

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

**Forest Service Handbook 2709.12 – Road Rights of Way Grants
Chapter 30 – Forest Road and Trail Act Easements**

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

Chapter 30: Removes obsolete direction, updates, and replaces codes and captions, revises chapter in its entirety, and adds zero code and section 39.

Section 31: Renames section from “Easement Grants to Cooperators for Cost Share Roads” to “Reciprocal Easements Granted to Cooperators for Cost Share Roads” and sets forth direction.

Section 32: Renames sections 32.1 from “Qualifications for Grant” to “Prerequisites”; 32.2 from “Format of Easement” to “Easement Form”; 32.3 from “Procedure for Issuance” to Issuance of Easements” and sets forth direction.

Section 33: Renames section from “Replacement of Prior Grants to Cooperators: to Easements Granted to Cooperators to Replace Road Right-Of-Way Authorizations Issued under other Authorities” and sets forth direction.

Section 34: Renames section from “Grants to Public Road Agencies” to Easements Granted to public Road Authorities; and sets forth direction.

Section 35: Updates section in its entirety.

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Section 36: Renames section from “Filing with Bureau of Land Management” to “Inclusion in the Forest Service’s Land Status Record System and the Master Title Plate for Federal Lands” and sets forth direction.

Section 37: Renames section from “Recording” to “Recording of an Easement and Notice of Termination or Revocation of an Easement” and sets forth direction.

Section 38: Renames section from “Termination” to “Termination of an Easement” and sets forth direction.

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This chapter discusses easements for use of roads on National Forest System lands or interests in lands held by the United States (Forest Service-acquired easements) under the National Forest Roads and Trails Act.

30.1 – Authority

National Forest Roads and Trails Act (FRTA), Title 16, United States Code, section 532-538 (16 U.S.C. 532-538). This statute authorizes the Forest Service to issue easements for use of roads on National Forest System lands.

30.2 – Definitions

Agreement Area. The area covered by a Road Right-of-Way Construction and Use Agreement.

Cost Share Road. A road for which the capital costs are shared and for which a reciprocal easement is granted under a Road Right-of-Way Construction and Use Agreement or similar prior agreement.

Landowner. The owner of non-federal land or interests in land within the boundaries of the National Forest System.

Road Right-of-Way Construction and Use Agreement. An agreement executed under FRTA covering an area in which the Forest Service and qualified cooperators have the need to establish access roads to their intermingled lands to manage, protect, and utilize resources on those lands and providing a process for the parties to cooperate in the joint construction, use, and maintenance of a road or road system where the costs are shared based upon use.

31 – Reciprocal Easements Granted to Cooperators for Cost Share Roads

The Forest Service and affected cooperators have agreed to the procedures for and content of the Road Right-of-Way Construction and Use Agreement, which provides for cooperators and the Forest Service to share capital road costs and to grant reciprocal road easements. FSM 5467 and FSH 5409.17, chapter 60, sections 60-66, provide direction on use of a Road Right-of-Way Construction and Use Agreement, including issuance of reciprocal easements for cost share roads. Develop a thorough understanding of this direction before issuing any reciprocal easements for cost share roads.

31.1 – Prerequisites

1. Before issuing a reciprocal easement for a cost share road, ensure that the cooperator has:

- a. Already constructed or agreed to construct the cooperator's proportionate share of the road pursuant to a Road Right-of-Way Construction and Use Agreement or a FRTA Agreement to the Facts (FSH 5409.17, ch. 60, sec. 64.5).
 - b. Conveyed, or arranged for conveyance, to the United States a reciprocal easement needed by the Forest Service to make the road a usable unit of the forest transportation system. Generally, the reciprocal easements granted to the United States are for road segments covered by a Road Right-of-Way Construction and Use Agreement on lands or easements owned or controlled by the cooperator.
2. Where the cost share road is entirely on National Forest System lands or covered by an easement acquired by the Forest Service, grant the cooperator a FRTA cost share easement (sec. 31) in accordance with FSM 5467.
3. If easements are needed across lands owned by parties other than the United States or the cooperator for the cost share road to become a usable component of the forest transportation system, obtain the easements from the other parties before granting any FRTA cost share easements to the cooperator. See easement acquisition requirements and procedures in FSH 5409.17, chapters 10 through 30.
 - a. Where either the cooperator or the Forest Service acquires a permanent easement across lands owned by another party that provides all of the rights needed to make the cost share road a usable component of the forest transportation system, and where the non-acquiring party does not have a permanent easement that is adequate for the non-acquiring party's needs, the cooperating parties shall share the costs of acquiring the easement as well as the costs of constructing the cost share road.
 - b. Where the cooperator has a permanent easement that is adequate for the cooperator's needs but does not convey all the rights needed to make the cost share road a usable component of the forest transportation system, the Forest Service shall acquire the additional rights needed for that purpose, but the Forest Service and the cooperator shall not share the costs of acquiring those rights. The Forest Service and the cooperator shall share the costs of constructing the cost share road, if it does not exist, or shall share the costs of reconstructing the cost share road, if it exists.
4. Where either the Forest Service or the cooperator has a permanent easement that conveys all the rights needed to grant easements for use of the cost share road to others, to control the use of the cost share road by others, and to allow use of the cost share road by the public, the Forest Service and the cooperator shall share the costs of constructing the cost share road or contribution value (FSH 5409.17, ch. 60,

sec. 60.5), as appropriate, as if the cost share road were located on land owned by the party holding the easement.

5. Where both the Forest Service and the cooperator hold an easement across lands owned by another party, the cooperator shall subordinate its easement rights to the Forest Service's easement rights in consideration for receiving a FRTA cost share easement from the Forest Service, so as to ensure consistent responsibilities, procedures, and requirements for all roads covered by the Road Right-of-Way Construction and Use Agreement

31.2 – Easement Form

Use form FS-2700-9d, Cost Share Easement, to grant a reciprocal easement for a cost share road.

31.3 – Issuance of Easements

A special use application (Form SF-299) is not required for issuance of a reciprocal easement for a cost share road. Reciprocal easements for cost share roads should be prepared concurrently with the corresponding supplement to the Road Right-of-Way Construction and Use Agreement providing for the cooperator to bear its share of the costs of the cost share road and to convey a reciprocal easement to the Forest Service for the cost share road. Deliver the executed reciprocal easement for a cost share road to the cooperator upon receipt of the associated supplement signed by the cooperator providing that the cooperator has borne, or has agreed to bear, its share of the costs of the cost share road and has conveyed or agreed to convey a reciprocal easement to the Forest Service. See FSM 5467 and FSH 5409.17, chapter 60, section 63, for additional guidance on issuance of cost share easements.

31.4 – Authorization of Off-Highway Haul in Reciprocal Easements for Cost Share Roads

1. Clauses may be added to form FS-2700-9d, Cost Share Easement (sec. 31.2) to provide for off-highway haul (OHH):
 - a. Where OHH is authorized on existing cost share roads that are being extended, unless there is a foreseeable need to restrict hauling to highway loads on those roads; or
 - b. On new cost share roads where the cooperator owns more than 50 percent of the lands covered by the Road Right-of-Way Construction and Use Agreement or where more than 50 percent of the timber harvested pursuant to the Road Right-of-Way Construction and Use Agreement will come from lands owned by the cooperator; has an established road system with a recent history of OHH; and continued OHH on that road system is reasonably anticipated in the future.

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2. Do not authorize OHH under cost share easements where the cooperator owns 50 percent or less of the lands covered by the Road Right-of-Way Construction and Use Agreement or where 50 percent or less of the timber harvested pursuant to the Road Right-of-Way Construction and Use Agreement will come from lands owned by the cooperator. Instead, if consistent with the applicable land management plan and directives at FSM 7731.18 and FSH 7709.59, chapter 20, section 26.2, authorize OHH by issuance of a road use permit.
3. Do not include OHH clauses in a cost share easement unless the cooperator agrees to bear all the increased costs of constructing and maintaining the cost share road to accommodate increased dimensions or loadings of OHH vehicles.

31.41 – Language Authorizing OHH in Reciprocal Easements for Cost Share Roads

1. Except as otherwise provided paragraphs 2, 3, and 4 of this section, authorize OHH in reciprocal easements for cost share roads by inserting the following clause E (sec. 31.41, ex. 01) in its entirety, without any deletions or revisions, and redesignating the remaining clauses in form FS-2700-9d, Cost Share Easement.
2. Clause E in exhibit 01 of this section does not have to be included to authorize OHH in existing reciprocal easements for cost share roads when the entire road system covered by the Road Right-of-Way Construction and Use Agreement is in place and actively being used for OHH; the majority of the reciprocal easements for cost share roads have been granted; and those that remain to be granted are needed only to complete documentation, rather than facilitate use, of the existing road system.
3. Do not include clause E in exhibit 01 of this section to authorize OHH in existing reciprocal easements for cost share roads when the existing easements already authorize OHH.
4. Do not include clause E in exhibit 01 of this section to authorize OHH in reciprocal easements for cost share roads that are not on National Forest System lands.

31.41 – Exhibit 01

OHH Clause

E. Subject to the provisions of this clause, Grantee is authorized to use the vehicles listed below or in an appendix attached to this easement with weight, height, length, and/or width in excess of limitations established by State law for use on State highways over the National Forest System roads or road segments listed below or in an appendix attached to this easement for the purpose of hauling non-Federal forest products, herein referred to as “off-highway haul”:

<u>Road Name</u>	<u>Road Number</u>	<u>Terminus</u>	<u>Authorized Vehicles</u>
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This authorization of off-highway haul (OHH) is issued subject to the following terms:

1. Vehicles Authorized

- a. Vehicle dimensions, weight, and configuration that can safely be accommodated shall be determined for each road or road segment based upon the capacity of the road in its present condition or as planned to be improved for immediate use.
- b. The combined weight of the vehicle and load shall not exceed the pounds on the front axle and the pounds on each additional axle.
- c. The total height of the vehicle and load shall not exceed [number] feet.
- d. The overall length of the vehicle and load, including trailers, shall not exceed [number] feet.
- e. The overall width of the vehicle and load shall not exceed [number] feet.
- f. No more than [number] trailer units per vehicle are authorized.
- g. The use of cleated equipment on paved roads is prohibited.

2. Compliance with State and Local Laws. Except as expressly provided otherwise in clause E of this easement, Grantee shall comply with all Federal, State, and local laws pertaining to the use of vehicles and roads.

3. Costs Borne by Grantee. Grantee shall bear the costs of construction, reconstruction, repair, and maintenance attributable to Grantee’s use of roads for OHH. Attributable costs include all expenditures required in excess of those required for construction, reconstruction, repair, and maintenance of roads to accommodate weight, height, length, and width limitations established by State law at the time of construction.

4. **Liability of Grantee.** Grantor disclaims all liability arising from Grantee's OHH pursuant to clause E of this easement, and Grantee shall indemnify, defend, and hold harmless the United States for any claim arising from such use.
5. **Bond or Other Assurance.** Grantor may require a satisfactory bond or other assurance for conducting OHH when deemed necessary by Grantor to protect the interests of the United States.
6. **Temporary Modification of OHH.** Upon written notice to Grantee, Grantor may temporarily modify the weight, height, length, and width limitations in clause E of this easement upon a determination that OHH is causing or may cause material damage to National Forest System lands, resources, roads, bridges, or associated facilities or is a hazard to public health or safety. Unless otherwise agreed in writing, such modifications shall remain in effect until the damage or hazard is abated. All damage caused by OHH shall be repaired at Grantee's expense. Except in emergencies involving health or safety or damage to National Forest System lands or resources, Grantor shall provide written notice to Grantee before making any temporary modifications to OHH.
7. **Revocation and Suspension of Authorization of OHH.** Grantor reserves the right to revoke or suspend, in whole or in part, authorization of OHH under clause E of this easement, either for noncompliance with any of its provisions or for public purposes. Except for immediate temporary suspension under clause E.8 of this easement, Grantor shall give prior written notice to Grantee and, except for revocation for public purposes, a reasonable opportunity for Grantee to comply before revoking or suspending authorization of OHH. The following additional conditions shall apply to revocation of authorization of OHH:
 - a. If Grantor gives Grantee at least 10 years prior notice of revocation of authorization of OHH for public purposes or Grantor revokes authorization of OHH for noncompliance with clause E of this easement, Grantee shall not be entitled to any compensation.
 - b. If Grantor gives Grantee less than 10 years prior notice of revocation of authorization of OHH for public purposes, Grantor shall pay Grantee for only the following unamortized investments in accordance with a 10-year, straight-line amortization and only as provided below:
 - (1) Road improvements made during the prior notice period that are directly attributable to OHH, other than short-term investments such as gravel surfacing or temporary stabilization that can be fully amortized prior to revocation.
 - (2) Specialized OHH trucks that are purchased prior to the date of the prior notice and that will be owned for less than 10 years as of the date of

revocation, provided Grantee has no other feasible use for them and they cannot be sold. No compensation shall be paid for specialized OHH trucks acquired after the date of the prior notice. Compensation paid shall be the unamortized value minus the salvage value.

8. **Immediate Temporary Suspension of Authorization of OHH.** Grantor may immediately temporarily suspend all or part of the authorization of OHH under clause E of this easement, without incurring any damages to Grantee or any other party, if the Authorized Officer determines that the OHH poses an immediate threat to public health or safety or the environment. Grantee shall immediately suspend OHH as directed upon receipt of a written notice of an immediate temporary suspension, until the Authorized Officer determines that the threat is abated. Grantee may request an on-site review with the Authorized Officer's superior of the adverse conditions prompting the suspension. The Authorized Officer's superior shall grant this request within 48 hours. Following the on-site review, the Authorized Officer's superior shall promptly affirm, modify, or cancel the suspension. Imposition of an immediate temporary suspension of authorization of OHH does not in any way affect Grantor's right to revoke or suspend authorization of OHH as provided in clause E.7 of this easement.
9. **Appeals and Remedies.** Written decisions by the Authorized Officer relating to administration of this easement, other than revocation or suspension decisions, are subject to administrative appeal pursuant to Title 36, Code of Federal Regulations, Part 214—Post decisional administrative Review Process for Occupancy or Use of National Forest Systems Lands and Resources (36 CFR Part 214), as amended. Revocation and suspension of this easement, including immediate suspension of authorization of OHH under clause E.8, are subject to administrative appeal pursuant to Title 7, Code of Federal Regulations, Part 1, Subpart H—Rules of Practice Governing Formal Adjudicatory (7 CFR Part 1, Subpart H), as amended. Revocation or suspension of this easement shall not give rise to any claim for damages by Grantee against Grantor.
10. **Amendment.** Authorization of OHH may be amended at any time by written agreement of the parties. Grantor may unilaterally modify the terms in clause E.1 of this easement to meet identified public purposes. Any unilateral modification by Grantor for public purposes shall be considered a partial revocation and shall be subject to clause E.7 of this easement to the extent any unamortized investments specified in clause E.7(b) are associated with the unilateral modification.
11. **Authorized Officer.** The authority of Grantor or the Forest Service provided by clause E of this easement shall be exercised by the Forest Supervisor or other Authorized Officer.

31.42 – Administration of OHH Under Reciprocal Easements for Cost Share Roads

Where OHH is causing or may cause material damage to National Forest System resources or facilities or is a hazard to public health or safety, consider temporarily modifying the terms of authorization of OHH to avoid the need to suspend or revoke it.

Authorization of OHH may be suspended in accordance with section 31.41, exhibit 01, clause E.7. When authorization of OHH is suspended, the conditions under which OHH may be resumed should be specified in the notice of suspension. An Authorized Officer's decision to modify, suspend, or revoke authorization of OHH use is subject to administrative appeal as provided in 36 CFR Part 214, as amended, or 7 CFR Part 1, Subpart H, as amended.

Authorization of OHH may be revoked for public purposes in accordance with section 31.41, exhibit 01, clause E.7. For example, it may be appropriate to revoke authorization of OHH for public purposes due to changes in land use by either the grantor or the grantee, or if jurisdiction of the cost share road is being transferred to a public road authority, and OHH would be contrary to the law applicable to the public road authority. It may also be appropriate to revoke authorization of OHH for public purposes due to changes in land use by the cooperator or the Forest Service, for example, if a major resort were established on the cooperator's lands or National Forest System lands and that use generated a substantial increase in traffic that would be incompatible with OHH. Authorization of OHH should be revoked for public purposes only when necessary to meet substantial long-term needs that cannot be met by mutually agreed upon amendment to the authorization of OHH.

32 – Easements Granted to Cooperators for Non-Cost Share Roads

32.1 – Prerequisites

All of the following four prerequisites must be met before granting an easement to a cooperator for a non-cost share road:

1. The non-cost share road is within an agreement area;
2. The non-cost share road is constructed at the sole expense of the cooperator or, in the case of existing non-National Forest System roads, the Forest Service and the cooperator must agree not to share costs for the road;
3. The Forest Service determines that the non-cost share road is not needed for National Forest System purposes; and
4. The need for the non-cost share road by the cooperator is indefinite or long-term and, if the road is to be constructed, it will be constructed to meet Forest Service standards and guidelines.

Unless all four prerequisites are met, issue a Federal Land Policy and Management Act special use authorization for the non-cost share road (FSH 2709.12, ch. 40).

A temporary road should be authorized by a special use permit that terminates when the road is no longer needed for the purposes authorized (FSM 5467; FSH 2709.12, ch. 40, sec. 41.24).

32.2 – Easement Form

Use form 2700-9e, Non-Cost Share Easement, to issue an easement to a cooperator for a non-cost share road.

32.3 – Issuance of Easements

Sections 2, 3, and 13 of the Road Right-of-Way Construction and Use Agreement (FSH 5409.17, ch. 60, sec. 61, ex. 01) describe the procedure for issuance of easements to cooperators for non-cost share roads.

33 – FRTA Easements granted to Cooperators to Replace Road Right-Of-Way Authorizations Issued Under Other Authorities

33.1 – Prerequisites

All of the following three prerequisites must be met before granting a FRTA easement to a cooperator to replace a road right-of-way authorization issued under another authority:

1. The cooperator holds the road right-of-way under one of the following instruments:
 - a. A special use permit under which the cooperator constructed and is using the road; or
 - b. An easement issued by the United States Department of the Interior, Bureau of Land Management (BLM), under the Act of March 3, 1899 Title 16, United States Code, section 525 (16 U.S.C. 525); or
 - c. Stipulations for rights of ingress and egress issued by the Forest Service under the Act of June 4, 1897, under which the cooperator constructed and is using the road;
2. The cooperator has conveyed easements needed by the Forest Service to make the road a usable component of the forest transportation system; and
3. The cooperator has borne its proportionate share of the construction costs of the road.

The Forest Service shall grant an easement to holders of BLM easements upon application in accordance with Title 36, Code of Federal Regulations, section 212.8(c)(1)—Permission to Cross

Lands and Easements Owned by the United States and Administered by the Forest Service (36 CFR 212.8(c)(1)).

33.2 – Easement Form

To grant a FRTA easement as a replacement for a road right-of-way authorization issued under another authority, use Form FS-2700-9d, Cost Share Easement, or form FS-2700-9e, Non-Cost Share Easement, as applicable.

Ensure that the FRTA easement does not grant rights that the cooperator did not have or was not intended to have under the prior authorization and that, if granted, would impair the usefulness of the road for the Forest Service's purposes or increase the costs of administering the road. For example, in replacing a BLM easement with a FRTA easement, any authorization of OHH in the FRTA easement may not exceed authorization of OHH under the BLM easement.

33.3 – Issuance of Easements

Each Regional Forester shall prescribe the procedures for applications for a FRTA easement to replace a road right-of-way authorization issued under another authority, except procedures for review of applications to replace BLM easements, which must be granted (sec. 33.1). Applications must include a request for, or consent to, relinquishment of all rights under the prior authorization. Such relinquishment shall be effective when the FRTA easement is fully executed. Prepare relinquishment of BLM easements in the form approved by the appropriate State Director and transmit the relinquishment documentation to the Director for action.

34 – Easements Granted to Public Road Authorities

See FSM 7703 for considerations that should be taken into account in deciding whether to grant or assign an easement to a public road authority for a public road.

The Forest Service may grant an easement on National Forest System lands or assign an easement on non-National Forest System lands for construction of a public road by a public road authority or assumption of jurisdiction of an existing road by a public road authority for use as a public road. The Forest Service may cooperate in construction of a public road under an appropriate agreement.

Assigning an easement acquired by the United States for an existing road to a public road authority transfers jurisdiction of the road to the public road authority. When considering the assignment of an easement to a public road authority, review the rights granted to the United States by the easement to ensure legal sufficiency for use of the road as a public highway. See FSM 5461.11 and FSH 5409.17, chapter 10, for more direction on assignment of easements for public roads and consult with the local Office of the General Counsel in reviewing the easement granted to the United States.

34.1 – Easement Form

Use form FS-2700-9f, Public Road Easement, to issue an easement for a public road to a public road authority, including a rural improvement district, a county, or a State department of transportation for public roads and highways that are not part of the Federal-aid highway system Title 16, United States Code, section 533 (16 U.S.C. 533).

Easements over National Forest System lands for public roads and highways that are part of the Federal-aid highway system are issued by the Federal Highway Administration to a county or state department of transportation, Title 23, United States Code, section 317 (23 U.S.C. 317); FSM 2731).

35 – Easements Granted to Landowners Who Cooperate in the Constructions of National Forest System Roads Outside Agreement Areas

35.1 – Prerequisites

Before issuing an easement under FRTA to a landowner for a road to be constructed outside an agreement area, ensure that one of the following two prerequisites is met:

1. The landowner is a signatory to a Road Right-of-Way Construction and Use Agreement for roads located in the same Forest Service region as the road to be covered by the easement; or
2. The landowner:
 - a. Has granted or will have granted to the United States a permanent road easement under FSH 5409.17, chapter 60, section 64.51, in the same Forest Service region as the road to be covered by the FRTA easement;
 - b. Has shared or will share the costs of constructing the road to be covered by the FRTA easement or the road system in which that road is to be included; and
 - c. Needs the road to be covered by the FRTA easement to harvest timber from the landowner's lands and to provide for long-term protection, management, and utilization of the timber resources on those lands.

If the landowner does not meet the prerequisites in section 35.1, paragraph 1 or 2, the Regional Forester may grant the landowner an easement or permit under the Federal Land Policy and Management Act (FLPMA) (FSH 2709.12, ch. 40) for the road to be constructed.

35.2 – Easement Form

The proper form to be used to issue an easement under FRTA to a landowner for a road outside an agreement area depends upon the jurisdiction of the road to be covered by the easement.

Use a FRTA Forest Road Easement (form FS-2700-9g) when the easement will be issued for use of a National Forest System road. Use a FRTA private road easement (form FS-2700-9h) when the easement will be issued for use of a private road.

1. **FRTA Forest Road Easement.** Use the FRTA Forest Road Easement (form FS-2700-9g) when:
 - a. The road is part of the forest transportation system;
 - b. The costs of constructing the road are shared, utilizing standard cost share principles (FSM 5467 and FSH 5409.17, ch. 60, sec. 64.5); and
 - c. The landowner has granted or will grant to the United States a permanent road easement of substantially similar value (36 CFR 212.8(a)).
2. **FRTA Private Road Easement.** Use the FRTA Private Road Easement (form FS-2700-9h) when:
 - a. The road is not part of the forest transportation system;
 - b. The costs of constructing the road are not shared; or
 - c. The landowner has granted or will grant to the United States a reciprocal permanent road easement of substantially similar value to the easements applied for (36 CFR 212.8(a)).
3. **Existing Roads Constructed Under Another Authority.** For an existing road constructed under another authority:
 - a. Issue a FRTA Forest Road Easement if the road was constructed under a special use permit or by the Forest Service for inclusion in the forest transportation system.
 - b. Issue a FRTA Private Road Easement if the road was constructed at the landowner's sole expense under a valid private road special use permit, or the road was constructed by unknown parties and is not needed for the forest transportation system.

35.3 – Valuation

Use the procedures in FSH 5409.17, chapter 60, to value an easement granted to a landowner who cooperates in the construction of a National Forest System road outside an agreement area.

Payment of the consideration for the easement must be given prior to issuance and may take the form of cash, reciprocal easements, or a combination of the two. Consideration in cash must be paid in a single lump sum.

35.31 – Forest Road Easements

For Forest Road Easements, calculate the value of the road and rights granted using the cost share principles in FSM 5467 and FSH 5409.17, chapter 60, section 64.5. Include the fair market value of the land underlying the right-of-way, the value of third-party easements previously acquired by the United States being conveyed with the easement, and engineering costs in the total costs to be shared by the Forest Service and the landowner.

Where the easement is granted for road construction or reconstruction by the landowner, the Forest Service shall pay its prorated share of the costs of constructing the road upon final acceptance of the road.

For existing National Forest System roads that need to be reconstructed, grant the cooperator a FRTA Forest Road Easement (FS-2700-9g). Limit the Forest Service's contribution to the existing National Forest System road:

1. If the Forest Service does not have the funds to pay its proportionate share of the reconstruction costs or the Forest Service's proportionate share of the reconstruction costs is not offset by the cooperator's proportionate share; and
2. An exchange of easements to cover the balance of the reconstruction costs is not possible or is inappropriate, such as where the private land is owned by multiple limited liability companies and negotiating an easement on behalf of the United States would be nearly impossible.

When Forest Service funds are not available for reconstruction, limit road improvements to those needed to accommodate the cooperator's additional use.

35.32 – Private Road Easements

For roads to be constructed, grant the cooperator a FRTA Private Road Easement (form FS-2700-9h), when one of the following three prerequisites is met:

1. The value of the right-of-way granted to the United States is insufficient to offset the Forest Service's share of the construction costs and funds are not available for the construction;
2. An exchange of easements is not possible or is inappropriate; or
3. The road is not needed for National Forest System purposes.

Do not use the Uniform Appraisal Standards for Federal Land Acquisitions to appraise the value of the rights granted by a private road easement. Appraise the value of the rights granted by a private road easement as if it were a transaction involving two private parties, for example, based on the fair market value as determined by standard real estate appraisal practices of private parties in the area where the easement is located.

35.4 – Issuance of Easements

A special use application (Form SF-299) is required for issuance of a FRTA easement (FSH 2709.12, ch. 10) to a landowner. Conduct and document the requisite environmental analysis prior to issuance of the easement (FSH 2709.12, ch. 10, sec. 13). The delegated Authorized Officer may execute an easement upon payment of the consideration for the easement or the grant of a reciprocal permanent easement of substantially similar value to the United States. The Authorized Officer must approve the required plans, specifications, and stipulations before any road construction work commences.

35.5 – Survey and Plat Requirements

1. For FRTA Forest Road Easements, use the survey and plat standards for deeds exchanged under a Road Right-of-Way Construction and Use Agreement (FSH 5409.17, ch. 60).
2. For FRTA Private Road Easements, use the survey and plat standards in FSM 7153 for easements granted under FLPMA.

36 – Inclusion in the Forest Service’s Land Status Record System and the Master Title Plat for Federal Lands

Ensure that all FRTA easements are included in the Forest Service’s Land Status Record System.

Send a copy of all FRTA easements across National Forest System lands reserved from the public domain or having equivalent status, such as National Forest System lands that were acquired through a legislated exchange for public domain lands, to the appropriate State Director of the U.S. Department of the Interior, BLM. The Regional Forester, in consultation with the appropriate State Director of the BLM, shall develop the procedure for transmitting a copy of easements to the BLM for inclusion in the Master Title Plat for Federal lands.

Many FRTA easements cross both lands reserved from the public domain and other lands administered by the Forest Service or lands over which the Forest Service has an easement. Separately identify the segments that cross public domain lands in the easement and in the letter transmitting a copy of the easement to the BLM.

File a copy of a notice of revocation of a FRTA easement for lands reserved from the public domain or with equivalent status with the appropriate State Director of the BLM.

37 – Recording of an Easement and Notice of Termination or Revocation of an Easement

A FRTA easement must be recorded in each county in which lands traversed by the easement are located. The grantee is responsible for recording a FRTA easement. An easement terminates if it is not recorded within 90 days of the date it is granted.

When an easement or segment of an easement terminates other than for failure to record the easement (sec. 38) or is revoked (sec. 39), the Authorized Officer shall record the notice of termination or revocation in each county in which lands traversed by the easement are located. The Forest Service must pay the fees for recording a notice of termination or revocation.

38 – Termination of an Easement

A FRTA Forest Road Easement (form FS-2700-9g) and a FRTA Private Road Easement (FS-2700-9h) terminate:

1. If the cooperator does not record the easement within 90 days of the date it is granted;
2. Upon the written agreement of the Forest Service and the landowner; or
3. If a subsequent easement is granted by the Forest Service to a public road agency for operation of the forest or private road as a public highway.

A FRTA Private Road Easement (form FS-2700-9h) also terminates if the Forest Service assumes jurisdiction over the private road. Issue a replacement easement to the cooperator or landowner for the private road using the appropriate standard Forest Service form. If the private road was constructed by the cooperator or landowner under a special use authorization, pay the cooperator or landowner the Forest Service's pro rata share of the current replacement cost of the road, less depreciation.

38 – EXHIBIT 01

SAMPLE NOTICE OF TERMINATION - Liability of Grantee.

After recording, return document to: 2730 ROW Grant
XYZ National Forest XYZ National Forest
Attn: Lands [Name] Land Exchange
[address]

<USER NOTES FOR THIS TEMPLATE>

<Select the applicable text in brackets in the title and body of the template. Deleted the inapplicable text in brackets. Delete the brackets.>

TERMINATION OF [AN EASEMENT] [A SEGMENT OR SEGMENTS OF AN EASEMENT]

On the February 1, 1974, the United States of America, acting by and through the United States Department of Agriculture, United States Forest Service (the grantor), granted an easement for roads across certain National Forest System lands in [County], [State], to XYZ Paper Company (the grantee), which was recorded in the public records of [County], [State], on [date], in Book [number], at Page [number], Reception Number _____, hereinafter referred to as “the easement.”

The easement provides that it shall terminate, all or in part, upon the written agreement of the grantor and the grantee.

Termination of [the easement] [a segment or segments of the easement] is hereby agreed to by the grantor and XYZ Lumber Company, a corporation of the State of [Name] and successor in interest to the grantee. The [easement that is terminated is] [segment or segments of the easement that are terminated are] shown on the map attached as Appendix A to this document and [is] [are] described as follows:

Purcell Ridge South Road No. 6786. Beginning at its junction with Purcell Ridge Road No. 6783 in the NW¼NW¼, Section 9, T33N, R31W, PMM, and crossing National Forest System lands in the E½NE¼ Section 8, T33N, R31W, PMM, and ending at a point on the east line of the SE¼NE¼, Section 8, T33N, R31W, PMM.

The grantor and XYZ Lumber Company, successor in interest to the grantee, are agreeing to the termination of the foregoing [easement] [segment or segments of the easement] because they have determined that XYZ Lumber Company, successor in interest to the grantee, has no further need for [the easement] [the segment or segments of the easement].

SAMPLE NOTICE OF TERMINATION - Liability of Grantee.

On [date], I, the successor in interest to the grantee, have read, understood, and accepted the termination of [the easement] [the segment or segments of the easement] identified above.

[NAME]

DATE

[TITLE]

XYZ Lumber Company

STATE OF [NAME]

[NAME] COUNTY

On [date], before me, a notary public in the State of [name], personally appeared [name], known to me to be the person who signed this termination of [the easement] [the segment or segments of the easement] as successor in interest to the grantee.

Notary Public for the State of [Name]

My commission expires _____

On [date], the United States, through the United States Department of Agriculture, Forest Service, has executed this termination of [the easement] [the segment or segments of the easement] pursuant to delegations of authority in 7 CFR 2.60(a)(2), 36 CFR 251.52, and FSM 2732.04c.

UNITED STATES OF AMERICA

[NAME]

DATE

SAMPLE NOTICE OF TERMINATION - Liability of Grantee.

DIRECTOR OF LANDS

_____ Region

USDA Forest Service

STATE OF [NAME]

[NAME] COUNTY

On [date], before me, a notary public in the State of [Name], personally appeared [name], known to me to be the person who signed this termination of [the easement] [the segment or segments of the easement] as the grantor.

Notary Public for the State of [Name]

My commission expires _____

39 – Revocation of an Easement

A FRTA Forest Road Easement (form FS-2700-9g) and a FRTA Private Road Easement (FS-2700-9h) may be revoked only as follows:

1. **By Consent of Grantee.** The consent may apply to a segment of the easement or to all of it. Consent to revoke must be documented. The documentation must be prepared by the Authorized Officer and presented to the grantee for signature before it is signed by the Authorized Officer. Send a copy of the fully executed consent to revocation to the grantee and appropriate State Director of the BLM and ensure the consent to revocation is properly recorded.
2. **By Condemnation.** Process condemnation in the same way as condemnation of other private interests in lands or roads (FSM 5463).
3. **For Abandonment.** The Authorized Officer may revoke all or part of a FRTA Forest Road or Private Road Easement (form FS-2700-9g or FS-2700-9h) based on a finding of abandonment of the easement after a continuous 5-year period of non-use, provided:
 - a. The easement or segment of the easement is not being preserved for prospective future use;
 - b. The Authorized Officer gives the grantee written notice of the revocation; and
 - c. If the grantee administratively appeals the revocation within 60 days of receipt of the notice, the revocation is upheld on appeal.

The Authorized Officer must have documentation for the finding of abandonment and for the finding that the easement is not being preserved for prospective future use.

Before revocation, send the grantee a 60-day notice of the Authorized Officer's determination to revoke all or part of the easement, and provide the grantee an opportunity to request a hearing under the applicable appeals procedure (7 CFR Part 1, Subpart H).

39 – EXHIBIT 01

SAMPLE NOTICE OF REVOCATION

After recording, return document to: 2730 ROW Grant
XYZ National Forest XYZ National Forest
Attn: Lands [Name] Land Exchange
[address]

<USER NOTES FOR THIS TEMPLATE>

<Select the applicable text in brackets in the title and body of the template. Deleted the inapplicable text in brackets. Delete the brackets.>

REVOCATION OF [AN EASEMENT] [A SEGMENT OR SEGMENTS OF AN EASEMENT]

On the February 1, 1974, the United States of America, acting by and through the United States Department of Agriculture, United States Forest Service (the grantor), granted an easement for roads across certain National Forest System lands in [Name] County, [State], to XYZ Paper Company (the grantee), which was recorded in the public records of [Name] County, [State], on [date], in Book [number], at Page [number], Reception Number _____, hereinafter referred to as “the easement.”

The easement provides that the grantor may revoke all or part of the easement based on a finding of abandonment of the easement after a continuous 5-year period of non-use, provided:

- (1) The easement or segment of the easement is not being preserved for prospective future use;
- (2) The Authorized Officer gives the grantee written notice of the revocation; and
- (3) If the grantee administratively appeals the revocation within 60 days of receipt of the notice, the revocation is upheld on appeal.

[The easement is] [A segment or segments of the easement are] hereby revoked by the grantor. The [easement that is revoked is] [segment or segments of the easement that are revoked are] shown on the map attached as Appendix A to this document and [is] [are] described as follows:

Purcell Ridge South Road No. 6786. Beginning at its junction with Purcell Ridge Road No. 6783 in the NW¼NW¼, Section 9, T33N, R31W, PMM, and crossing National Forest System lands in the E½NE¼ Section 8, T33N, R31W, PMM, and ending at a point on the east line of the SE¼NE¼, Section 8, T33N, R31W, PMM.

Forest Service Handbook 2709.12 – Road Rights of Way Grants Handbook

Chapter 30 – Forest Road and Trail Act Easements

Amendment: 2079.12-2023-1

Effective date: December 22, 2023

[The easement described above is] [The segment or segments of the easement described above are] not being preserved for prospective future use; the grantor has given the grantee written notice of revocation of that segment of [the easement] [the segment or segments of the easement]; and the revocation was upheld on appeal after the grantee administratively appealed the revocation within 60 days of receipt of the notice of revocation.

On [date], I, the grantee, have read, understood, and accepted revocation of [the easement] [the segment or segments of the easement] identified above.

[NAME]

DATE

[TITLE]

XYZ Paper Company

STATE OF [NAME]

[NAME] COUNTY

On [date], before me, a notary public in the State of [Name], personally appeared [name], known to me to be the person who signed this revocation of [the easement] [the segment or segments of the easement] as the grantee.

Notary Public for the State of [Name]

My commission expires _____

On [date], the United States, through the United States Department of Agriculture, Forest Service, has executed this revocation of [the easement] [the segment or segments of the easement] pursuant to delegations of authority in 7 CFR 2.60(a)(2), 36 CFR 251.52, and FSM 2732.04c.

UNITED STATES OF AMERICA

[NAME]

DATE

Forest Service Handbook 2709.12 – Road Rights of Way Grants Handbook

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Effective date: December 22, 2023

DIRECTOR OF LANDS

_____ Region

USDA Forest Service

STATE OF [NAME]

[NAME] COUNTY

On [date], before me, a notary public in the State of [Name], personally appeared [name], known to me to be the person who signed this revocation of [the easement] [the segment or segments of the easement] as the grantor.

Notary Public for the State of [Name]

My commission expires _____