

**Forest Service Manual
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Forest Service Manual 5409.17 – Rights-of-Way Acquisition Handbook

Chapter 10 – Acquisition Procedures and Documents

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Approved by: James M. Pena, Associate Deputy Chief, NFS

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Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Posting Instructions: Amendments are numbered consecutively by handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this handbook was 5409.17-2013-5 to 5409.17_contents

10: Establishes codes, captions, and revises, updates, and sets forth new direction throughout the entire chapter.

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10.1 - Authority

1. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715). This Act authorizes the acquisition of access over non-Federal lands to units of the National Forest System by purchase, exchange, donation, or eminent domain of lands or interest therein.
2. Forest Roads and Trails Act of 1964 (16 U.S.C. 532-538). This Act authorizes the acquisition, construction, and maintenance of National Forest System (NFS) roads and trails within and near the National Forests and other lands administered by the Forest Service. It also authorizes cooperative financing with public and private agencies or individuals as well as amortization of road costs with purchasers of National Forest timber and other products through agreements, including road right-of-way construction and use agreements.

10.2 - Objectives

To provide guidance to obtain legally valid and administratively acceptable rights-of-way for roads and trails to access and utilize NFS lands. To ensure easement acquisitions are consistent with the relevant Forest Plan as well as the 2001 Road Management Rule, and the 2005 Travel Management Rule.

10.3 - Policy

(See FSM 5460.3)

10.4 - Responsibility

(See FSM 5460.4)

10.5 - Definitions

(See FSM 5460.5)

11 - Form of Easement Conveyance

11.1 - Standard Road Easement Form

Exhibit 01 is the standard format for an unrestricted road easement to be utilized when the road would be wholly constructed and administered by the Forest Service. When the easement is for a cooperatively constructed road, refer to chapter 60, sec. 63 of this handbook.

Exhibit 01 is formatted for a conveyance from a private landowner or private landowners. See section 12 for a discussion of each element of the easement form as well as suggested modifications and additional clauses that may be incorporated when appropriate. The Regional Office of the General Counsel may redraft the form to conform to the requirements of the jurisdiction where it is to be used.

11.2 - Standard Trail Easement Form

Exhibit 01, the standard sample format for an unrestricted road easement, may be modified as follows to become the standard format for a trail easement.

1. Change the word “road” to “trail” throughout the easement deed.
2. Under reservations by the Grantor, clause 1, delete the phrase “as well as such traffic-control regulations as grantee may reasonably impose, as well as construction, reconstruction, and maintenance costs proportionate to commercial use”.
3. Under reservations by the Grantor, clause 2, delete the words “traffic control”.

11.1 - Exhibit 01

Format for an Easement

Correct as to Consideration, Description, and Conditions	
Name of Person with ROW expertise, Title	Date

GENERAL WARRANTY EASEMENT DEED

THIS GENERAL WARRANTY EASEMENT DEED, dated this _____ day of _____, _____, from [all the fee owners], _____ [marital status] _____ whose legal residence is [County and State] hereinafter called "Grantor," to the United States of America, hereinafter called "Grantee".

WITNESSETH:

Grantor, for and in consideration of [\$xx.xx] _____ received by Grantor, does hereby grant to Grantee and its assigns, subject to existing easements and valid rights, a perpetual easement for a road over and across the following described lands in the County of _____, State of _____.

(list meridian, township, range, section, & 40's crossed by road(s))

The location of said easement is shown approximately on Exhibit _____, attached hereto and made a part hereof.

This easement for the construction and utilization of a road shall be _____ feet on each side of the centerline with such additional width as required for accommodation and protection of cuts and fills. If the road is located substantially as described herein, the centerline of the road as constructed is hereby deemed accepted by the Grantor and Grantee as the true centerline of the easement granted. If any subsequent survey of the road shows that any portion of the road, although located substantially as described, crosses lands of the Grantor not described herein, the easement shall be amended to include the additional lands traversed retroactively by its own accord to the date of actual construction, but shall be evidenced by notice in recordable form provided to the landowner; if any lands described herein are not traversed by the road as constructed, the easement traversing the same shall only be terminated in the manner hereinafter provided.

The acquiring agency is the United States Department of Agriculture, Forest Service.

This grant is made subject to the following terms and conditions applicable to Grantee, its permittees, contractors, and assigns:

11.1 - Exhibit 01—Continued

- A. Except as hereinafter limited, Grantee shall have the right to construct, reconstruct, maintain, and utilize roads within the easement without further consideration for all purposes deemed necessary or desirable by Grantee.

Except as provided hereinafter, Grantee has the exclusive right to extend rights and privileges for use of the road to other Federal, State, and local authorities, as well as other users including the public.

- B. Grantee shall have the right to cut timber and remove obstructions within the easement to the extent the Grantee deems necessary for constructing, reconstructing, and maintaining the road. Timber so cut shall, unless otherwise agreed to, be decked along the road for disposal by the owner of such timber.

This easement is granted subject to the following reservations by the Grantor, for itself, its permittees, contractors, assigns, and successors in interest:

1. The right to use the road for all purposes deemed necessary or desirable by the Grantor, subject to the Secretary's rules and regulations as well as such traffic-control regulations as the Grantee may reasonably impose, as well as construction, reconstruction, and maintenance costs proportionate to commercial use.
2. The right to access and cross the easement at any place by any means and manner that complies with the traffic-control regulations of the Grantee and does not interfere unreasonably with Grantee's use of the road.
3. The right to all timber now or hereafter growing on the easement subject to Grantee's right to cut such timber as hereinbefore provided.

If the Regional Forester determines in writing that the easement or any segment thereof is no longer needed, the easement traversed thereby shall immediately terminate of its own accord and shall be evidenced by a statement in recordable form furnished by the Regional Forester to the Grantor or its successors or assigns in interest.

IN WITNESS WHEREOF, I hereto set my hand this [Day] day of [Month], [Year].

By _____
[Name]

By _____
[Name]

[This space is for the State specific acknowledgement and notary signature and seal]

12 - Preparation and Contents of Easements

References in this section apply to the sample format of easement deed in section 11, exhibit 01.

12.1 - Date and Grantor-Grantee Recitation

The date entered must be the date of execution and must not be later than the date of earliest acknowledgment.

The name of the Grantor(s) shall be identical to the name under which the Grantor(s) hold record title as revealed by the preliminary title evidence. Show the marital status of individual Grantors in the manner required by State law.

Always show the Grantee as "the United States of America."

12.2 - Granting Clause

The clause in section 11, exhibit 01 is suitable for most NFS roads.

Do not accept conditions that are properly part of the road design or that serve the purposes for which the road is constructed. For example, the right to plant grass or other vegetation to prevent erosion on cuts and fills or to make plantings to enhance the beauty of the roadside. However, when there are plans for fencing, set forth the rights to fence in the easement to avoid a later claim of severance.

The precise dollar amount of consideration must be recited. If the consideration is to be the grant of reciprocal easements, follow the direction found in FSH 2709.12, chapter 40, section 45.32. If the Grantor wants to donate the easement, document the donation by having the Grantor sign a statement to that effect. Advise the Grantor they are entitled to just compensation.

12.3 - Description of Easement

Describe land crossed by the easement. Where the Public Land Survey System (PLSS) was used, list aliquot parts crossed by the easement. Include meridian and baseline, township, range, section, and as appropriate, 40-acre parcels crossed. In areas that were already private land when the PLSS was adopted (primarily the 13 original States plus Maine, Tennessee, Kentucky, and Texas), use descriptions that are commonly used and accepted locally, such as metes and bounds.

Describe the width of the easement along with any additions to width. Reference a plat where appropriate (sec. 14.2) and address how errors in the actual location of the easement will be addressed. Description of the easement should be of sufficient detail so as to exclude the possibility of confusion with other roads in the area.

12.4 - Naming Acquiring Agency

The Department of Justice, *Title Standards 2001: A Guide for the Preparation of Title Evidence in Land Acquisitions by the United States* ("Title Standards 2001") requires that the easement

deed contain a statement naming the acquiring agency. Include this statement in all easements following the description of the right-of-way.

12.5 - Rights of Grantee

The standard easement deed includes conditions applicable to the Grantee (the United States).

12.51 - Right to Use the Road

The United States is granted the right to construct, reconstruct, maintain, and utilize roads within the easement without further consideration for all purposes deemed necessary or desirable by the Forest Service.

12.52 - Exclusive Right to Authorize Other Users

Except as described in section 12.6, the United States has the exclusive right to extend rights for use of the easement to other Government departments and agencies, States, and subdivisions thereof, as well as other users including the public.

12.53 - Right to Cut Timber and Remove Obstructions

The Forest Service has the right to cut timber and remove obstructions within the easement to the extent the Forest Service deems necessary for constructing, reconstructing, and maintaining the road. Unless otherwise agreed to, the timber remains as the property of the Grantor (or occasionally a third party) and must be decked along the road for disposal by the Owner.

12.6 - Reservations by Grantor

The standard easement deed at section 11, exhibit 01 includes three reservations by the Grantor. Before discussing these reservations, or considering additional reservations, it is important to understand the rights and obligations of the Grantor and Grantee created by the wording in the standard easement deed.

An easement acquired using the format found in section 11, exhibit 01 includes the right to clear timber, crops, and other obstructions from the right-of-way to the extent necessary for road construction and utilization. Any material or timber removed remains the property of the Grantor. The road may occupy the entire right-of-way or only a portion of it. The road may be widened during later reconstruction to occupy a greater portion of the right-of-way. Although the Government has only an easement over the land, it is the sole owner of the road it builds. The acquisition of the easement carries with it the obligation to ensure that the Grantor or others do not use the right-of-way in a manner that violates Forest Service traffic-control regulations or unreasonably interferes with the road's use by the Forest Service or other authorized users.

The Grantor may use the area within the right-of-way for purposes that do not unreasonably interfere with road purposes. The Grantor may graze the unused portion of the right-of-way or grow agricultural crops or timber on it. The Grantor may cross the road and the right-of-way with stock or equipment, construct connections to the road so the Grantor can cross or reach the road with vehicles, and use the road on the easement as long as the Grantor's use does not

unreasonably damage or interfere with safe use of the road. The Grantor shall be liable for construction, reconstruction, and maintenance costs for the road proportionate to the Grantor's use.

The Grantor may also place improvements on the unused portion of the right-of-way as long as they do not interfere with the purposes for which the easement was granted and do not impose an unreasonable safety risk that would cause unacceptable liability to the United States. However, the Grantor would have to move such improvements if the Government should need the area on which they are located to reconstruct or widen the road. Ensure that Grantors understand this point and discourage any but the most temporary improvements within the right-of-way. When the Grantor places an improvement, such as a fence, within the right-of-way, notify the Grantor in writing that it will be necessary to move the fence, at the Grantor's own expense, if it interferes with any subsequent widening of the road.

The Grantor may grant easements for other purposes within the right-of-way, such as for an electric transmission line or pipeline, so long as they do not interfere with the road. Because subsequent easements would be subordinate to the road easement granted to the United States, a subsequent easement holder's use may be interrupted by increased use of the road easement. For example, a public utility would have to move its line if the road was widened. The law in some States that authorizes public utilities to use State and county road rights-of-way without securing the permission of the owner of the underlying land does not apply to Federally-owned rights-of-way. To minimize conflicts regions may develop a consent form to be used in conjunction with these subordinate easements.

The following reservations are included in section 11, exhibit 01.

12.61 - Right to Use the Road

The Grantor reserves the right to use the road for all purposes deemed necessary or desirable by the Grantor, subject to such traffic-control regulations as the Forest Service shall reasonably impose. The Grantor shall bear maintenance cost proportionate to use as provided in 36 CFR 212.

12.62 - Right to Access and Cross Right-of-Way

The Grantor reserves the right to access and cross the road right-of-way including the construction of an access connector that complies with Forest Service traffic-control regulations.

In a few special cases, it may be necessary to restrict crossing or connections to one or a few places. A reservation of a right to cross or make connections only at specified locations has the effect of limiting the right the Grantor would have under the standard easement deed. A reservation to fit the needs of the particular case must be drafted with the assistance of or approved by the Office of the General Counsel.

12.63 - Timber Reservation

Section 11, exhibit 01 includes wording for a timber reservation that reserves ownership of the timber to the landowner(s).

Avoid an easement that conveys title of existing or future timber to the United States. A clause that says “and all timber thereon, including timber hereafter growing” will require the Forest Service to have to administer and protect any timber which remains on the right-of-way as well as timber that later grows on the right-of-way. This may require permanent or recurrent marking of the right-of-way boundary or other measures to avoid loss of Government property.

The Forest Service shall make arrangements for purchase of the timber by the road contractor or a timber purchaser. Do not include such agreement in the easement deed.

12.64 - Optional Clauses

The following are not included in the standard easement deed, but may be considered on a case-by-case basis:

12.64a - Assurance to Grantor

Often, facilities the Government plans to build as part of the road project are important to the Grantor. Do not include in the easement deed assurance that the Government will construct the facilities in question. Furnish written assurance, subject to available funds to avoid violation of the Anti-deficiency Act (31 U.S.C. 1341), in the form of a letter from either the District Ranger or Forest Supervisor or provide a copy of the road plans. If the Grantor insists that the assurance by a provision in easement conveyance, have the Office of the General Counsel draft the provision to fit the particular case to avoid creating a situation that might result in future challenges to the easement.

12.64b - No-Fencing Clause

When the Forest Service does not plan to fence the right-of-way, a no-fencing clause may be included in the easement deed when requested. Frequently, this clause is requested by ranch owners in western range areas. A suitable statement is as follows:

“This easement does not convey the right for the Grantee to construct a fence within the right-of-way”.

A later decision to fence the right-of-way would require acquisition of the additional interest.

12.64c - Sharing Construction Costs

The Grantor may wish to secure a right to use without charge on the road to be constructed under the easement authority for commercial hauling. To obtain this right the Grantor shall bear their proportionate share of the cost of the completed road. One method of investment sharing would be accomplished under the terms of a cooperative agreement and the Grantor would obtain the desired right of use in the road it has agreed to help build (FSM 5467).

In rare instances the value of the easement granted to the United States may constitute the Grantor's estimated proportionate share of the completed road on the easement. If this is true and if the Grantor is interested in a right to use the portion of road covered by the easement and is

willing to contribute the easement, the Grantor then has contributed their fair share of the road within the meaning of the regulations (36 CFR 212.9). In such a case, wording substantially as follows may be used in the conveyance:

“The Grantor and Grantee specifically agree that the easement herein granted is in consideration for and represents the Grantor's proportionate share of the road planned for construction thereon by the Grantee. They further agree that the Grantor may use the road when constructed subject to compliance with traffic control regulations and rules as provided in 36 CFR 261.12. When such use is for commercial hauling, the Grantor agrees to bear road maintenance costs proportionate to use as provided in 36 CFR 212.7(d)”.

12.7 - Termination Clause

Do not vary the standard easement termination clause for any reason without consulting with the Office of the General Counsel. The easement or a segment thereof terminates by its own accord immediately upon a written determination by the Regional Forester that the road or a segment thereof is no longer necessary. Evidence of the termination should be furnished to the owner of the servant estate in the form of a recordable instrument. Follow the direction found in chapter 40, section 41 of this handbook.

12.8 - Warranty Clause

The Department of Justice has specified that land or interest in land should be acquired by a general warranty easement deed. The delegation of title approval authority to the U.S. Department of Agriculture also limits this authority to transactions using a general warranty deed.

13 - Easement Execution, Certification, and Recording

13.1 - Execution

1. Date. Enter the date of execution.
2. Signatures. A signature for a corporation must be by the officer of the corporation authorized to make the conveyance.
 - a. Generally, the secretary or acting secretary of the corporation shall attest to the signature of the corporation officer executing the conveyance.
 - b. Only the original should be signed. Type or print the names on copies.
 - c. In some States, the Grantor's signature must be witnessed by one or more persons. This may be in addition to or in lieu of acknowledgment before a notary.

3. Seal. If the State has a law requiring corporations that have a corporate seal to affix the seal to the easement deed, or if the deed mentions a seal, have the Grantor affix a seal to ensure its legality.
4. Acknowledgment. The acknowledgment must be in the form required by the State in which the easement is located.

When using a printed acknowledgement form, be sure to insert the correct words and strike out inappropriate words. Be sure the notary's seal is affixed and is legible. Notaries are typically found at most title company offices, banks, Forest Service Regional Offices, and large corporations.

Refer questions on the form of acknowledgment to the Office of the General Counsel. Prepare Regional instructions relating to acknowledgments with assistance from the Office of the General Counsel.

13.2 - Certification

Carefully check easement conveyances before execution to ensure that the legal description of the lands encumbered by the right-of-way is correct and that the conveyance is correct in all respects, including the exhibit map or plat.

After execution, a subject matter expert with the expertise to review easement deeds and certify that the easement is correct in all aspect shall sign and date a certification that the conveyance is "correct as to consideration, description and conditions." The term "conditions" includes all provisions, covenants, and reservations in the conveyance. Do not place the certification in the margin as some counties will not record the easement if the margin is cluttered. Place the certification as shown in section 11, exhibit 01.

13.3 - Recording

Refer to chapter 20, section 22, of this Handbook for recording and title approval instructions.

14 - Negotiations

Use care in all contacts with private landowners to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended 42 U.S.C. 4601 et. seq. and the regulations in 49 CFR 24. If in doubt about the propriety of an action, contact either the Regional Office Lands Group or the Office of the General Counsel for advice.

14.1 - Preliminary Contacts

Keep landowners advised of projects that may affect them. Secure written permission to enter private land for surveying, appraisal and all other purposes.

Do not discuss compensation for the easement until after the appraisal is completed and the Authorized Officer has established the estimated just compensation. Discussion of potential

impacts on the property is appropriate, but limits the discussion to location alternatives and does not discuss estimates of costs or value losses.

14.2 - Legal Description

Prepare a legally adequate description in accordance with FSM 7100, chapter 50, section 53 and the Land Surveying Guide, EM 7150-3.

14.3 - Initial Offer

Provide the negotiator with a letter signed by the Authorized Officer that includes:

1. An easement deed ready for signature by the Owner or Owners.
2. A statement of estimated just compensation based on an approved appraisal that includes a statement of the appraised fair market value of the interest the United States is to acquire if the appraised value is less than the estimated just compensation. Do not offer less than the appraised value.

The negotiator shall be familiar with the location of the road on the ground and be able to correlate features on the ground with features on the plat. The negotiator should have knowledge of the regulations in 49 CFR 24 and their potential effect on the landowner.

Provide the negotiator with an understanding of the appraisal and the effect of title encumbrances on the value of the easement. The negotiator shall also have knowledge of the alternative routes considered and be able to explain why they were not selected.

Discuss with the landowner any defects or encumbrance on the landowner's title that affects title to the easement including unrecorded uses and environmental conditions such as hazardous materials, also discuss the required curative action. In some cases, the landowner shall take certain actions or furnish certain information.

Sometimes it is only necessary that the landowner know that the identified defect or encumbrance must be resolved by the landowner before the Government can make payment.

Ensure that the landowner understands any special title problems related to taxes due or delinquent. Failure of the landowner to understand the tax status and its relation to title approval requirements can result in misunderstandings and delays in title approval. If an authorization to withhold a portion of the purchase price to ensure payment of taxes is necessary, obtain such authorization in writing at the time the landowner signs the easement deed.

14.4 - Offers and Counter-Offers

Before making or accepting an offer or counter-offer higher than the initial estimate of just compensation, perform an analysis to determine if such a decision is in the public interest. Refer to FSM 5460.43 for the authority to make such offers. Include in the analysis a history of negotiations and probable effect of the higher approved price on the purchase of future easements in the area. Include the written analysis as a part of the case file.

Avoid making visits or contacts over a protracted period of time to barter over price and conditions. Prolonged negotiations normally tend to complicate the action and cause hostility.

14.5 - Fiscal, Legal, and Administrative Limitations and Guidance

14.51 - Permissible Conditions

As a condition of a road easement, the Forest Service may agree to construct, replace, or repair facilities within the right-of-way to:

1. Protect, or provide for the safe use of the road, such as cattle-guards, fences, and turn outs.
2. Maintain the usefulness of previously existing facilities, such as irrigation ditches, waterlines, culverts, siphons, bridges, pipelines, fences, to name a few.
3. Mitigate any damage to the landowner's property that otherwise would be included as a cost-to-cure item in the appraisal.
4. Construct facilities or structures in the right-of-way that are needed to prevent damage to property adjacent to the right-of-way. Examples are culverts under the road to eliminate impoundments or swamps created by fills across drainages, or to permit pipes or wires to pass under the road without the need to dig a ditch across the road at a later date.

The facilities constructed under items 1, 3, and 4 above would be Government property; those under item 2 would remain the property of the landowner. When the Government project requires the construction of a private facility outside the right-of-way, such as a road, the Forest Service shall construct the facility under a cooperative agreement with the landowner.

The Granger-Thye Act of April 24, 1950 (16 U.S.C. 572) provides the authority for cooperative arrangements.

14.52 - Prohibited Conditions

Except as specified in section 14.51, do not agree to landowners' demands or conditions that would require specific performance by the United States or which are otherwise unrelated to the easement. Occasionally, landowners attempt to condition the grant on the granting of a privilege or other favorable administrative action unrelated to the planned facility. An example would be fencing that is unrelated to the easement, although this practice is common in agreements between private parties, do not authorize or sanction such arrangements.

Note that the granting and acquisition of reciprocal easements that are not similar, such as a road easement for a pipe line easement, is acceptable. For clarification, contact the Regional or National Rights-of-Way Specialist.

14.53 - Consideration to Specify All Compensation

Include a statement of the total consideration in the easement deed to the United States and an acknowledgement for receipt of the consideration.

Payment may be delivered on execution of the easement if the Office of the General Counsel has made a preliminary title review and authorized payment upon execution of the easement, and the Forest Official has determined that no additional encumbrances have been filed on the land. Otherwise, make actual payment after final title approval.

14.54 - Other Limitations

Accept easements only if they give the Government the right to regulate and control all traffic on the road, including that of the Grantor. However, the nature of such regulation may be specified in the deed to the United States when the Grantor has made a valid reservation of a right to use an existing road.

Do not obtain easements for floating rights-of-way. The deed must describe the location of the right-of-way across the Grantor's property. For raw-land easements this requires that a surveyed description of the right-of-way be described in the easement deed (or as an exhibit) as specified in section 14.2.

The Forest Officer may execute a separate agreement with the Grantor whereby the Forest Service agrees to aid in disposing of the timber to which the Grantor retained title.

While condemnation is a tool that may be used in certain situations, in practice it is difficult to obtain the required congressional approval to proceed with a condemnation.

14.55 - Liability

Do not accept conditions which purport to make the United States liable for use of the road by others. The United States cannot assume such liability, and no agent or employee of the United States shall commit the United States to such liability.

15 - Easements Across Railroad Rights-of-Way

Railroad crossings for NFS roads typically require:

1. Permission from the state commission or agency charged with administering the State law governing public railroad crossings,
2. Sufficient ownership by the Government of an interest in the land on which the crossing is to be constructed in order to meet requirements for spending public funds, and
3. Arrangements with the railroad company regarding the construction and maintenance of the crossing.

Railroad crossings include underpasses and overpasses as well as at-grade crossings. The three requirements listed usually apply to all crossings. However, the kind of crossing has a considerable effect on the nature of the problem in connection with requirements (1) and (3). In some States, the State Commission has no responsibilities or jurisdiction except for crossings at-grade.

Private road crossings may be used for temporary roads or roads that serve limited purposes and exclude public travel. Generally, the State Commissions are not concerned with private road crossings, but this is not always the case.

Some States have laws that require railroads to construct and maintain railroad crossings at their own expense. In others, crossing construction may be covered by franchise conditions or regulations of the State Regulatory Agency.

If the railroad is located on an easement across Federal land, check the granting document for language that may require the railroad to construct and maintain road crossings.

15.1 - Permission from State Commission

Most States consider railroad crossings for NFS roads to be public road crossings subject to State law governing construction of public road railroad crossings. The responsibility for administration of the State law and the authority to regulate and authorize establishment of crossings generally rest with a State regulatory body such as a public utilities commission or railroad commission.

Although a State Commission shall not lawfully prohibit the Forest Service from constructing a railroad crossing, in the interest of Federal-State comity, the Forest Service shall seek permission from the State Commission. In the event that permission is unreasonably denied, conditioned, or delayed, consult with the Office of the General Counsel.

State statutes vary, but in general, they are designed to:

1. Establish a State Commission with power to administer the provisions of the statutes.
2. Require railroads to permit installation of necessary and desirable crossings.
3. Authorize the public Commission to specify conditions of installation and signing to make the crossing safe for public use.
4. Authorize the Commission to apportion the cost of installation between the railroad and the Agency applying for the crossing.

15.2 - Railroad-Crossing Easement

The permission of the State Commission to construct and use a railroad crossing does not constitute a conveyance of an interest in the land. Unless the United States owns the fee underlying the proposed crossing, it is necessary to obtain an easement from the owner of the land. The following situations may be encountered and require the indicated action:

1. The railroad company owns its right-of-way in fee. Obtain an easement from the railroad.
2. The railroad company has only an easement and a third party owns the underlying fee. Obtain an easement from the third party subject to the railroad easement.
3. The railroad company has only an easement and the United States owns the underlying fee. The United States need acquire no further interest; however, if the land is under the jurisdiction of another Federal agency, the Forest Service shall secure an appropriate authorization from that agency.

15.3 - Arrangements for Construction

In addition to obtaining authorization from the State Commission and an easement on which the crossing is to be constructed, when needed, make arrangements with the railroad company for construction and financing of the crossing.

Negotiate these arrangements before application for the crossing is made to the Commission. They may be formalized in an agreement with the railroad company, or they may be incorporated in the easement obtained from the railroad company when it owns the railroad right-of-way in fee.

Agreement with the railroad company must cover the following elements:

1. The physical characteristics of the crossing-location, design, and specifications, and the safety facilities, such as signs and automatic signals or gates.
2. Agreement on how and when the railroad company is to construct the crossing and associated facilities. Railroad companies routinely insist on making the installation except for the road approaches.
3. Agreement on costs the Forest Service is to bear and how these are to be paid.

If it is possible to reach agreement on these arrangements before going to the Commission, the Commission usually promptly approves the agreement. When it is not possible to reach agreement, some State Commissions will resolve the disputed issues, often following a hearing at which both sides are given the opportunity to present information for the Commission to use in making its decision.

The most common disagreement is over the safety features of the crossing. Know the Commission's rules and requirements concerning safety features before contacting the railroad.

15.4 - Procedure

Each Region should develop procedures and instructions for handling railroad crossings for each of the States in the Region.

Take the following actions, at minimum, for each State where travel management plans show railroad crossings are needed or already exist.

1. Ask the Office of the General Counsel to review the State law concerning railroad crossings and the regulations and practices of the State Commission.
2. Establish contacts with the State Commissions and the railroads. Discuss with them the procedures for railroad-crossings.
3. Inventory the railroad crossings on existing NFS roads for compliance with State law. The road right-of-way status record should provide this information. Schedule action to bring existing crossings into compliance with the State law, or in instances where compliance with State law may cause an unreasonable burden to the Forest Service, consult with the Office of the General Counsel.
4. Review the easements or permits that granted the access for the railroad where it crossed Government-owned lands. They may contain provisions concerning future Government needs for road crossings.
5. Prepare and maintain in the Regional Office a file that contains the results of the work done according to items 1 through 4.