operating plans and agreements for special use authorizations for powerline facilities in compliance with section 512 of FLPMA, the Forest Service’s special use regulations at 36 CFR Part 251, Subpart B, and this directive.

### **80.4 – Responsibility**

#### **80.4a – Washington Office, Director of Lands and Realty Management**

The Washington Office Director of Lands and Realty Management is responsible for:

1. Developing, issuing, and maintaining directives to implement section 512 of FLPMA, including procedures developed jointly by the Forest Service and the BLM for review and approval of proposed operating plans and agreements and review and approval of proposed modifications to approved operating plans and agreements;
2. Developing standard clauses in special use authorizations for powerline facilities governing operating plans and agreements;
3. Documenting and reporting on the Washington Office Lands and Realty Management website, by April 1 of the year following submission of the documentation by authorized

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officers, annual requests and responses or lack of responses to requests to conduct routine vegetation management under an approved operating plan or agreement.

4. Providing training on powerline facilities, with input from the electric utility industry, that references industry reliability standards, common practices, and new technologies; and
5. Assisting field units in resolving programmatic issues related to implementation of this directive and associated statutes and regulations.

#### **80.4b – Authorized Officers**

Authorized officers are responsible for:

1. Implementing this directive for existing and new powerline facilities on NFS lands under their jurisdiction and where they have delegated authority from the Regional Forester for purposes of issuance and administration of a master powerline facility authorization.
2. In compliance with 36 CFR 251.58 and its implementing directive, executing cost recovery agreements with owners and operators for review and approval of proposed operating plans and agreements, modification of approved operating plans and agreements, and Class C activities (sec. 87.3).
3. Ensuring to the maximum extent practicable that their employees who work with owners and operators on the development of proposed operating plans and agreements for powerline facilities and who review and approve the proposed operating plans and agreements are trained on this directive.
4. Annually documenting requests for approval of routine vegetation management and responses or lack of responses to those requests under approved operating plans and agreements for powerline facilities on NFS lands under the authorized officer's jurisdiction or delegated authority and submitting that documentation to the Washington Office Director of Lands and Realty Management by March 1 the following calendar year.

#### **80.5 – Definitions**

Access Road or Trail. For purposes of this directive, a road or trail constructed, operated, and maintained by an owner or operator that is necessary to access a powerline facility or its linear right-of-way.

Bulk Power System. A system consisting of powerline facilities and control systems necessary for operating an interconnected electric energy transmission network or any part of it, other than facilities used in the local distribution of electric energy, and electric energy from generation facilities needed to maintain transmission reliability.

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Conductor. Cable or wire that transmits electricity.

Edison Electric Institute (EEI). The association that represents all investor-owned electric companies in the United States.

Electric Reliability Organization. An independent, self-regulating entity created by the Energy Policy Act of 2005 that has been certified by the Federal Energy Regulatory Commission (FERC) to enforce reliability standards for the bulk power system.

FERC License. An authorization issued by FERC for a non-Federal hydropower project and its primary powerline facility, which may include Forest Service conditions for powerline facility maintenance and vegetation management per section 4(e) of the Federal Power Act.

Fiber Optic Cable. An all-dielectric, self-supporting, non-conducting cable consisting of a central core surrounded by buffer tubes containing optical fibers and covered with a protective polyethylene jacket; an optical ground wire; or an overhead ground wire with optical fibers integrated into the design of the cable to provide communications capability as well as lightning protection.

Flashover. An electric discharge over or around the surface of an insulated conductor that may result in fire through the ignition of surrounding objects.

Hazard Tree. For purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter “vegetation” (whether located on NFS lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the owner or operator to be:

1. Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and
2. Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.

Integrated Vegetation Management. The practice of promoting desirable, stable, low-growing plants that will resist invasion by tall-growing tree species through the use of appropriate, environmentally sound, and cost-effective methods, including a combination of chemical, biological, cultural, mechanical, and manual treatments.

Linear Right-of-Way. An authorized right-of-way for a linear facility, such as a road, trail,

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pipeline, powerline facility, fence, water transmission facility, or fiber optic cable, whose linear boundary is delineated by its legal description.

Master Powerline Facility Authorization. A permit or an easement that covers more than one powerline facility to streamline authorization of an owner's or operator's powerline facilities and administration of the associated powerline facility permits or easements, including consolidation of the number of powerline facility permits and easements and their expiration dates, points of contact, and operating plans or agreements.

Maximum Operating Sag. The theoretical position of a conductor when operating at 100 degrees Celsius, which must be accounted for when determining minimum vegetation clearance distance.

Minimum Vegetation Clearance Distance (MVCD). The calculated distance (stated in feet or meters) that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages. The MVCD is measured from a conductor's maximum operating sag to vegetation on NFS lands within the linear right-of-way for a powerline facility and on NFS lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the owner or operator uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

North American Electric Reliability Corporation (NERC). The Electric Reliability Organization certified by FERC for the purposes of developing and enforcing reliability standards for the bulk power system in North America.

North American Electrical Power Grid (the Electrical Grid). The interconnection of hundreds of thousands of miles of high-voltage powerline facilities and millions of miles of low-voltage powerline facilities with distribution transformers that connect thousands of power plants to hundreds of millions of electricity customers across North America.

Operating Plan or Agreement for a Powerline Facility (Operating Plan or Agreement). A plan or agreement prepared by the owner or operator of a powerline 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 powerline facility on NFS lands within the linear right-of-way for the powerline facility and on NFS lands adjacent to either side of the linear right-of-way to fell or prune hazard trees and to construct, reconstruct, and maintain access roads and trails, to enhance electric reliability, promote public safety, and avoid fire hazards.

Owner or Operator. For purposes of a powerline facility, the owner or operator of the powerline facility or a contractor or other agent engaged by the owner or operator of the powerline facility.

Powerline Facility. One or more electric distribution or transmission lines authorized by a

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special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the owner or operator; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

**Powerline Facility Maintenance.**

1. **Emergency Maintenance.** Immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electrical service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.
2. **Non-Routine Maintenance.** Realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment of it, including reconductoring, as identified in an approved operating plan or agreement.
3. **Routine Maintenance.** Repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (such as insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

**Reliability Standard.** A requirement developed and enforced by NERC to provide for reliable planning and operation of the bulk power system in North America, including operation of existing bulk power system facilities and the design of planned additions or modifications to those facilities to the extent necessary to provide for reliable operation of the bulk power system, but not including any requirement to enlarge bulk power facilities or to construct new transmission or generation capacity.

**Tort.** A civil wrong, other than breach of contract, for which a remedy may be obtained, usually in the form of damages, which typically falls into one of the following four categories:

1. An intentional act resulting in harm;
2. An act involving unlawful conduct causing unintentional harm;
3. An unintentional act involving an unreasonable risk of harm; or
4. An act resulting in accidental harm for which, because of the hazards involved, the law imposes strict or absolute liability despite the absence of fault.



Vegetation Management.

1. Emergency Vegetation Management. Unplanned pruning or felling of vegetation on NFS lands within the linear right-of-way for a powerline facility and unplanned pruning or felling of hazard trees on NFS lands adjacent to either side of the linear right-of-way that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.
2. Non-Emergency (Routine) Vegetation Management. Planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on NFS lands within the linear right-of-way for a powerline facility and on NFS lands adjacent to either side of the linear right-of-way to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

## **81 – Use of Operating Plans and Agreements**

All new and existing powerline facilities on NFS lands must have an approved operating plan or agreement that complies with section 512 of FLPMA, the Forest Service’s implementing regulations, and this directive, except for new and existing powerline facilities on NFS lands authorized under a FERC license containing conditions on powerline facility maintenance and vegetation management that meet these requirements. See FSH 2709.15 for direction on Forest Service conditions on FERC licenses.

The authorized officer shall ensure that the applicable operating plan or agreement clause in Chapter 50 of this Handbook is included in all existing special use authorizations for powerline facilities.

All new powerline facilities on NFS lands must be authorized using the current appropriate powerline facility form containing clauses compliant with this directive. Operating plans and agreements differ in terms of when they may be used and the strict liability limit that applies to activities conducted under them.

### **81.1 – When Operating Plans Must be Utilized**

An operating plan, rather than an operating agreement, must be utilized for powerline facilities that:

1. Are subject to NERC reliability standards (200 kilovolts or more); and
2. Sold more than 1,000,000 megawatt hours of electricity during each of the 3 calendar years during the period of March 23, 2015, to March 23, 2018.

Activities conducted under an operating plan approved under this directive are subject to strict liability up to the limit specified in 36 CFR 251.56(h)(2), as amended, per occurrence (sec. 89, para. 1).

### **81.2 – When Operating Agreements May be Utilized**

An operating agreement may be utilized for powerline facilities that:

1. Are not subject to NERC reliability standards (less than 200 kilovolts); and/or
2. Sold 1,000,000 megawatt hours or less of electricity for purposes other than resale during each of the 3 calendar years during the period of March 23, 2015, to March 23, 2018.

Activities conducted under an approved operating agreement are subject to strict liability up to \$500,000 per occurrence until March 23, 2028, at which time they are subject to strict liability up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence (sec. 89, para. 2).

### **82 – Scope of Operating Plans and Agreements**

An operating plan or agreement must cover all the activities authorized under a new, amended or existing powerline facility special use authorization, both inside the linear right-of-way for the powerline facilities and on NFS lands adjacent to either side of the linear right-of-way, as follows:

1. Emergency and routine vegetation management; emergency, non-routine, and routine powerline facility maintenance; and inspection and operation of powerline facilities inside their linear right-of-way;
2. Emergency and routine vegetation management involving felling and pruning of hazard trees adjacent to either side of the linear right-of-way for powerline facilities; and
3. Construction, reconstruction, and maintenance of access roads and trails.

### **83 – Requirements for Submitting Proposed Operating Plans and Agreements for Review and Approval**

The authorized officer shall adhere, and shall ensure that owners and operators adhere, to the following procedures regarding submission of proposed operating plans and agreements for review and approval.

1. Existing Operating Plans. If an existing powerline facility has an operating plan, the authorized officer shall determine, in consultation with the owner or operator, whether the operating plan complies with section 512 of FLPMA, the Forest Service's regulations, and this directive and whether the owner or operator is eligible for an operating

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agreement or must have an operating plan (sec. 81.1 and 81.2) and shall provide written notification to the owner or operator of those determinations by September 30, 2026. The authorized officer has the discretion to determine the order in which owners or operators shall be notified of the need to modify existing operating plans for compliance. In determining the order of notification, the authorized officer may consider delaying notification to owners and operators of existing operating plans that are partly compliant with applicable requirements and to owners and operators that are eligible for an operating agreement.

- a. Compliant Operating Plans. If the authorized officer determines that the existing operating plan complies with applicable requirements (including environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources), no modification to the operating plan is required. If the authorized officer determines that the owner or operator is eligible for an operating agreement in lieu of an operating plan and the owner or operator chooses to have an operating agreement, the authorized officer shall rename the operating plan as an operating agreement and shall administer the associated powerline facility authorization in accordance with the strict liability provisions in section 89, paragraph 3, of this directive.
- b. Noncompliant Operating Plans. If the authorized officer determines that an existing operating plan does not comply with applicable requirements (including environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources), the authorized officer shall provide written notification to the owner or operator of the noncompliance by September 30, 2026. The notice must state that the owner or operator shall submit, within 18 months of the date of the notice, a proposed modification to the operating plan or, if applicable, a proposed operating agreement for review and approval (sec. 86).
- c. Continued Operation and Maintenance Pending Approval. Owners and operators may continue operating and maintaining their powerline facilities under a noncompliant operating plan that was previously approved by the authorized officer, subject to the owner's or operator's existing powerline facility authorization, section 512 of FLPMA, and the Forest Service's regulations, until a proposed modification to the operating plan or a proposed operating agreement is approved.
- d. Applicable Liability Standard. Activities conducted under a powerline facility authorization with a noncompliant operating plan must comply with applicable laws, regulations, and the terms of the authorization. In addition, activities conducted under powerline facility authorizations with a noncompliant operating plan, including vegetation management outside the linear right-of-way to fell or prune hazard trees, are subject to strict liability under Title V of FLPMA. The limit and conditions on imposition of strict liability in section 89, paragraphs 2 and 4, of this directive do not apply to activities conducted under a noncompliant operating plan.

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2. Lack of an Operating Plan. If an existing powerline facility does not have an operating plan, the authorized officer shall notify the owner or operator by September 30, 2026, of the requirement to submit a proposed operating plan, or, if the authorized officer determines that the owner or operator is eligible for an operating agreement, a proposed operating agreement that meets applicable requirements. The notice shall state that the owner or operator must submit, within 18 months of the date of the notice, a proposed operating plan or, if applicable, a proposed operating agreement for review and approval (sec. 86). The authorized officer has the discretion to determine the order of notification. In determining the order of notification, the authorized officer may consider delaying notification to owners and operators that are eligible for an operating agreement and to owners and operators that have multiple powerline facilities.
  - a. Continued Operation and Maintenance Pending Approval. The owner or operator may continue to operate and maintain an authorized powerline facility without an operating plan under the owner's or operator's existing powerline facility authorization, section 512 of FLPMA, and the Forest Service's regulations pending review and approval of a proposed operating plan or agreement.
  - b. Applicable Liability Standard. Activities conducted under a powerline facility authorization without an operating plan must comply with applicable laws, regulations, and the terms of the authorization. In addition, activities conducted under powerline facility authorizations without an operating plan, including vegetation management outside the linear right-of-way to fell or prune hazard trees, are subject to strict liability under Title V of FLPMA. The limit and conditions on imposition of strict liability in section 89, paragraphs 2 and 4, of this directive do not apply to activities conducted under a powerline facility authorization without an operating plan.
3. New Powerline Facilities. The authorized officer shall ensure that a new powerline facility has an operating plan or agreement that complies with applicable requirements and that has been reviewed and approved by the authorized officer (sec. 86) before issuing a special use authorization for the new powerline facility. The authorized officer may also require the owner or operator to submit a short-term plan for protection and restoration of NFS lands and resources during powerline facility construction.
4. Review of Approved Operating Plans and Agreements. At least every 10 years from the approval date of an operating plan or agreement, the owner or operator must review and, as necessary or appropriate, propose updates to the approved operating plan or agreement to address changed conditions. Proposed updates to an approved operating plan or agreement that are deemed significant by the authorized officer, such as adjustments for changes to the powerline facilities or new statutory requirements, shall be treated as proposed modifications and shall be submitted by the owner or operator for review and approval by the authorized officer in accordance with section 86. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the owner or operator and the authorized officer.

5. Expiration of an Approved Operating Plan or Agreement. Upon expiration of a powerline facility permit or easement, the associated approved operating plan or agreement shall expire. The authorized officer shall notify the owner or operator of the need to prepare a new proposed or modified operating plan or agreement, either solely or in consultation with the authorized officer, and submit it to the authorized officer for review and approval (sec. 86).

## **84 – Minimum Content of 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 or the authorized officer's designated representative. Operating plans or agreements must include provisions deemed necessary or important by owners or operators and the authorized officer to ensure safe and reliable operation of powerline facilities on NFS lands. Those provisions must include planned activities and methods for routine maintenance and inspection of powerline facilities and routine vegetation management inside the linear rights-of-way for powerline facilities and adjacent to either side of the linear rights-of-way to fell and prune hazard trees.

In assisting with development of an operating plan or agreement, the authorized officer should seek to minimize the need for per-project environmental compliance and consultation for cultural and historic resources. Instead, where feasible and desired by the owner or operator, the authorized officer should strive to comply with environmental and consultation requirements through a comprehensive approach that applies to all planned activities under the operating plan or agreement. A sample operating plan or agreement that complies with section 512 of FLPMA, the Forest Service's implementing regulations, and this directive can be found at <https://www.fs.usda.gov/managing-land/lands-reatly-management/powerline-management>.

At a minimum, the authorized officer shall ensure that operating plans and agreements for powerline facilities on NFS lands under the jurisdiction of the authorized officer or for which the authorized officer has delegated authority:

1. Identify the powerline facilities covered by the operating plan or agreement, including supporting equipment such as fiber optic cable and communications equipment, using nomenclature employed for tracking special uses in the Special Uses Data System;
2. Consider preexisting operating plans and agreements for the powerline facilities covered by the operating plan or agreement;
3. Address the roles and responsibilities of the authorized officer and owner or operator and include contact information (including a cellular telephone number and email address) during the workday and after hours for the authorized officer and owner or operator, their relevant staffs, and contractors and agents;
4. Describe any applicable forest orders and any applicable limitations or restrictions based

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on resource concerns;

5. Classify by type (sec. 87) the activities to be conducted under the operating plan or agreement, such as routine vegetation management and inspections, routine and non-routine powerline facility maintenance, and emergency vegetation management and powerline facility maintenance;
6. Describe the types of activities that will require additional environmental analysis and prior written approval from the authorized officer as new, changed, or additional uses or areas under 36 CFR 251.61, such as non-routine maintenance and construction of access roads and trails (sec. 87.3);
7. Describe the vegetation management, inspection, and operation and maintenance methods that may be used to comply with the applicable land management plan; all applicable law for protection of the environment, cultural resources, and threatened and endangered species, sensitive species, species of conservation concern, and their habitat; applicable Federal and State fire safety requirements; and electrical system reliability standards, including NERC FAC-003;
8. Identify best management practices for vegetation management used by the owner or operator, the electric utility industry, and the Forest Service; schedules for conducting routine vegetation management; the applicable MVCD; procedures for identifying, marking, and felling or pruning hazard trees and other vegetation; and road and trail standards and best management practices;
9. Describe the types of equipment (including unmanned aircraft systems such as drones) and pesticides (including herbicides) that may be used in accordance with project-specific pesticide use and safety plans;
10. Specify procedures for disposal and payment of timber and removal of slash;
11. Include an inventory or a map of access roads and trails and NFS roads and trails that may be used in conducting activities under the operating plan or agreement, including any restrictions on use of NFS roads and trails, requirements for a road use permit for NFS roads, and construction, reconstruction, and maintenance requirements for NFS roads and trails;
12. Specify the procedures for modifying the approved operating plan or agreement (sec. 86, para. 3); and
13. Specify that the authorized officer and owner or operator will review the operating plan or agreement at least every 10 years and will update it as necessary or appropriate, and that updates deemed significant by the authorized officer will be treated as proposed modifications that will require prior written approval from the authorized officer (sec. 83, para. 4).

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Where any information required to be included in an operating plan or agreement already exists in a powerline facility authorization, a cross-reference to the information in the authorization will satisfy the requirement.

## **85 – Requirements, Standards, and Other Considerations for Proposed Operating Plans and Agreements**

Before approving a proposed operating plan or agreement, the authorized officer shall ensure that the requisite environmental compliance and consultation for cultural and historic resources for approval have been completed, depending on the approach to compliance selected by the owner or operator (Track 1 or 2, sec. 86, para. 2e), and that the operating plan or agreement provides for completion of any additional environmental and consultation requirements for specific types of activities before they are conducted under the approved operating plan or agreement.

The authorized officer shall ensure that appropriate processing fees are charged and collected in accordance with 36 CFR 251.58 and FSH 2709.11, Chapter 20, to cover Forest Service costs incurred in developing, reviewing, and approving proposed operating plans and agreements; reviewing and approving proposed modifications to approved operating plans and agreements; and approving activities under an approved operating plan or agreement.

In developing, reviewing, and approving proposed operating plans and agreements, the authorized officer should:

1. Ensure compliance with the statutory and regulatory requirements governing use and occupancy of NFS lands, including section 512 of FLPMA, the Forest Service's implementing regulations, and this directive;
2. Address compliance with other applicable Federal and State laws;
3. To the greatest extent practicable and to the extent allowed by law, conduct only the environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources necessary to authorize routine vegetation management and routine powerline facility maintenance and inspection for the term of the powerline facility authorization without requiring but not precluding case-by-case environmental analysis and approval. Where appropriate, use categorical exclusions (CEs) and previous site-specific and programmatic documentation to identify and mitigate impacts on the environment, threatened or endangered species, and cultural and historic resources.
4. Consider all applicable fire safety and electrical system reliability standards and requirements, including but not limited to:
  - a. NERC FAC-003. NERC FAC-003 is the national reliability standard for maintaining the MVCD for powerline facilities that carry 200 kilovolts or more of electricity and for certain other powerline facilities identified as critical by NERC;

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- b. The National Electric Safety Code and the Institute of Electrical and Electronic Engineers Standards. The National Electric Safety Code and the Institute of Electrical and Electronic Engineers Standards specify the minimum clearance between conductors and workers, tools, or vegetation under normal operating conditions; and
  - c. American National Standards Institute (ANSI) A300. ANSI A300 is the national standard used by industry and governmental entities to develop written specifications for projects involving pruning or felling of vegetation;
- 5. Consider the use of integrated vegetation management, including the use of pesticides (including herbicides) authorized by the Forest Service in affected administrative units;
  - 6. Consider owner or operator, electric utility industry, and Forest Service best management practices for powerline facility safety, including the use of new technologies;
  - 7. For a Federally owned or operated powerline facility, consider any existing MOU between the Federal owner or operator and the Forest Service addressing operation, maintenance, vegetation management, and inspection of the Federal owner's or operator's powerline facilities on NFS lands to the extent the MOU is consistent with section 512 of FLPMA, the Forest Service's implementing regulations, and this directive. Any such existing MOU with a Federal owner or operator must be revised to be consistent with those authorities by September 30, 2026, and any such future MOU with a Federal owner or operator must be consistent with those authorities;
  - 8. For investor-owned companies, consider the 2016 MOU or its current successor MOU, which addresses cooperation and coordination among the parties regarding vegetation management on NFS lands inside the linear right-of-way for a powerline facility and on NFS lands adjacent to either side of the linear right-of-way;
  - 9. For a proposed operating agreement, ensure that the minimum requirements of the operating agreement reflect the financial resources of the owner or operator compared to other owners or operators by:
    - a. Considering whether the owner's or operator's financial resources merit a full or partial waiver of cost recovery fees for review and approval of the proposed operating agreement, review and approval of proposed modifications to the approved operating agreement, and approval of specific activities under the approved operating agreement; and
    - b. Directing the owner or operator to contact the Rural Utilities Service to determine if the work to be conducted under the proposed operating agreement qualifies for a Rural Utilities Service grid security and fire prevention loan; and



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10. Consider coordinating with the BLM on the content of a proposed operating plan or agreement for a powerline facility that traverses Federal lands managed by the Forest Service and Federal lands managed by the BLM.

**86 – Procedures for Approval of Proposed and Modified Operating Plans and Agreements**

1. Development of Proposed Operating Plans and Agreements.
  - a. The authorized officer shall ensure that owners and operators of proposed or existing powerline facilities are aware of their obligation to submit a proposed operating plan or agreement in accordance with section 83 of this directive.
  - b. To allow for expedited review and approval, the authorized officer should encourage owners and operators to consult with the authorized officer in developing a proposed operating plan or agreement. When consulting with owners and operators on development of proposed operating plans and agreements, the authorized officer may use the process enumerated in section 86, paragraph 2, exhibit 01. To enhance efficiency in administration, the authorized officer should encourage owners and operators to cover multiple powerline facilities in a proposed operating plan or agreement to the extent practicable.
  - c. The authorized officer shall conduct review and approval of a proposed operating plan or agreement or proposed modification to an approved operating plan or agreement in accordance with the jointly developed Forest Service and BLM procedures specified in paragraphs 2 and 3 of this section.
2. Procedures for Review and Approval of Proposed Operating Plans and Agreements. In reviewing and approving a proposed operating plan or agreement, the authorized officer shall:
  - a. For a proposed operating agreement, determine whether the owner or operator qualifies based on the criteria in section 81.2.
  - b. Determine whether the proposed operating plan or agreement would cover one or multiple new or existing powerline facilities, and whether the proposed operating plan or agreement would modify an existing operating plan or agreement.
  - c. To the maximum extent practicable, complete the review and approval process for the proposed operating plan or agreement within 120 days from the date of receipt, with the understanding that the practicability of meeting that timeframe may be affected by such factors as the number of proposed operating plans and agreements and proposed modifications to approved operating plans and agreements under review; the number of powerline facilities covered under a single operating plan or agreement; compliance with other applicable laws; and other factors potentially influencing the timeframe. Based on such factors, establish a timeline for review and approval,

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including submission of Forest Service comments and a final decision. For Forest Service reporting, document delays in meeting established timelines.

- d. Determine whether the proposed operating plan or agreement identifies the types of activities the owner or operator anticipates conducting under the operating plan or agreement based on historical or industry practices, including vegetation management and inspection, operation, and maintenance of the authorized facilities (including access roads).
- e. Approve proposed operating plans or agreements under the procedures enumerated for Track 1 or Track 2, paragraph (e)(1) or (e)(2), based on whether requirements for environmental compliance and consultation for threatened and endangered species and cultural and historic resources have been satisfied before or will be met after the proposed operating plan or agreement is approved.
  - (1) Track 1 (Post-Approval Case-by-Case Environmental Compliance and Consultation). The owner or operator elects to have environmental compliance and consultation requirements for all types of activities satisfied case by case, after approval of a proposed operating plan or agreement. The owner or operator may not conduct the types of activities that require environmental compliance and consultation until those requirements have been satisfied.
  - (2) Track 2 (Pre-Approval Full or Partial Environmental Compliance and Consultation). The owner or operator elects to have environmental compliance and consultation requirements for all or some types of activities satisfied before approval of a proposed operating plan or agreement. After the authorized officer approves the proposed operating plan or agreement, the owner or operator may conduct the types of activities that require environmental analysis and consultation only after those requirements have been satisfied.
  - (3) Requirements for Tracks 1 and 2.
    - (a) Specify the types of activities that will be covered by approval of the operating plan or agreement and that will not be subject to case-by-case environmental analysis and consultation after approval;
    - (b) Specify the types of activities that will not be covered by approval of the operating plan or agreement and that will be subject to case-by-case environmental analysis and consultation after approval and before the owner or operator conducts those activities;
    - (c) Include a schedule and requirements for notification and acknowledgment or approval (sec. 87) of the types of activities that will be covered by approval of the proposed operating plan or agreement;

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- (d) Expressly state that the limit and conditions on strict liability in section 89, paragraphs 2 and 4, of this directive do not apply to activities under an approved operating plan or agreement for which the requirements for environmental compliance and consultation for listed endangered or threatened species and cultural and historic resources have not been met; and
  - (e) Provide for documentation of all subsequent case-by-case approval of activities under the approved operating plan or agreement and inclusion of a schedule and requirements for notification and acknowledgment or approval for those types of activities.
- f. Provide written notification to the owner or operator of approval or disapproval of the proposed operating plan or agreement upon completion of review.
- g. Ensure that approved operating plans and agreements are in writing and are signed and dated by the owner or operator and the authorized officer prior to implementation.
- 3. Procedures for Review and Approval of Proposed Modifications to Operating Plans and Agreements Approved Under this Directive.
  - a. The owner or operator may at any time submit a proposed modification to an operating plan or agreement approved under this directive for review and approval by the authorized officer.
  - b. The authorized officer may initiate a proposed modification to an operating plan or agreement approved under this directive based on changed conditions. The authorized officer shall provide written notification to the owner or operator of the proposed modification and the changed conditions supporting the proposed modification. The authorized officer shall give the owner or operator an opportunity to submit a proposed modification of the approved operating plan or agreement to address the changed conditions. The owner or operator may continue to implement the operating plan or agreement approved under this directive to the extent it does not directly and adversely affect the conditions prompting the proposed modification.
  - c. To the maximum extent practicable, the review and approval process for proposed modifications to operating plans and agreements must be completed within 120 days from the date of receipt, with the understanding that the practicability of meeting that timeframe may be affected by such factors as the number of proposed operating plans and agreements and proposed modifications to approved operating plans and agreements under review; the number of powerline facilities covered under a single operating plan or agreement; compliance with other applicable laws; and other factors potentially influencing the timeline. Based on such factors, establish a timeline for review and approval, including submission of Forest Service comments and a final decision. For Forest Service reporting, document delays in meeting established

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timelines.

- d. Proposed modifications to operating plans or agreements approved under this directive must be in writing and must be signed and dated by the owner or operator and the authorized officer prior to implementation.

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<p style="text-align: center;"><b>86, para. 2 – Exhibit 01</b></p> <p style="text-align: center;"><b><u>Guide for Development, Review, and Approval of Proposed Operating Plans and Agreements</u></b></p>	
<p style="text-align: center;"><b>STAGE AND RECOMMENDED TIMELINE</b></p>	<p style="text-align: center;"><b>KEY ACTIONS</b></p>
<p><u>Planning:</u> 30 days</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Document the owner’s or operator’s intent to submit a proposed operating plan or agreement.</li> <li><input type="checkbox"/> Determine whether the owner or operator would like to convert to a current powerline facility authorization and whether the owner or operator would like a master powerline facility authorization.</li> <li><input type="checkbox"/> Schedule and convene an initial in-person meeting: <ul style="list-style-type: none"> <li>○ Discuss the requirements and minimum content of an operating plan or agreement.</li> <li>○ Discuss applicable cost recovery fees and Tracks 1 and 2 for environmental compliance and consultation requirements for operating plan or agreement approval.</li> <li>○ Discuss the timeline for review and approval of a proposed operating plan or agreement under Tracks 1 and 2.</li> <li>○ Share contact information for key Forest Service and owner or operator personnel.</li> </ul> </li> </ul>
<p><u>Development:</u> 60 days (90 days if no prior coordination before submission)</p>	<p>Upon submission of a proposed operating plan or agreement:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Send the owner or operator written acknowledgment of receipt.</li> <li><input type="checkbox"/> If the proposed operating plan or agreement was submitted without prior coordination with the authorized officer, conduct appropriate steps of the planning phase.</li> <li><input type="checkbox"/> Assess whether existing environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources are sufficient for the activities to be conducted under the proposed operating plan or agreement.</li> <li><input type="checkbox"/> Request any missing information needed for review and approval.</li> <li><input type="checkbox"/> Calculate and bill cost recovery fees per 36 CFR 251.58 and FSH 2709.11, Chapter 20. For cost recovery fees in category 5 or 6, prepare and execute the appropriate cost recovery agreement.</li> </ul> <p>Prepare a timeline for review and approval of the proposed operating plan or agreement</p>

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<b>STAGE AND RECOMMENDED TIMELINE</b>	<b>KEY ACTIONS</b>
<u>Development:</u> 60 days (90 days if no prior coordination before submission)	<p>Upon submission of a proposed operating plan or agreement:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Send the owner or operator written acknowledgment of receipt.</li> <li><input type="checkbox"/> If the proposed operating plan or agreement was submitted without prior coordination with the authorized officer, conduct appropriate steps of the planning phase.</li> <li><input type="checkbox"/> Assess whether existing environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources are sufficient for the activities to be conducted under the proposed operating plan or agreement.</li> <li><input type="checkbox"/> Request any missing information needed for review and approval.</li> <li><input type="checkbox"/> Calculate and bill cost recovery fees per 36 CFR 251.58 and FSH 2709.11, Chapter 20. For cost recovery fees in category 5 or 6, prepare and execute the appropriate cost recovery agreement.</li> <li><input type="checkbox"/> Prepare a timeline for review and approval of the proposed operating plan or agreement.</li> </ul>
<u>Environmental Compliance:</u> Track 1 – 0 days	<ul style="list-style-type: none"> <li><input type="checkbox"/> The owner or operator elects to have environmental compliance and consultation requirements for all types of activities satisfied case by case, after approval of a proposed operating plan or agreement but before those types of activities are conducted.</li> </ul>

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<b>STAGE AND RECOMMENDED TIMELINE</b>	<b>KEY ACTIONS</b>
Track 2 – up to 240 days (based on number of powerline facilities, types of activities that are subject to environmental compliance and consultation before approval of proposed operating plan or agreement, and complexity of environmental compliance and consultation)	<ul style="list-style-type: none"> <li><input type="checkbox"/> Conduct the requisite environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources based on the assessment in the development phase and according to the following statutes and directives: <ul style="list-style-type: none"> <li>○ National Environmental Policy Act (NEPA) (FSM 1950 and FSH 1909.15). Work with NEPA coordinator to: <ul style="list-style-type: none"> <li>▪ Identify any applicable CEs, existing site-specific and programmatic environmental analysis, and requisite environmental analysis for specific activities.</li> </ul> </li> <li>○ Section 7 of the Endangered Species Act (ESA) (FSM 2670 and <a href="https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf">https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf</a>). <ul style="list-style-type: none"> <li>▪ Tier from existing programmatic or site-specific consultation, if available.</li> <li>▪ Consider the baseline for the linear right-of-way for a powerline facility and access roads and trails to be highly modified, with limited habitat for species of concern and minimal adverse effects from activities to be conducted under the operating plan or agreement on threatened and endangered species, sensitive species, and species of conservation concern and their habitat.</li> <li>▪ Incorporate into the operating plan or agreement any needed protective or mitigation measures for threatened and endangered species, sensitive species, and species of conservation concern and their habitat.</li> </ul> </li> <li>○ Section 106 of the National Historic Preservation Act (NHPA) (36 CFR Part 800, FSM 2360, and FSH 2309.12).</li> </ul> </li> </ul>
Submission, Review, and Approval: Track 1 – 30 days Track 2 – 120 days	<ul style="list-style-type: none"> <li><input type="checkbox"/> Review and approve or disapprove the proposed operating plan or agreement and issue the new authorization, if applicable.</li> </ul>
Implementation: Submission of first project or annual schedule of work (sec. 87.2)	<ul style="list-style-type: none"> <li><input type="checkbox"/> Plan for initial activities under the approved operating plan or agreement.</li> </ul>

## **87 – Notice, Acknowledgment, and Approval of Activities Under Operating Plans and Agreements**

The authorized officer shall approve activities conducted under approved operating plans and agreements to ensure compliance with Forest Service regulations requiring an application for new, changed, or additional uses or areas (36 CFR 251.61) and shall acknowledge or approve activities conducted under approved operating plans and agreements to ensure compliance with applicable environmental law, including NEPA, the ESA, and the NHPA. Acknowledgment by the authorized officer involves notifying an owner or operator that notice of a particular activity has been received. Approval by the authorized officer is written permission to conduct a particular activity.

To facilitate orderly and consistent acknowledgment or approval of activities conducted under approved operating plans and agreements, the authorized officer shall ensure that owners and operators categorize those activities under their proposed operating plans and agreements to make clear, consistent with section 512 of FLPMA, the Forest Service’s implementing regulations, and 36 CFR 251.61, which types of activities require acknowledgment, additional approval, or no action prior to being conducted by the owners and operators. The classification system in sections 87.1 through 87.4 is suggested for that purpose and is consistent with section 512 of FLPMA, the Forest Service’s implementing regulations, and 36 CFR 251.61.

Proposed operating plans and agreements must also include timeframes for any required prior notice and acknowledgment or approval of activities to be conducted under approved operating plans and agreements. The timeframes may vary depending on the scope and scale of an owner’s or operator’s powerline facilities.

If the requisite environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources have not been completed for a particular activity that requires prior notice and approval under an operating plan or agreement, the requisite environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources must be completed before that activity can be approved.

The authorized officer should verify that planned activities will not adversely affect other authorized activities on NFS lands or Forest Service operations or pose a threat to the public, Forest Service staff, or owner or operator personnel.

### **87.1 – Class A Activities**

1. Description. Class A includes routine activities that are deemed by qualified Forest Service specialists to involve minimal or no ground disturbance or impacts on vegetation inside and outside the linear right-of-way for the powerline facilities and that do not require additional environmental analysis or consultation for listed endangered or threatened species and cultural and historic resources. Examples include but are not limited to mapping and inspections of poles, conductors, and other structures where large equipment, helicopters, or drones would be involved. Class A activities may be restricted



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during certain times or under certain conditions to prevent adverse environmental, cultural, or species or habitat impacts.

2. Prior Notice. A telephone call or email from the owner or operator to the authorized officer is sufficient prior notice for Class A activities.
3. Response to Prior Notice. Class A activities approved under an operating plan or agreement must be acknowledged (not approved) by the authorized officer by telephone call or email within 24 hours of receipt of prior notice. The owner or operator may proceed with Class A activities upon authorized officer acknowledgment or if the authorized officer does not acknowledge receipt of prior notice within 24 hours.

## **87.2 – Class B Activities**

1. Description. Class B includes routine activities that are deemed by qualified Forest Service specialists to involve minimal ground disturbance and impacts on NFS lands inside and outside the linear right-of-way for the powerline facilities and that do not require additional environmental analysis or consultation for listed endangered or threatened species and cultural and historic resources. Examples include but are not limited to routine vegetation management, routine powerline facility maintenance, routine maintenance of access roads and trails and NFS roads and NFS trails, and routine repair or replacement of fiber optic cable.
2. Prior Notice. The owner or operator may satisfy prior notice for Class B activities conducted under an approved operating plan or agreement by submitting a single project notice or an annual schedule of work that identifies the activities planned for a calendar year. If deemed practical by the authorized officer, the owner or operator may be allowed to submit an annual schedule that covers up to 5 years of Class B activities. An email or letter regarding a single project or an email transmitting an annual schedule of work is sufficient prior notice for Class B activities.
3. Response to Prior Notice. Generally, prior notice for Class B activities will require prior written acknowledgment, rather than approval, by email or letter from the authorized officer. Prior written approval by email or letter from the authorized officer is required for routine maintenance of NFS roads that requires a road use permit. Prior written approval by email or letter from the authorized officer is also required for routine vegetation management unless:
  - a. The owner or operator has submitted an email or letter requesting approval of a single routine vegetation management project or an annual schedule of work for routine vegetation management in accordance with the specified timeframe in the approved operating plan or agreement;

- b. The proposed routine vegetation management is covered by approval of a proposed operating plan or agreement or by subsequent case-by-case environmental analysis and consultation; and
- c. The authorized officer has not responded to the request in accordance with the specified timeframe in the approved operating plan or agreement.

Before acknowledging or approving an annual schedule of work for routine vegetation management, the authorized officer should ensure that it complies with the approved operating plan or agreement; determine whether additional authorization may be required for any activities in the annual schedule of work; and determine whether any changes in laws, regulations, or directives have occurred that may expedite or delay the activities in the annual schedule of work. The authorized officer may adjust an annual schedule of work for routine vegetation management to address changed conditions in accordance with section 86, paragraph 3.

### **87.3 – Class C Activities**

1. Description. Class C activities involve new, changed, or additional uses or areas under 36 CFR 251.61. Due to their complexity, impacts, and scope, Class C activities will typically require additional environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources. Examples include but are not limited to new construction, rerouting of powerline facilities, and refurbishment or replacement of powerline facility components such as conductors, ground wires, and fiber optic cable; non-routine powerline facility maintenance; hazard tree felling or pruning that extends beyond the linear right-of-way for a powerline facility; road and trail construction and reconstruction; non-routine road and trail use and maintenance, such as installation of drainage features, fences, gates, or signs; and installation of fiber optic cable on powerline facilities.
2. Prior Notice. Submission of an application (form FS-299) is required for prior notice of Class C activities.
3. Response to Prior Notice. Per 36 CFR 251.61, Class C activities require prior written approval in a signed letter from the authorized officer. The timeframe for approval will vary based on the complexity of the additional environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources required for Class C activities. A separate special use authorization is not required. However, if Class C activities are approved, the existing powerline facility authorization must be amended to reflect the approved activities.

### **87.4 – Class D Activities**

1. Description. Class D activities include emergency vegetation management and emergency powerline facility maintenance. Class D activities do not require additional

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environmental analysis and consultation for listed endangered or threatened species and cultural and historic resources. Examples include but are not limited to unplanned felling or pruning of hazard trees to prevent imminent contact with a powerline facility and immediate repair or replacement of powerline facility components that is necessary to restore electrical service. Ensure approved operating plans and agreements require that owners and operators take measures necessary to protect natural resources during emergency operations. Routine vegetation management and powerline facility maintenance should be planned and approved to mitigate Class D activities.

2. Prior Notice. Prior notice is not required for Class D activities but is suggested to the extent practicable to allow for any necessary Forest Service actions, such as notification of the State Historic Preservation Office.
3. Response to Prior Notice. Prior acknowledgment or approval from the authorized officer is not required for Class D activities. Appropriate prior notice and response are required before conducting other classes of activities in the vicinity of the owner's or operator's emergency response.
4. Subsequent Notice. The owner or operator must notify the authorized officer by email of the location and type of Class D activities as soon as practicable, but no later than 24 hours after completion of the activities. Within 30 days of completing Class D activities, the owner or operator must submit to the authorized officer a written report detailing at a minimum the location, type, and scope of the activities conducted, the reason they were conducted, the methods used to conduct them, and the resulting benefits. The owner or operator may be required to conduct consultation under the ESA and NHPA following Class D activities to determine impacts on listed threatened or endangered species or their habitat and cultural and historic resources (FSM 2670). The Forest Service may charge cost recovery fees for any costs incurred by the Agency in connection with consultation required after Class D activities.

## **88 – Inspections and Annual Reporting**

### **88.1 – Inspections**

Routine and activity-related inspections of powerline facilities are necessary to ensure their safe and reliable operation. Owners and operators are responsible for planning and conducting inspections of their powerline facilities in compliance with their powerline facility permit or easement and applicable laws and regulations and in accordance with the schedules in their approved operating plan or agreement.

1. Owners and operators are required to maintain their powerline facilities and permit or easement area to standards of repair, orderliness, neatness, sanitation, and safety deemed acceptable to the authorized officer and consistent with their powerline facility permit or easement and approved operating plan or agreement. Standards shall be subject to periodic change by the authorized officer when deemed necessary to meet statutory,

regulatory, or directive requirements or to protect NFS resources.

2. The authorized officer should monitor compliance with the applicable powerline facility permit or easement and operating plan or agreement during powerline facility construction, operation, maintenance, and vegetation management, including inside the linear right-of-way for the powerline facility and on NFS lands adjacent to either side of the linear right-of-way, equipment staging areas, and access roads and trails. Forest Service monitoring shall address compliance, for example, with applicable requirements for the prevention of soil erosion and gullying, fire safety, environmental mitigation, and protection of employees, contractors, and the public.

## **88.2 – Annual Reporting of Routine Vegetation Management**

Each calendar year, the authorized officer shall document all requests and responses or lack of responses to requests for conducting routine vegetation management under an approved operating plan or agreement for powerline facilities on NFS lands under the jurisdiction of the authorized officer or for which the authorized officer has delegated authority. For each request, the documentation must include:

1. The name of the owner or operator;
2. The date the request was received;
3. A brief description of the requested activity; and
4. The date and a description of the response or a statement that prior written approval was not required because all 3 criteria in section 87.2, paragraph 3, were met and an explanation showing how all 3 criteria were met.

The authorized officer shall send the documentation of annual requests and responses or lack of responses to requests to conduct routine vegetation management under an approved operating plan or agreement to the Washington Office Director of Lands and Realty Management by March 1 of the following year. The Washington Office Director of Lands and Realty Management shall post the documentation by April 1 of the following year on the Washington Office Lands and Realty Management website.

## **89 – Liability Standards**

1. Strict Liability Limit for Operating Plans Approved Under this Directive. Except as provided in paragraph 4 of this section, non-Federal owners and operators with an operating plan approved under this directive shall be strictly liable in tort (liable without proof of negligence) up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence. Liability in tort for injury, loss, or damage to the United States that exceeds the prescribed amount of strict liability in tort shall be determined under the law of negligence.

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2. Strict Liability Limit for Approved Operating Agreements. Except as provided in paragraph 4 of this section, non-Federal owners and operators that have an approved operating agreement shall be strictly liable in tort up to \$500,000 per occurrence solely in connection with types of activities that have been approved under their operating agreement and only until March 23, 2028. After that date, non-Federal owners and operators that have an operating agreement shall be strictly liable in tort to the United States up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence, except as provided in paragraph 4 of this section. Liability in tort for injury, loss, or damage to the United States that exceeds the prescribed amount of strict liability in tort shall be determined under the law of negligence.
3. Scope of Strict Liability in Tort for Operating Plans and Agreements Approved Under this Directive. Except as provided in paragraph 4 of this section, strict liability in tort shall be imposed for all injury, loss, or damage (including but not limited to fire suppression costs and destruction of or damage to NFS lands and Federally owned improvements) arising in tort in connection with operation, maintenance, vegetation management, and inspection activities conducted under a non-Federal powerline facility authorization on NFS lands inside and adjacent to either side of the linear right-of-way for the powerline facility.
4. Limitations on Imposition of Strict Liability in Tort Under Operating Plans and Agreements. Notwithstanding paragraphs 1, 2, and 3 of this section, strict liability in tort may not be imposed on a non-Federal owner or operator for injury, loss, or damage resulting from the authorized officer's:
  - a. Unreasonably withholding or delaying approval of a proposed operating plan or agreement under this directive; or
  - b. Unreasonably failing to adhere to an applicable timeframe for a type of activity under an operating plan or agreement approved under this directive.
5. Tort Liability for Federal Owners and Operators. Tort liability for Federal owners and operators shall be determined in accordance with the terms of their powerline facility authorization.