

Movement Decision Criteria for Industry and Regulatory Officials Managing Cattle and Sheep Grazing Federal Public Lands during a Foot-and-Mouth Disease (FMD) Outbreak

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Executive Summary

This guidance document describes three movement options and five decision criteria for industry and regulatory officials to consider when managing cattle and sheep grazing federal public lands that are affected by movement controls (quarantine, Control Areas) but are not infected with foot-and-mouth disease (FMD) during an outbreak in the United States. This document was created through collaborative discussions between cattle and sheep producers, livestock industry associations, state and federal animal health officials, and federal agencies for land management and wildlife management.

Movement options for livestock grazing on federal public lands in a Control Area that are not designated as Infected, Suspect or Contact Premises (herds/flocks) include:

1. Staying in place until the Control Area movement restrictions are lifted.
2. Moving within the Control Area.
3. Moving outside of the Control Area to a biosecure location that can quarantine livestock away from susceptible species.

The decision criteria to ensure animal needs and response goals are met include:

1. Assessing availability, suitability of adequate feed/water
2. Monitoring for disease (surveillance)
3. Mitigating interactions with wildlife
4. Controlling public access to Control Areas
5. Implementing just-in-time biosecurity

Interagency collaboration opportunities between the federal land management agencies who issue public land grazing use permits (Bureau of Land Management/BLM, USDA Forest Service/USFS) with the agencies who would manage an FMD outbreak response (USDA Animal and Plant Health Inspection Service (APHIS) and State Animal Health Officials (SAHO)) and the agencies that oversee wildlife (U.S. Fish and Wildlife Service, USDA APHIS Wildlife Services) are also described.

Guidance aligns with the USDA FMD Response Plan (Oct 2020), and is cognizant of BLM and USFS jurisdiction, referring to the Code of Federal Regulations, instructional memorandums, manuals, and directives. Where applicable, the outbreak movement permit guidance in the Secure Sheep and Wool Supply (SSWS) and Secure Beef Supply (SBS) Plans for Continuity of Business are followed. Modifications that account for grazing public lands include:

- Using allotment/pasture number/name instead of Premises Identification Number (PIN)
- Describing enhanced biosecurity steps to regulatory officials (using the Just-in-Time Biosecurity and Exposure Questionnaire for FMD: Livestock Grazing Public Lands)
- Conducting disease monitoring within the same Control Area or at a biosecure location that meets quarantine requirements for at least 28 days (two times the incubation period of FMD)

This is **GUIDANCE ONLY**. In an actual outbreak, decisions will be made by the Responsible Regulatory Officials based on the unique characteristics of the outbreak.

Scope

This document does not address the management of Infected, Suspect, or Contact Premises (see [Appendix A: USDA Definitions](#)) or animals grazing on Tribal Lands. Animals moving off Tribal Lands will need to meet USDA APHIS and State requirements for movement if in a Control Area. Rather, the focus is on the USDA FMD Response Plan critical activity of “Continuity of business measures for non-infected premises and non-contaminated animal products” located within a regulatory Control Area involving federal public lands. The

Secure Beef¹, Sheep and Wool² Supply Plans for Continuity of Business provide guidance for premises located in a regulatory Control Area that have susceptible livestock species with no evidence of FMD infection. Where applicable, the movement permit guidance in the SSWS and SBS Plans will be followed. Proposed modifications are included in [Table 1](#) and [Table 2](#).

This movement decision criteria document was created through collaborative discussions between cattle and sheep producers, livestock industry associations, state and federal animal health officials, federal land management agencies, and federal wildlife management agencies. Guidance builds upon documents regulatory officials will use to respond to an FMD outbreak, including but not limited to:

- *USDA APHIS Foot-and-Mouth Disease Response Plan: The Red Book, 2020*
www.aphis.usda.gov/animal_health/emergency_management/downloads/fmd_responseplan.pdf
- *USDA APHIS Ready Reference Guides, various dates:* www.aphis.usda.gov/aphis/ourfocus/animalhealth/emergency-management/ct_fadprep_readyreferenceguides
- *FAD PReP Classification of Phases and Types of a Foot-and-Mouth Disease Outbreak and Response, 2013:* www.aphis.usda.gov/animal_health/emergency_management/downloads/phases-and-types-of-an-fmd-outbreak_2013.pdf

Additional details that support this guidance can be found in:

- Bickett-Weddle, Roles of Agencies in Non-outbreak and FMD Outbreak Situations: Permitting Sheep and Cattle Grazing Federal Public Lands, 2024: <https://seuresheepwool.org/Assets/Grazing-Fed-Public-Lands-Role-Agencies-Permits.pdf>
- Bickett-Weddle, Management Practices and FMD Exposure Risks for Sheep and Cattle Grazing Federal Public Lands, 2024: <https://seuresheepwool.org/Assets/Grazing-Fed-Public-Lands-Mgt-Practices-FMD-Exposure-Risks.pdf>

The regulations pertaining to BLM's jurisdiction and grazing permit process are described in [43 CFR Subchapter 3, Part 4100](#) as well as a series of internal policies and instruction memoranda (IM). The regulations pertaining to USFS's jurisdiction and grazing permit process are described in [36 CFR Chapter 2 Part 222](#) as well as the USFS Handbook. Additional links to guidance that could contribute to an effective interagency response are provided throughout this document and in [Appendix B: Applicable Code of Federal Regulations for Interagency Response to a Foreign Animal Disease Outbreak](#).

Introduction

In the event of a foot-and-mouth (FMD) outbreak, a national movement standstill of susceptible species will be recommended by USDA for at least the first 72-hours of an outbreak. During this time, Control Areas will be established around infected premises and movement restrictions will be implemented. Movement into, within, or out of a Control Area will require a permit and be based on risk. When Control Areas encompass part or all of a federal public land allotment, in one or more states, there are unique challenges for sheep and cattle owners to mitigate disease exposure risks. They must work with the federal land management agencies in addition to the state and federal regulatory officials managing the outbreak.

The Department of the Interior (DOI) Bureau of Land Management (BLM) and the U.S. Department of Agriculture (USDA) Forest Service (USFS) are the two primary federal land management agencies that issue public land grazing use permits to producers in advance of the season in which they are to move animals onto allotments. They also have the authority to close public access to federal public lands. USDA Animal and

¹ Secure Beef Supply Plan for Continuity of Business in an FMD Outbreak, available at: <https://securebeef.org/>

² Secure Sheep and Wool Supply Plan for Continuity of Business in an FMD Outbreak, available at: <https://seuresheepwool.org/>

Plant Health Inspection Service (APHIS) is the federal agency that has jurisdiction over the management of foreign animal disease (FAD) outbreaks, like FMD. State Animal Health Officials (SAHO) have quarantine authority for infected or at-risk livestock premises, lead the state FAD response, and determine outbreak movement permit criteria. The USDA APHIS and States will work under a Unified Command creating policies, executing them, and coordinating FAD response activities. Some wildlife are susceptible to FMD and the DOI U.S. Fish and Wildlife Service (USFWS), the USDA APHIS Wildlife Services (WS), and state wildlife agencies have expertise at the wildlife-livestock interface. Interagency coordination between those managing the outbreak response, the agencies that oversee permitted use of federal public lands, and the agencies that oversee wildlife will be needed during an FMD outbreak.

National Movement Standstill

A national movement standstill of susceptible species and animal products will be recommended by USDA for at least the first 72-hours of an FMD outbreak as one strategy to stop disease spread. A standstill could occur through a federal order from the U.S. Secretary of Agriculture or by each individual State through their individual quarantine authorities. If a Federal Order is issued, States can require additional restrictions. A State-specific standstill order may align with the USDA's recommendations with or without exclusions. "A standardized start and stop time for the national standstill will be established"³ after an initial grace period (proposed 12 hours) following the first FMD diagnosis announcement.

"A national (or regional) standstill includes stopping the sending and receiving of all live susceptible animals as well as semen and embryos from susceptible animals". (Source: USDA FMD Response Plan⁴, October 2020, page 100).

The language in a federal standstill movement announcement would explicitly describe what can or cannot be moved. States with livestock moving to/on/from federal public lands for grazing should consider the following when writing State-specific standstill orders:

- Susceptible animals already "on the road" when the standstill goes into effect are considered in-transit and should be allowed to continue to their destination (e.g., animals moving between premises/public lands on hoof or in trucks/trailers).
 - Livestock trailed on hoof may take longer than the proposed 12-hour grace period to reach their destination and should be allowed to continue to move to meet feed and water needs.
- Livestock moving between contiguous pastures and allotments on federal public lands should be allowed to continue to move unless they are trailing towards a known Infected or Suspect Premises (infected herd/flock).
- Cattle and sheep trailed on hoof that maintain separation when passing by other livestock holdings should be allowed to continue to move to meet feed and water needs.

There may be limited cellular and internet service in the areas where ranchers are trailing or grazing livestock. Ranchers may not be immediately informed of the grace period or the start of the national movement standstill. In sparsely populated livestock areas, so long as livestock are not encroaching upon an infected herd/flock or wildlife, ceasing movement may not mitigate a risk of exposure.

³ USDA FMD Response: Chronology and State Checklist, January 29, 2021 at: https://www.aphis.usda.gov/animal_health/emergency_management/downloads/fmd-state-checklist.pdf

⁴ USDA FMD Response Plan, October 2020 at: https://www.aphis.usda.gov/animal_health/emergency_management/downloads/fmd_responseplan.pdf

Control Areas

Once a Control Area is established, APHIS and States need to notify the premises with susceptible livestock that their animals are under quarantine and cannot move without first requesting an outbreak movement permit. Ranchers will be informed of disease mitigation steps, surveillance, and testing requirements, asked to provide tracing information, and given guidance on movement criteria that need to be met. When the Control Area involves federal public lands, APHIS and State officials will need information from BLM, USFS, State and Federal wildlife agencies to manage the disease response. See [Appendix C: USFS and BLM Organization and Responsibilities](#) for more information.

From USFS and BLM:

- Contact information for ranchers with livestock on public lands in a Control Area:
 - APHIS or the States would contact the USFS District Ranger for the area impacted and they can contact the permittees to inform them to contact APHIS or the State for more information.
 - Under routine use, BLM can share Personally Identifiable Information with “state and local governments and tribal organizations, or their representatives, when needed to administer their duties that directly relate to livestock grazing on BLM administered public lands”. (Source: 75 Federal Register 82063, December 29, 2010)
 - For business entities with livestock on public lands, their addresses and phone numbers are publicly available.
 - For private individuals, only the address is publicly available.
- Livestock details on public lands:
 - Species – is it mixed (cattle and sheep) or straight lots
 - Number of head (maximum)
 - Shared use with more than one permittee
 - Authorized arrival date (not actual – only rancher has that info)
 - Off dates for livestock (how much time is left)
 - Date and destination of next scheduled move (allotment/pasture)
 - What is scheduled next onto the allotment/pasture (livestock, other special permitted uses)
- Public use activities (energy, timber, mining, and recreation) in and around the Infected Premises that could contribute to fomite spread of FMD virus on vehicles, equipment, people’s footwear, clothing.
- Contact information for private entities that manage saddle and pack stock (special use permittees)
 - Cloven-hoofed animals (pack goats) are susceptible to FMD, and llamas and alpacas are mildly susceptible. Horses and mules are not susceptible to FMD yet can be fomites (spreading FMD virus on hooves, tack, equipment).
- Resources (i.e., Endangered plant, animal, or aquatic species) that may impact movement

From State and Federal Wildlife Agencies:

- Species in the areas around the Infected Premises, movement patterns, surveillance, and control options.
- Hunting season dates, species as applicable
- Endangered species (animal, aquatic) and associated requirements that may impact movement
- Contact information for private entities that manage saddle and pack stock (special use permittees)

Communication from USFS and BLM to ranchers currently happens at the local level; there is not a group notification/database system. Another option to get information out to all ranchers once an FMD outbreak is announced is through local/state livestock and grazing associations.

Communicating with Ranchers with Livestock in a Control Area

When contacting ranchers with livestock in a Control Area, animal health officials should be prepared to share:

- Information about the disease and risk to their animals,
- Disease mitigation steps,
- Surveillance and testing requirements,
- If they can get into the area where their animals are grazing,
- What movements can occur with and without an outbreak movement permit,
 - Besides susceptible species, other movements that may pose a risk include human footwear/clothing, vehicles, equipment, horses, pack animals, working dogs, carcasses
- How to get a movement permit from the State, and
- If livestock inspections are needed before movement.

Ranchers should be prepared to complete an epidemiology investigation form to determine if their livestock were in contact with the infected flock/herd (Infected Premises). See section: [Traceability](#) for more information.

Access to Public Land Allotment and Pasture Maps

The USFS and BLM have allotment and pasture boundary maps available publicly online and mapped as a GIS layer (links below). Allotments and pastures are numbered or named within the BLM and USFS systems. This information is included on the Annual Operating Instructions (AOI) for grazing permittees. AOI are publicly available for all of USFS Region 4 (ID, WY, UT, NV) and includes the on/off dates.

- USFS: <https://data-usfs.hub.arcgis.com/> and <https://usfs.maps.arcgis.com/home/>
- BLM: <https://gbp-blm-egis.hub.arcgis.com/maps/blm-natl-grazing-allotment-polygons>
 - Has an API to export Service or JSON files
- BLM: <https://reports.blm.gov/report/RAS/41/Operator-Information>
 - The operator information public website allows state, district, and field office level filtering to reveal the authorized operator's name, address, and phone number (if the operator is a business entity, but not for private individuals). It does not include which allotments the operators are authorized to use.

In the event online access is not available, States should establish BLM and USFS personnel points of contact who could readily provide map boundaries and grazing permittee information.

Premises Identification Numbers (PINs)

The USDA and States rely on Premises Identification Numbers (PINs) for traceability in a disease outbreak. This includes both the origin and destination when outbreak movement permits are issued. Ranchers are encouraged to get one for their privately owned land (base property). PINs can be requested anytime, for free, from the office of the SAHO.

Producers do not need to get a PIN for public land grazing allotments/pastures prior to an outbreak. Once the Control Area is determined, APHIS would assign PINs to the GPS latitude/longitude points for the load/unload area for allotments or pastures where animals need to enter/exit. The PIN can be linked in State or USDA databases (Emergency Management Response System – EMRS) to correspond to the BLM and USFS assigned allotment or pasture number/name.

Vacant Allotments/Pastures for Disease Control

Ranchers with livestock that are quarantined during an FMD outbreak may not be able to use all the public lands for which they have grazing permits. The States and/or APHIS may also determine allotments or pastures within a Control Area should remain vacant for disease control purposes. In either case, the States

and/or APHIS should provide the justification to BLM and USFS in a decision letter. This will allow BLM or USFS to make the allotment/pasture temporarily unavailable to livestock grazing without consequences (no penalty, fees, loss of use in subsequent seasons) to the grazing permittee. A copy of the agency decision will go to the grazing permittee and in their file. [See Appendix D: Draft Letter Requesting Allotment/Pasture be Temporarily Unavailable](#). This interagency collaboration is necessary to ensure grazing permittees do not face consequences of not using their full grazing permit due to circumstances out of their control.

NOTE: This is not the same as a grazing permittee requesting non-use for personal factors. Should an emergency decision to make an allotment temporarily unavailable occur during year four (4), following three (3) consecutive years of personal convenience request for non-use (grazing permittee hardship), this emergency decision would not result in consequences.

Options to Consider – Decision Criteria

The options to consider for livestock grazing on federal public lands in a Control Area that are not designated as Infected, Suspect or Contact Premises (herds/flocks) include:

1. Staying in place until the Control Area movement restrictions are lifted.
2. Moving within the Control Area.
3. Moving outside of the Control Area to a biosecure location that can quarantine livestock away from susceptible species.

Each of the above options has decision criteria (described below) to ensure animal needs and response goals are met. This will require interagency collaboration for an effective response.

Staying in Place

“In place” may mean a pasture or an allotment pending characteristics of the Control Area and the outbreak. Determining if the safest option for grazing livestock to stay in place should consider the following criteria (linked within this document):

1. [Assessing availability, suitability of adequate feed/water](#)
 - a. Weather considerations
 - b. Extending stays on federal public lands
 - c. Provision of feed/water
2. [Monitoring for disease \(surveillance\)](#)
 - a. Active Observational Surveillance (AOS)
 - b. Off-road/Motor vehicle use
 - c. Corrals within allotment
3. [Mitigating interactions with wildlife](#)
 - a. FMD in Wildlife
 - b. State/Federal agencies
4. [Controlling public access to Control Areas](#)
5. [Implementing just-in-time biosecurity](#)
 - a. Carcass management for non-FMD infected livestock

Moving within the Control Area

If there is not adequate feed and/or water, if the animals cannot be monitored for disease, if wildlife interactions cannot be mitigated and pose an exposure risk, if public access cannot be restricted and poses an exposure risk, if the producer cannot implement just-in-time biosecurity for the flock/band/herd which includes managing carcass disposal, then the livestock may need to be moved to another location in the Control Area. The new location within the Control Area should meet all criteria listed above (1-5). If that is

not possible, consider the next option. Movements within a Control Area will require an [outbreak movement permit](#) issued by the state.

Moving to a Biosecure Location Outside the Control Area that can Accept and Quarantine Livestock Away from Susceptible Species

If the criteria listed above cannot be met, the livestock may need to be moved to another location outside the Control Area where livestock can be quarantined away from susceptible species for at least 28 days and where disease monitoring can be done AFTER the move. Movements outside of a Control Area will require an [outbreak movement permit](#) issued by the state. This location may be designated as a Monitored Premises and not eligible for a movement permit until specific criteria are met.

Decision Criteria

Assessing Availability and Suitability of Adequate Feed/Water

One of the first considerations for determining the ability of livestock to stay in place is to ensure there is adequate feed and water for the estimated length of time the quarantine order will be in place (assume no less than 14 days). Staying in place may be in their current pasture or within a larger contiguous allotment (public or private/base property). The quarantine order will specify movement restrictions. Also, the suitability needs to be determined, ensuring there are no endangered species (plants, animals, aquatic) that may be impacted.

Weather Considerations

Another consideration is the weather, current and upcoming. Some public grazing lands are in areas prone to ice storms and blizzards. While feed and water may be adequate for a period, for safety reasons, the animals may need to leave the area before weather prevents their departure on hoof or in trailers. Communication between ranchers and the State agency who implements the quarantine will be critical pending time of year.

Extending Stays on Federal Public Lands

Once grazing permittees are told they are in a Control Area and under quarantine by the State agency, their extended “stay in place” may conflict with their term grazing permit management prescriptions and dates, including their off date. BLM and USFS may be aware of this need through communication with the State or APHIS when Control Areas are established. However, it is recommended that the grazing permittee contact their local point of contact (USFS or BLM Line Officer) as soon as possible to inform them that modifications may be needed to comply with quarantine and Control Area requirements. The USFS or BLM Range Specialist in coordination with the permittee would assess the grazing/land conditions to determine forage and water availability so contingency plans can be made as soon as possible. Production inputs are the responsibility of the livestock owner (feed, medication, etc.) even if under quarantine orders. Personnel entering a control area will need to follow biosecurity guidance provided by the State or USDA APHIS.

If the stay is going to be longer than 2 weeks past the grazing permit off date, APHIS would communicate to USFS and/or BLM to provide the justification to extend the stay. The USFS and BLM provide the authorization for a grazing permittee to stay longer through an authorization letter and the issuance of a bill and subsequent payment for the additional days on National Forest System (NFS) or BLM lands, if needed to ensure grazing continuity.

Adequate Feed/Water Available

The USFS or BLM grazing fee (i.e., occupancy fee based on available forage) would be billed and receipted, upon payment, as is current practice. If staying an extra two weeks, the agencies would bill for two additional weeks. If grazing permittees leave earlier under an outbreak movement permit issued by the State, the USFS and BLM can issue credits or refunds, respectively, for the dates not occupied/grazed.

Inadequate Feed/Water for Extended Stay

If feed and/or water is limited, alternatives must be considered and planned for as soon as possible.

Alternatives include bringing in feed/water, USFS and BLM authorizing extended stays through alternative processes in response to an animal health emergency, and USFS and BLM crediting or refunding, respectively, paid grazing fees that permittees are unable to use due to FAD factors. See section: [Provision of Feed/Water](#) for more information.

- USFS regulatory guidance under [36 CFR 222.50\(h\)](#) (June 2022) describes a waiver of fees for unforeseen, uncontrolled circumstances when use is not significant and National Forest System lands have not been damaged significantly. An FMD outbreak resulting in a quarantine should be considered an unforeseen, uncontrolled circumstance. If the forage consumed by the quarantined livestock is not significant, and National Forest System lands have not been damaged significantly by the quarantined livestock, then this regulation can be utilized to waive fees for the associated use.
- BLM does not have a regulatory provision that would exempt the BLM from billing the permittee for the time that livestock are on public lands, even if confined and fed harvested forage. If the BLM authorized an extension beyond the end of their permitted grazing season, the bill would be due immediately and late fees* would not accrue until 15 days later. **Late fees may be waived under certain circumstances.*

Provision of Feed/Water

In the event of a quarantine where there may not be enough feed/water on the pasture or allotment, livestock should either:

- Move to another location to graze/drink, or
- Stay in place and be provided with supplemental feed and/or water.

Each comes with varying risks to mitigate and considerations requiring timely communication with ranchers and interagency collaboration (State, APHIS, USFS, BLM).

LIVESTOCK MOVE: Grazing permittees in a Control Area would not be allowed to move until authorized by the State that implemented the quarantine. Livestock moving into, within or out of a Control Area is based on risk and will require an outbreak movement permit issued by the State. If the decision is to move, see section: [Permitting Movement in an Outbreak](#) for more information.

LIVESTOCK STAY: Bringing feed (and other supplies) into a Control Area may require an outbreak movement permit issued by the State managing the response. This is for traceability purposes and to ensure criteria are met to mitigate disease spread. The State will provide guidance if outbreak movement permits and biosecurity steps are required for moving feed into a Control Area.

Supplemental feed brought onto federal public lands needs to meet USFS or BLM requirements to ensure the movement does not introduce undesirable non-native grasses and weeds. Depending on the scope of the outbreak, this specific weed-seed-free feed may be limited. Locating and arranging for purchase and delivery of weed-seed-free feed may take time. Alternative options should be considered as soon as possible.

- **The USFS** does NOT allow supplemental feeding on federal public lands unless granted permission and the feed must be certified weed-seed-free. Bales that meet this requirement are marked with a specific baling twine so they can be monitored by USFS.
 - In an emergency, any Federal, State or local officer in the performance of an official duty can exempt the weed-seed-free requirement under special orders described in [36 CFR 261.50\(e\)](#) (2001). Guidance in the Forest Service Manual (FSM) 2900 Invasive Species Management ([FSM 2900](#)) regarding prevention of weed spread and establishment by contaminated materials is qualified by the use of the phrase “make every effort”.

- In the event an APHIS or State official exempts feeding weed-seed-free feed, they are encouraged to notify the APHIS VS and/or State Incident Command of the location so that it can be communicated to USFS. This will allow post-feeding mitigation steps to be taken.
- USFS has the capability (resource contacts) to set up check points for the conveyance hauling feed and may inspect and spray off tires, wheel wells, and undercarriage as a plant biosecurity step.
- **The BLM** does NOT allow supplemental feeding on federal public lands without a BLM Field Manager authorizing it. DOI policy is that all materials used within DOI-managed lands and waters are free of invasive species. BLM considers weed-seed-free feed a best management practice and it is specifically required in certain states (e.g., Idaho) and by specific land use plans or wilderness plans. BLM may categorically exclude from the National Environmental Policy Act (NEPA) the emergency feeding of livestock during extreme adverse weather conditions.
 - More information is available in the [Department of the Interior Manual 524 DM 1 Section 1.7\(A\)\(3\)\(b\)](#) (2020) “Materials. To the extent practicable, ensure that all materials used within DOI-managed lands and waters are free of invasive species, including such reproductive and propagative materials as seeds, roots, stems, flowers, leaves, larva, eggs, veligers, spores, and pathogens. Materials include plants, wood, plant products, firewood and other wood products, water, soil, rocks, sand, gravel, mulch, grain, hay, straw, and other related substances.”

If weed-seed-free feed cannot be procured, USFS and BLM have post-feeding mitigation steps that can be taken to prevent undesirable non-native grasses and weeds from being introduced. Actions are dependent on the area where feed is being offered. Post-feeding mitigation steps typically happen before the next growing season and could be delayed until the Control Area movement restrictions lift. The costs incurred will be the responsibility of the land management agency, not the permittee, as is done after wildfires, and other events out of the control of the permittee.

Monitoring for Disease (Surveillance)

Disease monitoring (surveillance) in an FMD outbreak aims to find infected animals as early as possible after exposure through observation and testing. This may be difficult on federal public lands given the large expanse of land over which animals graze. Only livestock that have no evidence of infection will be eligible to move within or outside of a Control Area. Ranchers with livestock grazing public lands will need to objectively demonstrate their cattle or sheep are not infected or suspected of having FMD when requesting a movement permit. This may include:

- Completing or updating an FMD exposure questionnaire,
- Conducting Active Observational Surveillance (AOS),
- Periodic inspection of animals and providing AOS records to Regulatory Officials or their designees, and
- Follow-up laboratory testing for animals with any suspicious clinical signs.

Ranchers would be notified by the States or APHIS as to what observations and/or diagnostic tests are needed while the livestock are in the Control Area and how to report concerns. To facilitate observations on federal public lands, determine if:

- Ranchers can conduct active observational surveillance (AOS).
 - USDA FMD Response Plan, October 2020, recommends every 2-3 days for large grazing operations as part of active observational surveillance (AOS). (See [Appendix E: Active Observational Surveillance Excerpt from USDA FMD Response Plan, AOS](#))
- Off-road/Motor vehicles use is allowed.

- This may be needed to observe all animals on large pastures/allotments.
- Facilities exist within the pasture/allotment or temporary panels/chutes can be set up to corral animals if they need to be restrained for closer examination and/or sample collection.
 - Corralled livestock would need supplemental feed and water during this quarantine/observation period (previously discussed).

If any of the above cannot be accomplished on the current pasture/allotment, consider moving the livestock to another location within the Control Area for surveillance. If that is not possible, consider moving livestock to a biosecure location that meets quarantine requirements (no direct or indirect contact with susceptible species for at least 28 days) outside of the Control Area. This location may be designated as a Monitored Premises and not eligible for a movement permit until specific criteria are met.

FMD Exposure Questionnaire

One of the first steps for ranchers with livestock quarantined in a Control Area will be to provide some information about possible exposure risks. This can help regulatory officials determine if the herd/flock had contact with known infected animals or if they are “at risk” of disease. The “*Just-in-Time Biosecurity and Exposure Questionnaire for FMD: Livestock Grazing Public Lands*” was developed specifically for producers with livestock grazing federal public lands, which is available on the [SSWS Public Land Grazing webpage](#) and [SBS Public Land Grazing webpage](#). Details related to the movement of animals, feed, supplies, equipment, personnel, and wildlife interactions are included. See the sections in this document on [Mitigating Interactions with Wildlife](#) and [Traceability](#) for more information.

Active Observational Surveillance (AOS)

To determine the presence or absence of clinical signs, close observation of animals is needed. This may require gathering animals and properly restraining them in animal handling facilities for closer exam or sample collection for disease testing. This may be a limiting factor in some pastures/allotments.

Active Observational Surveillance (AOS) can be used as an initial screening test. AOS is a systematic method for routinely monitoring livestock for potential signs of early FMD infection during an outbreak. AOS cannot prove freedom from infection, it can only establish a lack of evidence of infection. AOS includes:

- **Frequent visual observation** of livestock by trained observers who are familiar with the health status of the livestock and able to recognize abnormal findings (clinical signs and/or changes in production parameters) that may be an early indicator of FMD virus infection. Frequent is defined in the FMD Response Plan as “every 2-3 days for large grazing operations”. This may need to change based on outbreak characteristics. The SSWS and SBS Plan websites include AOS resources to demonstrate which production parameters to monitor and how to recognize clinical signs that may indicate early FMD virus infection. Cattle show visible clinical signs of FMD more readily than sheep; therefore, the monitoring steps vary slightly. If printed items are needed, they can be requested from ASI or NCBA. These should meet the needs of herders who may not speak or read English as the printed items include photos and the videos are narrated in English and Spanish. Videos can be downloaded to personal devices in the event internet access is limited on federal public lands.
 - SSWS Disease Monitoring: <https://seuresheepwool.org/producers/disease-monitoring/>
 - SBS Disease Monitoring: <https://securebeef.org/beef-producers/disease-monitoring/>
- **Recording** normal or abnormal findings (referred to as AOS records). Record keeping resources are available on the SSWS and SBS websites that describe the health observations and performance parameters to monitor and document. For instance, noting clinical signs or the lack of (e.g., fever, nasal discharge, lameness), health events (e.g., death loss), or performance data (e.g., no changes, decreased feed consumption).

- **Prompt reporting** of abnormal findings to Regulatory Officials with a follow up examination of animals by them or their designee (USDA Accredited Veterinarian). The Regulatory Officials may conduct laboratory testing on any suspicious cases.

Off-road/Motor Vehicle Use (MVU)

Using horses to visually observe animals that are spread out over vast expanses could take days to see each animal once. Using motor vehicles may facilitate livestock (and wildlife) observations if the federal public land management agency allows it (site-specific). The BLM and USFS only allow use of motorized vehicles if it is not restricted by the travel management plan, land use plan, or by statute. These agencies will need to balance what is necessary to address the animal health emergency response while minimizing unnecessary impacts to known resources.

Designated wilderness, wilderness study areas, and areas with other special designations will often be the most restrictive. Emergency actions in wilderness are almost solely to protect "the health and safety of persons within the area" and will be limited to the minimum activity necessary.

Requesting MVU from USFS

The Incident Commander from APHIS or the State should communicate with the USFS agency representative or authorized officer what activities are necessary or need to be limited to address the emergency. The USFS will identify whether there are limitations in certain areas. The USFS must still comply with the Endangered Species Act, NEPA, and other laws to protect or minimize impacts to resources of concern. General guidance for USFS on MVU use is described in [36 CFR 212]. Further guidance for USFS on MVU in areas with additional restrictions, like wilderness areas, is described in the USFS Manual Section 2320 on Wilderness Management, effective date January 2007. Specifically, this describes the congressional guidelines and policies regarding grazing in National Forest Wilderness Areas ([sec. 108, P.L. 96-560, H.R. Report 96-617 dated 11/14/79](#)) which applies to all wilderness areas, regardless of agency jurisdiction:

2323.22 Exhibit 01. 5. "The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible. This privilege is to be exercised only in true emergencies, and should not be abused by permittees."

Requesting MVU from BLM

The Incident Commander from APHIS or the State should communicate with the BLM agency representative or authorized officer what activities are necessary or need to be limited to address the emergency. The BLM will identify whether there are limitations in certain areas. The BLM must still comply with the Endangered Species Act, NEPA, and other laws to protect or minimize impacts to resources of concern. BLM would need to complete a NEPA analysis after the emergency has passed. Guidance for BLM on off-road vehicle use is described in [43 CFR 8340.0-5\(a\)](#) (Nov 2020)*: "Off-road vehicle means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding:

- 2) Any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes;
- 3) Any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved;
- 4) Vehicles in official use"

*The author excluded 1) as it refers to motorboats and is not applicable

Corrals

If corral facilities exist within the pasture/allotment within the Control Area that do not require passing by infected animals, this could facilitate frequent observations. During the gather, owners/herders should observe animals for signs of lameness. If found, inspect those animals more closely. Once corralled, consider

having an initial examination by a USDA Accredited Veterinarian to look for lesions. Animals with suspected lesions could have samples collected at this time if the veterinarian is a trained Foreign Animal Disease Diagnostician (FADD) or given permission by the SAHO or APHIS regulatory official.

If gathering is not feasible, or may increase the risk of disease exposure, consider AOS conducted by owners/herders on a regular basis around watering areas following the typical patterns and schedules of the animals. Getting input from epidemiologists on the observational data points that would be considered reliable would be needed.

If no corral facilities exist, consider gathering animals into a staging area (portable corrals with a portable chute) to look for clinical signs, collect samples for testing if needed, and determine if some are slaughter ready before moving.

Moving animals out of a Control Area with unknown health status poses a risk of transmission. The destination will need to be evaluated to ensure it has acceptable biosecurity and is suitable for accepting and quarantining livestock from all other susceptible species for at least 28 days. The State and APHIS will provide the rancher with the specific criteria that need to be met to request an outbreak movement permit. See section: [Permitting Movements](#) for more information.

Setting Up Temporary Corrals

Setting up temporary corrals for observing and restraining livestock on federal public lands will require collaboration between the State and APHIS managing the response and BLM and/or USFS that oversee the land use. In non-disease outbreak situations, BLM and USFS would need to first conduct the appropriate NEPA analysis for an emergency event to determine the impact of additional fencing or building corrals. This can take time which is often limited in a foreign animal disease response. The BLM and USFS support taking immediate action to prevent or reduce risk to public health or safety, property, or important resources in an FMD outbreak and complying with NEPA after the emergency has passed so as not to slow the disease response.

The Incident Commander from APHIS or the State could communicate with the BLM or USFS agency representative or authorized officer describing what is needed to contain the animals and other necessary disease response activities. BLM and USFS can identify where certain actions can occur, what areas should be avoided, and identify other locations that might be more appropriate/have less environmental impact. It should be noted that BLM does not have corral supplies on hand; APHIS, the States or ranchers would need to provide the equipment. USFS may have fencing available depending on the location of the Control Area.

BLM: When requested, they will identify areas for temporary corrals and waterers that will not have other impacts (using a checklist) and may use a categorical exclusion (CE). The CE would authorize placement and use of temporary (not to exceed one month) facilities, portable corrals, and water troughs to hold animals longer than 2 weeks. The BLM may also use a CE to authorize temporary emergency feeding of livestock. The BLM may also need to complete an EA or EIS after the action occurs if the proposed area does not meet the criteria for a CE or if animals are concentrated in a small area for two weeks or more.

USFS: The construction of temporary corrals and fencing could fall under the CE described under [36 CFR 220.6\(d\)\(8\)](#) (Nov 2020) which pertains to the NEPA Compliance: “Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands.”

- If there is a need to implement measures beyond existing categorical exclusions, [36 CFR 220.4\(b\)](#) (Nov 2020) may be used for implementation in emergency responses. “When the responsible official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation...”

FMD Diagnostic Tests

There are well-established protocols, sample types, diagnostic tests, and policies for decision making based on test results for animals with clinical signs of FMD. There are few sample types and diagnostic test options for animals lacking clinical signs. The only definitive test is a probang sample (capturing cells deep in the throat) which requires proper restraint by a trained sample collector (at a minimum, an accredited veterinarian) using a specific instrument. This may be difficult at best to use in animals grazing federal public lands without corrals or other infrastructure. The probang sample can detect virus 10 days post exposure. Prior to 10 days (when exposure may be suspected but no clinical signs), oral swab samples with adequate epithelial cells may be used.

The oral swab real-time reverse transcriptase polymerase chain reaction (rRT-PCR) test is a validated sample type for use in animals with clinical signs of FMD and a validated test with known specificity (99%) and sensitivity (94%) for use by the USDA APHIS VS (Veterinary Services), National Veterinary Services Laboratory (NVSL), Foreign Animal Disease Diagnostic Laboratory. The National Animal Health Laboratory Network (NAHLN) labs are proficiency tested for the rRT-PCR FMD assay but are not approved to test oral swabs on non-clinical animals (as of February 2024). This test has not been validated for use in animals with no clinical signs of FMD. Therefore, a NAHLN laboratory would need to request a deviation from the NAHLN program office for Emergency Use Approval (EUA) of this test on non-clinical animals. Should diagnostic tests be available for animals without clinical signs, this falls under business continuity testing and associated costs are the producer's responsibility.

The ability to provide a very high degree of confidence that animals are negative for FMD virus (FMDV) using currently available, validated laboratory testing methods, and sample collection protocols for certain types of animals is currently limited. Guidance will be provided by regulatory officials managing the outbreak response based on available diagnostic resources.

Mitigating Interactions with Wildlife

Mitigating interactions between livestock grazing public lands and wildlife that are susceptible to FMD is complex. There are variations in how FMD appears in wildlife as it depends on the animal species and the serotype of FMDv circulating. Surveillance in wildlife, particularly where they intersect with domestic livestock, has been part of the FMD response strategy in other countries. It has been suggested that countries, other than sub-Saharan Africa, that focus on controlling FMD in domestic livestock can protect livestock and wildlife without direct or interventional activities with most wildlife. Feral pigs may require direct and interventional control strategies to mitigate their transmission potential.

APHIS and the States would benefit from ranchers, BLM, USFS, WS, USFWS, and state wildlife agencies sharing information about sightings and interactions with wildlife and livestock during an outbreak. This could inform surveillance activities and livestock movement strategies needed to mitigate the risk of exposure.

FMD in Wildlife

The list of wildlife in North America that have been experimentally infected and may be capable of transmitting FMDv to cattle grazing public lands in the U.S. are listed below (Source: Weaver G.V, et. al. Foot and mouth disease: A look from the wild side. *J of Wildlife Diseases*, 2014; 49(4):759-785). This publication did not list potential wildlife transmission to sheep. As part of this project, two FMD experts were interviewed, and both shared that exposure risks to sheep are similar to cattle. Therefore, the following are included in the SSWS and SBS *Just-in-Time Biosecurity and Exposure Questionnaire for FMD: Livestock Grazing Public Lands* document:

- American Bison (*Bison bison*) – also naturally infected
- Elk (*Cervus elaphus nelsonii*)

- Mule deer (*Odocoileus hemionus*)
- Pronghorn antelope (*Anilocapra americana*)
- White-tailed deer (*Odocoileus virginianus*) – also naturally infected
- Feral pigs (*Sus scrofa*) – also naturally infected

While not specifically listed in the various publications, for the purposes of this discussion, wild sheep (genus *Ovis*) and wild goats (genus *Oreamnos*) are considered FMD-susceptible species.

There are a few species found on U.S. public lands that have published reports of natural FMDv infections in zoos outside of North America including:

- Brown bears (*Ursus arctos*)
- Grizzly bears (*Ursus arctos horribilis*)

In 2015, the World Organization for Animal Health published guidelines for wildlife disease surveillance (Source: WOA. Guidelines for Wildlife Disease Surveillance: An Overview, 2015 available at: <https://www.woah.org/app/uploads/2021/03/oie-guidance-wildlife-surveillance-feb2015.pdf>). A 2022 publication by USDA researchers describes adaptive risk-based targeted surveillance (Source: Miller, R.S., et.al. Adaptive risk-based targeted surveillance for foreign animal diseases at the wildlife-livestock interface. *Transboundary and Emerging Diseases*, 2022:1–12. <https://doi.org/10.1111/tbed.14576>). Both provide the guidance necessary to prioritize FAD surveillance in wild animals in a Control Area.

State/Federal Wildlife Agencies

BLM defers to state wildlife agencies to manage wildlife populations. BLM often coordinates with state wildlife agencies and USFWS to manage wildlife habitat on public lands and works with grazing permittees to avoid or minimize livestock-wildlife conflicts.

USFS defers authority to state wildlife agencies for wildlife oversight. They work with state and federal agencies to protect wildlife or mitigate livestock-wildlife conflicts.

USDA APHIS Wildlife Services (WS) does not have regulatory or enforcement authority; they support APHIS VS and State wildlife agencies in response efforts when requested. Activities may include providing expertise at the wildlife-livestock interface, implementing possible options to reduce spillover risk, assisting with depopulation if needed, and implementing disease mitigation steps. Additionally, WS has unique relationships with all State wildlife agencies and wildlife colleagues in the DOI, Tribal partners, and wildlife management agencies to both assist with mitigation at the wildlife-livestock interface and work on disease detection and monitoring in susceptible wild animal populations. APHIS WS National Wildlife Disease Program would also coordinate with the National Feral Swine Damage Management Program (NFSDMP), as feral swine is one of the FMD susceptible species.

Another DOI Agency, the USFWS could coordinate their regulatory and mission critical work with USDA APHIS' animal disease response activities upon request. "While DOI land and resource management regulatory authorities are not superseded by the U.S. Department of Agriculture's (USDA's) Animal Health Protection Act, DOI actions may be carried out in coordination with USDA animal disease response activities. USFWS works to conserve, protect, and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people. USFWS provides scientific and technical advice, information, and assistance for animal disease events. USFWS assumes responsibility for managing or coordinating emergency response on lands within its jurisdiction and assists other Federal and state agencies on adjacent lands as requested. National Wildlife Refuge System law enforcement and firefighting personnel maintain

Incident Command expertise. USFWS personnel provide expertise on threatened and endangered species and migratory birds to include appropriate response and recovery techniques.”⁵

USDA APHIS WS, the USFWS, and State wildlife agencies could assist APHIS VS and the State(s) with response activities upon request. Working with wildlife agencies is another consideration if the outbreak occurs during a hunting season. Individual state regulations define what constitutes domestic livestock, alternative livestock, captive wildlife, wildlife and therefore, which agency would determine movement regulations. In some states, it is defined by geographic area (public lands, Tribal lands, etc.). In others, it is defined by ownership of the animal(s). Movement strategies in an FMD outbreak need to account for state-specific definitions as it will impact the multiagency coordination. APHIS VS has successfully collaborated with APHIS WS, USFWS, and state wildlife agencies during other foreign animal disease outbreak responses infecting and affecting wildlife.

Controlling Public Access to Control Areas

FMD is not a public health concern; it is a highly contagious animal disease. The States and USDA do not quarantine or restrict people movement. They can establish biosecurity steps for equipment, vehicles, and other fomites to enter or exit a premises with animals under quarantine. The “quarantine order” will describe the requirements that need to be met. There may be instances where steps need to be taken for anyone entering/exiting a Control Area to limit or prevent disease spread.

Recreationalists and other multiple users in a Control Area could pose a fomite risk (spreading FMD virus on tires, equipment, footwear). The States and USDA APHIS will need help educating, informing, and limiting access to Control Areas for people not involved in the direct care and management of livestock or wildlife.

Both BLM and USFS have procedures to follow to close or restrict public access to public lands in their respective jurisdiction.

- USFS can issue an Emergency Closure to prevent access to the affected area which includes road closures. This notice is posted publicly in all local places, on social media, the Federal Register, and coordinated with local law enforcement.
- BLM can issue a closure or restriction order, including off-highway vehicle access, under the authorities in [43 CFR 8364.1](#) and IM 2016-128, Requirements for Processing and Approving Temporary Public Land Closure and Restriction Orders for up to 24 months (2016). The closure must be posted in the Federal Register, on site, and at the local BLM Office. They work with counties and law enforcement.

These can take time to implement which may contribute to potential disease spread. The Forest Service Special Orders and Emergency Closure Orders directive describes the steps, documentation, and enforcement criteria under the regulations in [36 CFR 261.53](#) (2011) as it applies to all National Forests. It is available at: https://www.fs.usda.gov/im/directives/fsh/1909.15/wo_1909.15_30-Amend%202023-2.docx

In the event of an FMD outbreak, BLM and USFS propose the following process to States and USDA APHIS to control public access in a timelier manner:

- APHIS or the SAHO would contact the USFS Forest Supervisor and/or BLM State Director with the request to close access to the Control Area.
 - USFS Forest Service Contact Information: <https://hrm.gdci.com/directory/>
 - BLM State Offices Contact Information: <https://www.blm.gov/office/national-office>

⁵ DOI Protecting America’s Resources and Lands During Animal Disease Outbreaks, 2017; provided by Advisory Group Member, USFWS Representative, personal communication (not available online)

- USFS and BLM will communicate with their local staff in a timely manner to ensure they know what areas need to be closed to public access. They will provide them with a disease brief explaining the need for movement control to prevent disease spreading to animals and that it is NOT a public health risk (resources available from USDA and on the SSWS and SBS websites).
- The SAHO or their designee will contact local law enforcement to close road access to unauthorized personnel. They will provide them with a disease brief.
- A liaison from USFS, BLM, and/or the grazing association who has a list of grazing permittees that need to be allowed into the area will be staffed at the Incident Command Post. This person will oversee the distribution of badges (or another form of authorized entry) to anyone that needs to enter the area to care for, feed, monitor (including herders that remain on site), or collect samples from the quarantined livestock.
- A liaison from APHIS WS, USFWS, and/or State wildlife agencies who has a list of wildlife personnel that need to be allowed into the area will be staffed at the Incident Command Post. This person will oversee the distribution of badges (or another form of authorized entry) to anyone that needs to enter the area to monitor or collect samples from wildlife.

Emergency closures/restricted access on federal public lands will result in public notices of the allotments or pastures that are closed. USFS and BLM will not publish who is grazing on those lands at the time of the closure. However, it is possible that people who want to search the online, public databases that list who have grazing permits for various allotments/pastures would be able to figure out “who” may be involved in the outbreak. Some states do not release any information about where Control Areas are located; others can publicly post the location. Anonymity will vary by state.

Implementing Just-in-Time Biosecurity

The SSWS/SBS Plans enhanced biosecurity checklists and templates were originally written for producers who could control access to private lands. They do not align with federal public land nuances since controlling access, separation of flocks/herds, and limiting wildlife contact are out of the individual rancher’s control. The goal of enhanced biosecurity is to prevent disease exposure of livestock in a Control Area. This will require collaboration with the land management agencies and wildlife agencies involved in the response. Once notified their livestock are in a Control Area, ranchers could be provided with the “*Just-in-Time Biosecurity and Exposure Questionnaire for FMD: Livestock Grazing Public Lands*” template created specifically for this livestock population. It is available on the [SSWS Public Land Grazing webpage](#) and [SBS Public Land Grazing webpage](#). This allows ranchers to describe how they can effectively manage animals in the most biosecure manner in their current location.

NOTE: The Just-in-Time (JIT) document does NOT collect information on where the rancher needs to move “next” or their mode of travel (trailer/truck or trailing). Moving outside a Control Area may require additional biosecurity steps (including Cleaning and Disinfection or C&D) to ensure movements of animals, vehicles, equipment, personnel, and supplies do not contribute to disease spread. Officials should be prepared to provide guidance that aligns with feasibility and risk management based on the allotment/pasture location, climate, and travel route.

Carcass Management

One biosecurity item is to have a plan for carcasses found on federal public lands in a Control Area. Disposal must meet USFS, BLM, USDA APHIS, State and Federal wildlife agency requirements.

In an FMD outbreak, ranchers with livestock in a Control Area may be required to report ALL known animal deaths (livestock or wildlife) to the State or APHIS so the risk can be initially assessed via phone. It is assumed that ranchers (or herders or Range Riders) will be closely monitoring animal health in a Control Area because of the increased risk of illness in adults and death of young animals from FMD. If the death is

deemed suspicious of FMD, then the State or APHIS would send out a Foreign Animal Disease Diagnostician to investigate. If there is no concern after communicating with rancher, the State and APHIS would defer to the federal land management agency to determine carcass disposal options that align with their protocols and/or land use plan.

Carcass management options in non-outbreak situations may be defined in some local land use plans and could include burial (terrain dependent), explosives placed by USFS or BLM personnel (large animal size and location dependent), and removal* for off-site disposal (this may involve packing out, whole or in pieces, from some locations). Scavengers, heat, flies, and snow cover also contribute to carcass removal. Dead animals found near watering holes or public access roads need to be moved*. The ability to do so depends on the size of the animal (2000-pound bull vs. 50-pound lamb).

*Moving carcasses out of an FMD Control Area may require an outbreak movement permit from the State.

As of November 2023, there is no field test for the presence of FMDV; sample collection and subsequent testing at a NAHLN laboratory is the only way to reach a definitive diagnosis. The regulatory officials managing the outbreak will need to determine if samples need to be collected from dead animals in grazing allotments and/or the risk of moving the carcass and available management strategies that align with response goals.

Permitting Movements in an Outbreak

In an FMD outbreak, outbreak movement permits will be required for susceptible livestock and germplasm leaving, going into, or traveling within a Control Area. It is assumed that no semen or embryos will be moved out, into, or within public lands (uncommon/rare management practice during the grazing season). The States have the authority to determine the outbreak permit requirements that need to be met to protect livestock in their state from disease exposure. Permits serve as a verification of safe movement for the animal/product as well as traceability records. States will communicate their permit criteria expectations to APHIS and the ranchers. APHIS should be prepared to communicate this information with other federal agencies (BLM, USFS, USFWS, WS).

[Table 1](#) summarizes the outbreak movement permit guidance for sheep/cattle grazing federal public lands located within an FMD Control Area. It was based on the guidance in the SSWS and SBS Plans and modified (**bold underline**) to reflect livestock grazing federal public lands. The State and APHIS may have additional requirements based on the risk. Movements of animals and animal products in an FMD outbreak will also need to follow all applicable state regulations.

[Table 2](#) summarizes the outbreak movement permit guidance for sheep/cattle grazing federal public lands moving outside an FMD Control Area to a biosecure location that meets quarantine requirements. It was based on the guidance in the SSWS and SBS Plans and modified (**bold underline**) to reflect livestock grazing federal public lands. The request for moving live animals from a Control Area may trigger a risk analysis, assessing the situation (including exposure risks, disease monitoring status of livestock), transport method, route, and destination. This will help determine the best way to mitigate the risk of disease spread. For instance, livestock leaving the Control Area should not use trails/roads that pass by Infected or Suspect Premises.

Outbreak movement permits need to be requested/filled out by the person signing the permit who can attest to statements about the cattle, sheep or their products, health status, and biosecurity protocols. States use a variety of outbreak movement permit issuing/tracking systems (commercially developed and state-built). The USDA Emergency Management Response System (EMRS) is the USDA APHIS official system of record for all animal health incidents. Ranchers may or may not work directly with EMRS pending their state outbreak movement permitting system.

The USDA FMD Response Plan (2020) provides guidance criteria Tables for various types of items moving into (4-8), within (4-9), and out of (4-10) a Control Area. It provides guidance on the types of items that may be permitted: “Because of the variation in the risk of the commodities, animals, and conveyances, it is possible that premises—particularly Monitored Premises and At-Risk Premises—may be permitted to move one commodity, animal, or conveyance but not another. In making the decision whether movement will be allowed, substantial consideration will be given to critical movements (for example, the movement of animal feed onto premises).”

Movement Permit Guidance Tables 1, 2

Table 1. Movement of Sheep and Cattle Grazing Federal Public Lands Within an FMD Control Area

Permit Guidance Criteria for livestock that can be observed and/or tested within the Control Area

Traceability information is available (allotment #/pasture #/name , GPS Coordinates, and information on type and number of animals to be moved)
Trace-back/forward information is acceptable; premises is NOT Infected, Contact, Suspect
<u>Enhanced biosecurity steps are described through records, interviews, or observations</u> and are acceptable to Responsible Regulatory Officials
Destination premises and state are willing to accept the sheep/cattle
No evidence of infection based on disease monitoring (surveillance) <u>conducted within the same Control Area</u>
If all above criteria can be met, consider issuing OUTBREAK MOVEMENT PERMIT to move sheep/cattle within a Control Area involving federal public lands

Table 2. Movement of Sheep and Cattle Grazing Federal Public Lands from Inside to Outside an FMD Control Area

Permit Guidance Criteria: Livestock that cannot be observed and/or tested within the Control Area may be permitted to move to a biosecure location that meets quarantine requirements (no direct or indirect contact with susceptible species for at least 28 days)

Traceability information is available (allotment #/pasture #/name , GPS Coordinates, and information on type and number of animals to be moved)
Trace-back/forward information is acceptable; premises is NOT Infected, Contact, Suspect
<u>Enhanced biosecurity steps are described through records, interviews, or observations</u> and are acceptable to Responsible Regulatory Officials
<u>Destination premises is a biosecure location that meets quarantine requirements (no direct or indirect contact with susceptible species for at least 28 days)</u>
Destination state (if applicable) is willing to accept the sheep/cattle
Disease monitoring (surveillance) <u>can be conducted at the destination premises for at least 28 days</u>
If all above criteria can be met, consider issuing OUTBREAK MOVEMENT PERMIT to move sheep/cattle out of a Control Area involving federal public lands to a biosecure location that meets quarantine requirements

Traceability Information is Available, Premises is not Infected, Suspect, Contact

Additional details can be found in the [Premises Identification Number](#) section. Ranchers should be ready to provide the State and APHIS with animal movement information so exposure risk and potential for disease spread can be determined. The *Just-in-Time Biosecurity and Exposure Questionnaire for FMD: Livestock Grazing Public Lands* captures information about the allotment/pasture location, movement details, other livestock in the area, and known contacts with wildlife. Records will be needed to demonstrate the livestock were not in contact with the Infected Premises. Knowing where cattle/sheep grazed in the last 28 days (two times the incubation period of FMD) could also help determine the size of a Control Area. The faster ranchers can provide this information, the faster the State and APHIS can make decisions about movement.

Enhanced Biosecurity Steps

Additional details can be found in the [Implementing Just-in-Time Biosecurity](#) section. Determination of acceptable enhanced biosecurity steps by regulatory officials may be through a live visit to the current premises, a virtual visit using available technology, or a recording of critical aspects as requested. There are benefits and limitations of each option and guidance will be provided by officials managing the response based on characteristics of the outbreak, risk posed, and available resources.

Destination Willing to Accept the Movement

The destination premises must be willing to accept the movement. If crossing state lines moving within, or leaving a Control Area, the SAHO for the origin and destination state both need to grant permission to move. This is to ensure the movement is as safe as possible and tracked for outbreak control purposes.

- To another public land allotment or pasture within the same Control Area
 - Must have a grazing permit from the land management agency
 - Must meet the States movement permit criteria
- To another location not owned by the rancher or government within the same Control Area
 - Must ensure the receiver understands and accept the risks associated with receiving the animals from the Control Area.
 - States may require a signed form stating as such to be submitted with the outbreak movement permit request.
 - Must meet the States movement permit criteria
- To another location outside the Control Area
 - Must be to biosecure location that meets quarantine requirements (no direct or indirect contact with susceptible species for at least 28 days)
 - Must meet the States movement permit criteria
 - A risk assessment for live animal movement may be needed

Commuter agreements for livestock moving into other states to graze that were in place prior to an outbreak would NOT be honored in an outbreak.

If the movement is denied, the State would work with the rancher and the federal land management agency to explore other grazing options.

Disease Monitoring (Surveillance)

Previously covered under [Monitoring for Disease \(Surveillance\)](#)

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Abbreviations and Terminology used in Document

APHIS: Animal and Plant Health Inspection Service, an agency within USDA that leads the federal response to FAD outbreaks

BLM: Bureau of Land Management, an agency within the DOI

DOI: Department of the Interior

EA: Environmental Assessment

EIS: Environmental Impact Statement

ESA: Endangered Species Act

FAD: Foreign Animal Disease

FMD/FMDV: Foot-and-Mouth Disease virus

JIT: Just In Time

MVU: Motor Vehicle Use

NAHLN: National Animal Health Laboratory Network; 48 approved for FMD PCR in the U.S.

NADPRP: National Animal Disease Preparedness and Response Program, USDA APHIS funding

NEPA: National Environmental Policy Act

PIN: Premises Identification Number

SAHO: State Animal Health Official

USDA: United States Department of Agriculture

USFS: United States Forest Service, an agency within USDA

USFWS: U.S. Fish and Wildlife Service, an agency within DOI

VS: Veterinary Services, a program within USDA APHIS that oversees the response to FAD outbreaks

WS: Wildlife Services, a program within USDA APHIS

Active Observational Surveillance (AOS): Systematic method for routinely monitoring livestock for potential signs of early FMD infection during an outbreak using visual observations, recording findings, and reporting concerns to animal health officials.

Allotment: An area of land determined to contain acres suitable for livestock grazing, and where there has been a decision (even if a historical decision) to authorize livestock use and occupancy at present, in the past, or in the future. An allotment can be comprised of both federal public lands and non-federal lands. Livestock grazing use on an allotment is authorized under some type of grazing permit.

Annual Operating Instructions (AOIs): Detailed U.S. Forest Service approved instructions for livestock grazing administration to be implemented on a given year on a given allotment.

Base Property: Land and/or interests used by permittees and specifically designated by the permittee to qualify for a term grazing permit. Requirements may vary according to specific USFS or BLM definitions.

Categorical Exclusion (CE): “A category of actions which do not individually or cumulatively have a significant effect on the human environment, and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.” 40 CFR Section 1508.4

Appendix A: USDA Definitions

The following definition is from the USDA Animal Disease Traceability website, June 2020 available at: www.aphis.usda.gov/aphis/ourfocus/animalhealth/SA_Traceability

- Animal disease traceability: knowing where diseased and at-risk animals are, where they've been, and when is important to ensure a rapid response when animal disease events take place.

The definitions below are from the USDA Foreign Animal Disease Preparedness and Response Plan (FAD PReP) Foot-and-Mouth Disease Response Plan: The Red Book, October 2020 available at:

www.aphis.usda.gov/animal_health/emergency_management/downloads/fmd_responseplan.pdf

- Infected Premises (IP): Premises where a presumptive positive case or confirmed positive case exists based on laboratory results, compatible clinical signs, FMD case definition, and international standards.
- Contact Premises (CP): Premises with susceptible animals that may have been exposed to FMD, either directly or indirectly, including but not limited to exposure to animals, animal products, fomites, or people from IP.
- Suspect Premises (SP): Premises under investigation due to the presence of susceptible animals reported to have clinical signs compatible with FMD. This is intended to be a short-term premises designation.
- At-Risk Premises (ARP): Premises that have susceptible animals, but none of those susceptible animals have clinical signs compatible with FMD. Premises objectively demonstrates that it is not an IP, CP, or SP. ARP seek to move susceptible animals or products within the Control Area by permit. Only ARP are eligible to become MP.
- Monitored Premises (MP): Premises objectively demonstrates that it is not an Infected, Contact, or Suspect Premises. Only ARP are eligible to become MP. Monitored Premises meet a set of defined criteria in seeking to move susceptible animals or products out of the Control Area by permit.

Appendix B: Applicable Code of Federal Regulations for Interagency Response to a Foreign Animal Disease Outbreak

Title, Chapter, Parts that describe authorities of the U.S. Forest Service (USFS), Bureau of Land Management (BLM), and USDA Animal and Plant Health Inspection Service (APHIS) as it pertains to permitting livestock grazing on federal public lands and managing an FMD response.

Waiver of Fees (USFS)

<https://www.ecfr.gov/current/title-36/chapter-II/part-222/subpart-C/section-222.50>

§ 222.50 General procedures. (June 2022)

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest system lands, or other lands under Forest Service control. An exception is livestock authorized free of charge under provisions of [§ 222.3\(c\)\(2\)\(ii\) \(B\)](#) through [\(G\)](#).

Specifically:

(h) The excess and unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. This rate is charged for unauthorized forage or forage in excess of authorized use and is separate from any penalties that may be assessed for a violation of a prohibition issued under [36 CFR part 261](#) or from an administrative permit action. This rate will apply to, but not be limited to, the following circumstances: excess number of livestock grazed; livestock grazed outside the permitted grazing season; livestock grazed in areas not authorized under a grazing permit and a bill for collection; or livestock grazed without a permit. Per [paragraph \(a\)](#) of this section, a grazing fee shall be charged for each head month of livestock grazing or use. This includes any excess or unauthorized grazing use. **The authorized officer may then waive monetary fees for excess or unauthorized grazing use only when all three of the following conditions are met:**

- (1) The excess or unauthorized use was a result of unforeseen or uncontrollable circumstances on behalf of the permittee or non-permittee, and the livestock associated with such use were removed by the permittee or non-permittee within the timeframe required by the authorized officer;
- (2) The forage consumed by the excess or unauthorized use is not significant; and
- (3) National Forest System lands have not been damaged significantly by the excess or unauthorized use.

Exemption for Feed that is Not Weed-seed-free (USFS)

[https://www.ecfr.gov/current/title-36/chapter-II/part-261#p-261.50\(e\)](https://www.ecfr.gov/current/title-36/chapter-II/part-261#p-261.50(e))

Subpart B—Prohibitions in Areas Designated by Order

§ 261.50 Orders. (Jan 2011)

An order may exempt any of the following persons from any of the prohibitions contained in the order:

- (1) Persons with a permit specifically authorizing the otherwise prohibited act or omission.
- (2) Owners or lessees of land in the area;
- (3) Residents in the area;

(4) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty; and

(5) Persons engaged in a business, trade, or occupation in the area.

(6) Any other person meeting exemption requirements specified in the order.

Off-Road Vehicles (BLM)

<https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-H/part-8340/subpart-8340>

§ 8340.0-5 Definitions. (Nov 2020)

As used in this part:

(a) **Off-road vehicle** means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding:

(1) Any nonamphibious registered motorboat;

(2) Any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes;

(3) Any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved;

(4) Vehicles in official use;

Temporary Corrals and Fencing (USFS)

[https://www.ecfr.gov/current/title-36/chapter-II/part-220/section-220.6#p-220.6\(d\)\(8\)](https://www.ecfr.gov/current/title-36/chapter-II/part-220/section-220.6#p-220.6(d)(8))

Part 220: National Environmental Policy Act (NEPA) Compliance

§ 220.6 Categorical exclusions. (Nov 2020)

(d) **Categories of actions for which a project or case file and decision memo are not required.** A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

(8) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of NFS land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

[https://www.ecfr.gov/current/title-36/chapter-II/part-220/section-220.4#p-220.4\(b\)](https://www.ecfr.gov/current/title-36/chapter-II/part-220/section-220.4#p-220.4(b))

§ 220.4 General requirements. (Nov 2020)

If there is a need to implement measures beyond existing categorical exclusions, [36 CFR 220.4\(b\)](#) may be used for implementation in emergency situations:

(b) **Emergency responses.** When the responsible official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation in accordance with the provisions in §§ 220.5, 220.6, and 220.7 of this part, then the following provisions apply.

(1) The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(2) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section, and such actions are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accord with these regulations. If the responsible official finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for environmental assessments, findings of no significant impact and categorical exclusions (FSM 1950.41a). Consultation with the Washington Office shall be coordinated through the appropriate regional office.

(3) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section and such actions are likely to have significant environmental impacts, then the responsible official shall consult with CEQ, through the appropriate regional office and the Washington Office, about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

Controlling Public Access to Control Areas

<https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-H/part-8360/subpart-8364/section-8364.1>

§ 8364.1 Closure and restriction orders. (BLM: 48 Federal Register 36384, Aug. 10, 1983)

(a) To protect persons, property, and public lands and resources, the authorized officer may issue an order to close or restrict use of designated public lands.

(b) Each order shall:

(1) Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use;

(2) Specify the uses that are restricted;

(3) Specify the period of time during which the closure or restriction shall apply;

(4) Identify those persons who are exempt from the closure or restrictions;

(5) Be posted in the local Bureau of Land Management Office having jurisdiction over the lands to which the order applies;

(6) Be posted at places near and/or within the area to which the closure or restriction applies, in such manner and location as is reasonable to bring prohibitions to the attention of users;

(7) Include a statement on the reasons for the closure; and

(c) In issuing orders pursuant to this section, the authorized officer shall publish them in the Federal Register.

(d) Any person who fails to comply with a closure or restriction order issued under this subpart may be subject to the penalties provided in [§ 8360.0–7 of this title](#).

<https://www.ecfr.gov/current/title-36/chapter-II/part-261/subpart-B/section-261.53>

§ 261.53 Special closures. (USFS 2011)

When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:

(a) Threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish.

(b) Special biological communities.

(c) Objects or areas of historical, archeological, geological, or paleontological interest.

(d) Scientific experiments or investigations.

(e) Public health or safety.

(f) Property.

(g) The privacy of tribal activities for traditional and cultural purposes. Closure to protect the privacy of tribal activities for traditional and cultural purposes must be requested by an Indian tribe; is subject to approval by the Forest Service; shall be temporary; and shall affect the smallest practicable area for the minimum period necessary for activities of the requesting Indian tribe.

Appendix C: USFS and BLM Organization and Responsibilities

USFS

<https://www.fs.usda.gov/about-agency/organization>

- **Headquarters** (Washington Office)
 - **Regional Foresters** (9 geographic regions) – Regional office staff coordinates activities between national forests and grasslands, monitors activities on those lands to ensure quality operations, provides guidance for forest plans, and allocates budgets to the forests.
 - **Forest and Grassland Supervisors** – Coordinates activities between districts, allocates the budget, and provides technical support to each district. There are 154 national forests and 20 grasslands, each with several ranger districts.
 - **District Rangers** – Carries out trail construction and maintenance, operation of campgrounds, and management of vegetation and wildlife habitat. There are more than 600 ranger districts, each with a staff of 10 to 100 people.
- USFS Forest Service Contact Information: <https://hrm.gdcii.com/directory/>

The term “line officer” is an individual with decision making authority for USFS. It is not an official USFS title with specific responsibilities within the agency. The type of decision that needs to be made will determine which level of authority can make the call.

BLM

Source: Personal communication with BLM representative

- **Headquarters** – Provides national-level direction, oversight, policy, and support to the field across all the BLM’s programs.
 - **State Directors** (12 state offices) – State offices generally align with the respective state’s boundaries; however, a few state offices cover multiple geographic states. BLM Oregon/Washington is self-explanatory; BLM Montana/Dakotas includes Montana, North Dakota, and South Dakota; and BLM New Mexico includes New Mexico, Texas, Oklahoma, and Kansas. State offices provide state-level direction, oversight, policy, and support to the BLM’s programs on BLM-managed public lands within their state. Contact info for state offices is available at: <https://www.blm.gov/office/national-office>
 - **District Managers** (50 districts) – District managers ensure consistency across their district and supervise employees who provide support to multiple field offices. They may also make decisions for actions that span multiple field offices within their district.
 - **Field Managers** (122 field offices, 14 national monuments) – There are typically two to four field offices per district. Field managers make decisions for BLM-managed public lands within their field office and supervise the employees who implement programs on the ground and work most directly with public lands users.

Appendix D: Draft Letter Requesting Allotment/Pasture be Temporarily Unavailable

To Whom It May Concern at USFS or BLM,

The [State Agency or USDA APHIS] requests that the following allotment(s)/pasture(s) be temporarily unavailable to livestock grazing to facilitate control measures due to the foot-and-mouth disease (FMD) outbreak. The area should remain vacant to grazing livestock until the Control Area(s) are released and the [State or USDA APHIS] determines it is safe for livestock to return to the area. Length of time to be determined based on the outbreak response.

Description of allotments/pastures to be left vacant (be as specific as possible, using maps)

- A
- B
- C

Rationale

FMD is a highly contagious foreign animal disease spread between cloven-hoofed livestock through direct and indirect contact. Infected animals shed the virus in bodily secretions (saliva, urine, feces, etc.). There is no treatment. Leaving these areas vacant will decrease the number of susceptible livestock in the regulatory Control Area which is a critical measure in stopping the spread of this virus. FMD is not a public health or food safety risk.

Implementation Date

Effective immediately.

End Date

List if known.

Contact

For additional information regarding this request, contact:

Name

Address

Phone

Signature

Date

Title

Appendix E: Active Observational Surveillance Excerpt from FMD Response Plan

Source: USDA FMD Response Plan, October 2020 available at:

www.aphis.usda.gov/animal_health/emergency_management/downloads/fmd_responseplan.pdf

4.3.1 Surveillance Planning for FMD Outbreak

4.3.1.2 DEFINITIONS

Active observational surveillance (AOS) is a purposeful effort to detect evidence of disease through observation of clinical signs following these criteria:

- Observations are ongoing, frequent (e.g., once or twice a day in confinement facilities or once every 2 to 3 days in large grazing operations), and follow a pre-planned schedule.
- Observer is specifically tasked with monitoring for evidence of disease, toxicity, or other causes of morbidity, mortality and decreased production.
- The group of animals undergoing AOS is clearly defined.
- A set of guidelines exist describing expected production parameters and corresponding investigation triggers.
- A communication plan is created for a response to the investigation triggers, including when to contact regulatory animal health officials or their designees.
- Observer is aware of and understands the production parameters, investigation triggers, and communication plan.
- Observation of clinical signs or other changed consistent with the disease of interest during AOS serves as the screening “test.” Confirmatory testing is laboratory-based.

Utility of AOS is highest for diseases that show overt clinical signs such as HPAI or FMD. Vesicular diseases such as FMD in a naïve population are particularly amenable for AOS in many U.S. animal populations. Most confinement livestock operations have standard management practices with the above criteria and, in fact, already conduct AOS.

Appendix F: Full CFRs, BLM Instructional Memo's, USFS Manual, USFS Directive

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- 31 CFR-title36-sec222.50-Waiver-Fees_2022_USFS
- 32 CFR-title36-sec261.50-Orders-2021-and-sec261.53-SpecialClosures-2001-USFS
- 36 FSM2900_InvasiveSpeciesMgt_2011
- 64 DOI-Part524-dept-manual-chap1_Invasive-species-policy
- 76 FSM2320-WildernessMgt_MotorVehicleUse_2007
- 85 CFR-title43-vol2-sec8340-0-5-Off-road-vehicles_2020_BLM
- 87 CFR-title36-sec220.6d8-CatEx-Minor-Special-Use-Fencing_2020_USFS
- 89 CFR-title36-sec220.4b-CatEx-EmergResp_2020_USFS
- 91 CFR-title43-sec8364.1-Closure-restriction-orders_nd_BLM
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- 95 CFR-title36-sec261.53-Special-closures_2011_USFS
- 96 Directive_Forest-Service-Special-Orders-and-Emergency-Closure-Orders_2020

This content is from the eCFR and is authoritative but unofficial.



Displaying title 36, up to date as of 6/22/2023. Title 36 was last amended 6/05/2023.

Title 36 – Parks, Forests, and Public Property
Chapter II – Forest Service, Department of Agriculture
Part 222 – Range Management
Subpart C – Grazing Fees

§ 222.50 General procedures.

- (a) Fees shall be charged for all livestock grazing or livestock use of National Forest system lands, or other lands under Forest Service control. An exception is livestock authorized free of charge under provisions of § 222.3(c)(2)(ii) (B) through (G).
- (b) Guiding establishment of fees are the law and general governmental policy as established by Bureau of the Budget (now, Office of Management and Budget) Circular A-25 of September 23, 1959, which directs that a fair market value be obtained for all services and resources provided the public through establishment of a system of reasonable fee charges, and that the users be afforded equitable treatment. This policy precludes a monetary consideration in the fee structure for any permit value that may be capitalized into the permit holder's private ranching operation.
- (c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one animal, except for sheep or goats. A full head month's fee is charged for a month of grazing by adult animals; if the grazing animal is weaned or 6 months of age or older at the time of entering National Forest System lands; or will become 12 months of age during the permitted period of use. For fee purposes 5 sheep or goats, weaned or adult, are equivalent to one cow, bull, steer, heifer, horse, or mule.
- (d) No additional charge will be made for the privilege of lambing upon National Forest System lands, or other lands under Forest Service control.
- (e) Transportation livestock may be charged for at a special rate, and at a minimum established for such use. Fees for horses, mules, or burros associated with management of permitted livestock on an allotment, or for research purposes and administrative studies, and authorized on a charge basis, are determined under provisions of paragraph (b) of this section.
- (f) The fees for trailing livestock across National Forest System lands will conform with the rates established for other livestock. Where practicable, fees for trailing permitted livestock will be covered in the regular grazing fee and the crossing period covered in the regular grazing period.
- (g) All fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use unless otherwise authorized by the Chief, Forest Service.
- (h) The excess and unauthorized grazing use rate will be determined by establishing a base value without giving consideration for those contributions normally made by the permittee under terms of the grazing permit. This rate is charged for unauthorized forage or forage in excess of authorized use and is separate from any penalties that may be assessed for a violation of a prohibition issued under 36 CFR part 261 or from an administrative permit action. This rate will apply to, but not be limited to, the following circumstances: excess number of livestock grazed; livestock grazed outside the permitted grazing season; livestock grazed in areas not authorized under a grazing permit and a bill for collection; or livestock grazed without a permit. Per paragraph (a) of this section, a grazing fee shall be charged for each head month of livestock grazing or use. This includes any excess or unauthorized grazing use. The authorized officer may then waive monetary fees for excess or unauthorized grazing use only when all three of the following conditions are met:

36 CFR 222.50(h)(1)) The excess or unauthorized use was a result of unforeseen or uncontrollable circumstances on behalf of the permittee or non-permittee, and the livestock associated with such use were removed by the permittee or non-permittee within the timeframe required by the authorized officer;

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- (2) The forage consumed by the excess or unauthorized use is not significant; and
- (3) National Forest System lands have not been damaged significantly by the excess or unauthorized use.
- (i) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief, Forest Service, may specify.
- (j) The fee year for the purpose of charging grazing fees will be March 1 through the following February.
- (k) The data year for the purpose of collecting beef cattle price data for computing indexes will be November 1 through the following October and apply to the following fee year.

[44 FR 24843, Apr. 27, 1979, as amended at 46 FR 42450, Aug. 21, 1981; 53 FR 2984, Feb. 2, 1988; 87 FR 35104, June 9, 2022]

This content is from the eCFR and is authoritative but unofficial.



Displaying title 36, up to date as of 6/22/2023. Title 36 was last amended 6/05/2023.

Title 36 – Parks, Forests, and Public Property
Chapter II – Forest Service, Department of Agriculture
Part 261 – Prohibitions

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- § 261.57 National Forest wilderness.
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Subpart B—Prohibitions in Areas Designated by Order

§ 261.50 Orders.

- (a) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of described areas within the area over which he has jurisdiction. An order may close an area to entry or may restrict the use of an area by applying any or all of the prohibitions authorized in this subpart or any portion thereof.
- (b) The Chief, each Regional Forester, each Experiment Station Director, the Administrator of the Lake Tahoe Basin Management Unit and each Forest Supervisor may issue orders which close or restrict the use of any National Forest System road or trail within the area over which he has jurisdiction.
- (c) Each order shall:
 - (1) For orders issued under paragraph (a) of this section, describe the area to which the order applies;
 - (2) For orders issued under paragraph (b) of this section, describe the road or trail to which the order applies;
 - (3) Specify the times during which the prohibitions apply if applied only during limited times;
 - (4) State each prohibition which is applied; and
 - (5) Be posted in accordance with § 261.51.
- (d) The prohibitions which are applied by an order are supplemental to the general prohibitions in Subpart A.
- (e) An order may exempt any of the following persons from any of the prohibitions contained in the order:
 - (1) Persons with a permit specifically authorizing the otherwise prohibited act or omission.
 - (2) Owners or lessees of land in the area;
 - (3) Residents in the area;
 - (4) Any Federal, State, or local officer, or member of an organized rescue or fire fighting force in the performance of an official duty; and
 - (5) Persons engaged in a business, trade, or occupation in the area.
 - (6) Any other person meeting exemption requirements specified in the order.
- (f) Any person wishing to use a National Forest System road or trail or a portion of the National Forest System, should contact the Forest Supervisor, Director, Administrator, or District Ranger to ascertain the special restrictions which may be applicable thereto.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977, as amended at 42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981; 66 FR 3218, Jan. 12, 2001]

§ 261.51 Posting.

Posting is accomplished by:

- (a) Placing a copy of the order imposing each prohibition in the offices of the Forest Supervisor and District Ranger, or equivalent officer who have jurisdiction over the lands affected by the order, and
- (b) Displaying each prohibition imposed by an order in such locations and manner as to reasonably bring the prohibition to the attention of the public.

§ 261.52 Fire.

When provided by an order, the following are prohibited:

- (a) Building, maintaining, attending or using a fire, campfire, or stove fire.
- (b) Using an explosive.
- (c) Smoking.
- (d) Smoking, except within an enclosed vehicle or building, a developed recreation site, or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.
- (e) Going into or being upon an area.
- (f) Possessing, discharging or using any kind of firework or other pyrotechnic device.
- (g) Entering an area without any firefighting tool prescribed by the order.
- (h) Operating an internal combustion engine.
- (i) Welding, or operating an acetylene or other torch with open flame.
- (j) Operating or using any internal or external combustion engine without a spark arresting device that is properly installed, maintained, and in effective working order in accordance with U.S. Forest Service Standard 5100-1.
- (k) Violating any state law specified in the order concerning burning, fires or which is for the purpose of preventing, or restricting the spread of fires.

[42 FR 2957, Jan. 14, 1977; 42 FR 24739, May 16, 1977; 42 FR 35959, July 13, 1977; 46 FR 33521, June 30, 1981; 77 FR 58493, Sept. 21, 2012]

§ 261.53 Special closures.

When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:

- (a) Threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish.
- (b) Special biological communities.
- (c) Objects or areas of historical, archeological, geological, or paleontological interest.
- (d) Scientific experiments or investigations.
- (e) Public health or safety.
- (f) Property.
- (g) The privacy of tribal activities for traditional and cultural purposes. Closure to protect the privacy of tribal activities for traditional and cultural purposes must be requested by an Indian tribe; is subject to approval by the Forest Service; shall be temporary; and shall affect the smallest practicable area for the minimum period necessary for activities of the requesting Indian tribe.

[42 FR 2957, Jan. 14, 1977, as amended at 76 FR 3017, Jan. 19, 2011]

§ 261.54 National Forest System roads.

When provided by an order, the following are prohibited:

- (a) Using any type of vehicle prohibited by the order.
- (b) Use by any type of traffic prohibited by the order.
- (c) Using a road for commercial hauling without a permit or written authorization.
- (d) Operating a vehicle in violation of the speed, load, weight, height, length, width, or other limitations specified by the order.
- (e) Being on the road.
- (f) Operating a vehicle carelessly, recklessly, or without regard for the rights or safety of other persons or in a manner or at a speed that would endanger or be likely to endanger any person or property.

[42 FR 2957, Jan. 14, 1977, as amended at 46 FR 33521, June 30, 1981]

§ 261.55 National Forest System trails.

When provided by an order issued in accordance with § 261.50 of this subpart, the following are prohibited on a National Forest System trail:

- (a) Being on a trail.
- (b) Using any type of vehicle prohibited by the order.
- (c) Use by any type of traffic or mode of transport prohibited by the order.
- (d) Operating a vehicle in violation of the width, weight, height, length, or other limitations specified by the order.
- (e) Shortcutting a switchback in a trail.

[55 FR 25832, June 25, 1990, as amended at 69 FR 41965, July 13, 2004; 70 FR 68291, Nov. 9, 2005]

§ 261.56 Use of vehicles off National Forest System roads.

When provided by an order, it is prohibited to possess or use a vehicle off National Forest System roads.

[42 FR 2957, Jan. 14, 1977, as amended at 66 FR 3218, Jan. 12, 2001]

§ 261.57 National Forest wilderness.

When provided by an order, the following are prohibited:

- (a) Entering or being in the area.
- (b) Possessing camping or pack-outfitting equipment, as specified in the order.
- (c) Possessing a firearm or firework.
- (d) Possessing any non-burnable food or beverage containers, including deposit bottles, except for non-burnable containers designed and intended for repeated use.
- (e) Grazing.
- (f) Storing equipment, personal property or supplies.
- (g) Disposing of debris, garbage, or other waste.
- (h) Possessing or using a wagon, cart or other vehicle.

[42 FR 2957, Jan. 14, 1977, as amended at 49 FR 25450, June 21, 1984]

§ 261.58 Occupancy and use.

When provided by an order, the following are prohibited:

- (a) Camping for a period longer than allowed by the order.
- (b) Entering or using a developed recreation site or portion thereof.
- (c) Entering or remaining in a campground during night periods prescribed in the order except for persons who are occupying such campgrounds.

- (d) Occupying a developed recreation site with prohibited camping equipment prescribed by the order.
- (e) Camping.
- (f) Using a campsite or other area described in the order by more than the number of users allowed by the order.
- (g) Parking or leaving a vehicle in violation of posted instructions.
- (h) Parking or leaving a vehicle outside a parking space assigned to one's own camp unit.
- (i) Possessing, parking or leaving more than two vehicles, except motorcycles or bicycles per camp unit.
- (j) Being publicly nude.
- (k) Entering or being in a body of water.
- (l) Being in the area after sundown or before sunrise.
- (m) Discharging a firearm, air rifle, or gas gun.
- (n) Possessing or operating a motorboat.
- (o) Water skiing.
- (p) Storing or leaving a boat or raft.
- (q) Operating any watercraft in excess of a posted speed limit.
- (r) Launching a boat except at a designated launching ramp.
- (s) Possessing, storing, or transporting any bird, fish, or other animal or parts thereof, as specified in the order.
- (t) Possessing, storing, or transporting any part of a tree or other plant, as specified in the order.
- (u) Being in the area between 10 p.m. and 6 a.m. except a person who is camping or who is visiting a person camping in that area.
- (v) Hunting or fishing.
- (w) Possessing or transporting any motor or mechanical device capable of propelling a watercraft through water by any means.
- (x) Using any wheel, roller, or other mechanical device for the overland transportation of any watercraft.
- (y) Landing of aircraft, or dropping or picking up any material, supplies, or person by means of an aircraft, including a helicopter.
- (z) Entering or being on lands or waters within the boundaries of a component of the National Wild and Scenic Rivers System.
- (aa) Riding, hitching, tethering or hobbling a horse or other saddle or pack animal in violation of posted instructions.
- (bb) Possessing a beverage which is defined as an alcoholic beverage by State law.
- (cc) Possessing or storing any food or refuse, as specified in the order.
- (dd) [Reserved]
- (ee) Depositing any body waste in caves except into receptacles provided for that purpose.

[42 FR 2597, Jan. 14, 1977, as amended at 42 FR 35959, July 13, 1977; 43 FR 32136, July 25, 1978; 46 FR 33521, June 30, 1981; 52 FR 19347, May 22, 1987; 59 FR 31152, June 17, 1994]



**FOREST SERVICE MANUAL
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FSM 2900 - INVASIVE SPECIES MANAGEMENT

CHAPTER - ZERO CODE

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Approved: JAMES M. PEÑA
Associate Deputy Chief, NFS

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New Document	2900_zero_code	28 Pages
Superseded Document(s) by Issuance Number and Effective Date		

Digest:

2900_zero_code - Establishes code and a new manual, FSM 2900, Invasive Species Management, which sets forth National Forest System policy, responsibilities, and direction for the prevention, detection, control, and restoration of effects from aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens). This new chapter replaces FSM 2080 (noxious weed management).

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2901 - AUTHORITY

The Forest Service authority to manage aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens) on all areas of the National Forest System is derived from laws enacted by Congress that authorize the Secretary of Agriculture (Secretary) to administer the National Forest System and other resources and to issue necessary regulations. Many of these authorities have subsequently been delegated from the Secretary to the Chief of the Forest Service.

2901.01 - Laws

The principal statutes governing or supporting the management of aquatic and terrestrial invasive species on the National Forest System include but are not limited to, the following statutes. Except where specifically stated, these statutes apply to the entire National Forest System.

1. Organic Administration Act of 1897 (16 U.S.C. §§473 *et seq.*). Authorizes the Secretary to establish regulations governing the occupancy and use of national forests and to protect national forests from destruction.
2. Knutson-Vandenberg Act of June 9, 1930 (16 U.S.C. 576, 576a-576b). Section 3 of the Act, codified at 16 U.S.C. 576b. Provides that the Secretary may require any purchaser of national forest timber to make deposits of money in addition to the payments for the timber, to cover the cost to the United States of planting, sowing with tree seeds, and cutting, destroying or otherwise removing undesirable trees or other growth, on the national forest land cut over by the purchaser, in order to improve the future stand of timber, or protecting and improving the future productivity of the renewable resources of the forest land on such sale area.
3. Bankhead-Jones Farm Tenant Act of 1937 (7 U.S.C. §§1010 *et seq.*) Title III of the Act. Authorizes the Secretary to develop a program of land conservation and land utilization in order to correct maladjustments in land use. This statute applies only to national grasslands and land utilization projects.
4. Anderson-Mansfield Reforestation and Revegetation Act of October 11, 1949 (16 U.S.C. 581j (note), 581j, 581k). Requires the agency to accelerate and provide a continuing basis for the needed reforestation and re-vegetation of National Forest System lands and other lands under Forest Service administration or control.
5. Granger-Thye Act of 1950 (16 U.S.C. §§580h). Authorizes the Secretary to use a portion of grazing fees for range improvement projects on National Forest System lands. Specific projects mentioned are artificial re-vegetation, including the collection or purchase of necessary seed and eradication of poisonous plants and noxious weeds, in

order to protect or improve the future productivity of the range. Section 11 of the Act authorizes the use of funds for rangeland improvement projects outside of National Forest System lands under certain circumstances.

6. Sikes Act (Fish and Wildlife Conservation) of September 15, 1960 (16 U.S.C. 670g-670l, 670o, P.L. 86-797), as amended. Section 201. Directs the Secretary of Agriculture to plan, develop, maintain, coordinate, and implement programs for the conservation and rehabilitation of wildlife, fish and game species, including specific habitat improvement or species management [including invasive species management] projects, on lands and waters under the Secretary's jurisdiction. The Act also provides for carrying out wildlife and fish conservation programs on Federal lands and waters including authority for cooperative State-Federal plans and authority to enter into agreements with States to collect fees to fund the programs identified in those plans.

7. Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. §§528 et seq.). Authorizes the Secretary to: administer National Forest System lands for outdoor recreation, range, timber, watershed, and wildlife and fish purposes; to develop the surface renewable resources for multiple use and sustained yield of several products and services to be obtained from these lands, without impairment of the productivity of the land; and, to cooperate with interested State and local governmental agencies and others in the development and management of the national forests. The Act also recognizes and clarifies Forest Service authority and responsibility to manage wildlife and fish on national forests.

8. The Endangered Species Act (ESA) of 1973 (16 U.S.C. §§1531 et seq.). Provides for the conservation of threatened and endangered species of plants and animals. Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of the species' critical habitat. This section also requires Federal agencies to consult with the U.S. Fish and Wildlife Service (for non-marine species) or the National Oceanic and Atmospheric Administration's National Marine Fisheries Service whenever an agency action is likely to affect a threatened or endangered species or result in the destruction or adverse modification of its critical habitat.

9. Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974 as amended by the National Forest Management Act (NFMA) of 1976. Section 6 of the Act codified at 16 U.S.C. §§1600 et seq. Provides for the Secretary to promulgate regulations, under the principles of the Multiple-Use Sustained-Yield Act of 1960, specifying guidelines for land management plans developed to achieve the goals of the Program. The guidelines should provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.

Further, within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan.

10. Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201, 1201 (note), 1236, 1272, 1305). Section 515. Directs the establishment on the mined areas, and all other lands affected, of a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation on the area; except that introduced species may be used in the re-vegetation process where desirable and necessary to achieve the approved post mining land use plan.

11. Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 (note), 2101-2103, 2103a, 2103b, 2104-2105). Section 3 (16 U.S.C. 2102). Details the assistance that may be given to State foresters or equivalent State officials and State extension directors, in the form of financial, technical, educational, and related assistance. Section 8 (16 U. S. C. 2104) details actions that may be taken directly on the National Forest System, in cooperation with other Federal departments on other Federal lands, and in cooperation with State foresters, or equivalent State officials, subdivisions of States, agencies, institutions, organizations, or individuals on non-federal lands to: enhance the growth and maintenance of trees and forests; promote the stability of forest related industries and employment associated therewith through the protection of forest resources; aid in forest fire prevention and control; conserve forest cover on watersheds, shelterbelts, and windbreaks; protect outdoor recreation opportunities and other forest resources; and extend timber supplies by protecting wood products, stored wood, and wood in use.

12. The North American Wetland Conservation Act 1989 (16 U.S.C. 4401 (note), 4401-4413, 16 U.S.C. 669b (note)). Section 9 (U.S.C. 4408). directs Federal agencies to cooperate with the Director of the U.S. Fish and Wildlife Service to restore, protect, and enhance the wetland ecosystems and other habitats for migratory birds, fish and wildlife within the lands and waters of each agency to the extent consistent with the mission of such agency and existing statutory authorities.

13. Consolidated Appropriations Resolution, 2003. Section 323 of the Act, codified at 16 U.S.C. 2104. Provides authority to the Forest Service to enter into stewardship contracts with public or private entities or persons to perform services to achieve land management goals for the National Forest System lands that meet local and rural community needs. Stewardship agreements may be entered into for other land management goals such as the following: removal of vegetation or other activities to

promote healthy forest stands, reduction of fire hazards; watershed restoration and maintenance; restoration and maintenance of wildlife and fish habitat; prevention and control of invasive species; and reestablishing native plant species.

14. Healthy Forests Restoration Act of 2003 (H.R. 1904), (16 U.S.C. 6501-6502, 6511-18, 6541-42, 6571-78). Provides improved statutory processes for hazardous fuel reduction projects on certain types of at-risk National Forest System and Bureau of Land Management lands and also provides other authorities and direction to help reduce hazardous fuel and restore healthy forest and rangeland conditions on lands of all ownerships.

15. The National Historic Preservation Act of 1966 (16 U.S.C. §§470 et seq.). Requires agency heads to assume responsibility for the preservation of historic properties owned or controlled by the agency and to develop a preservation program for the identification, evaluation, and nomination of historic properties to the National Register. Management activities to protect and preserve historic properties and cultural sites may include actions to prevent and control invasive species threatening or impacting those areas. The Act requires agency heads to evaluate the effects of an undertaking on property that is included or eligible for inclusion in the National Register and to afford the Advisory Council a reasonable opportunity to comment on the undertaking. Defines undertaking to include permitting activities or Federal financial assistance under the jurisdiction of an agency.

16. The Plant Protection Act of 2000 (7 U.S.C. 7701 et seq) as amended by the Noxious Weed Control and Eradication Act of 2004 (P.L. 108-412). Among other provisions, the Plant Protection Act authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States. The Act defines the term “Noxious Weed”.

17. Wyden Amendment (P.L. 109-54, Section 434). Authorizes the Forest Service to enter into cooperative agreements to benefit resources within watersheds on National Forest System lands. Agreements may be with willing Federal, Tribal, State, and local governments, private and non-government entities, and landowners to conduct activities on public or private lands. Under this authority, the Forest Service may enter into agreements to support or conduct invasive species management activities on aquatic and terrestrial areas owned by local and State governments, Tribes, other Federal agencies, and private individuals or organizations, to benefit and protect the National Forest System and other resources within a watershed at risk from invasive species.

18. Clean Water Act of 1977 (33 U.S.C. 1251, 1254, 1323, 1324, 1329, 1342, 1344; 91 Stat. 1566). This act amends the Federal Water Pollution Control Act of 1972. Section 313 is strengthened to stress Federal agency compliance with Federal, State and local substantive and procedural requirements related to the control and abatement of pollution to the same extent as required of nongovernmental entities. Invasive species management to improve watershed condition supports the Act's charge to maintain the ecological integrity of our nation's waters, including the physical, chemical and biological components.

19. National Environmental Policy Act of 1969 (16 U.S.C. 4321). Requires agencies to analyze the physical, social, and economic effects associated with proposed plans and decisions, to consider alternatives to the action proposed, and to document the results of the analysis. The provisions of NEPA and the Council on Environmental Quality implementing regulations apply to invasive species management (FSM 1950; FSH 1909.15).

20. Wilderness Act of 1964 (16 U.S.C. §§1131 et seq.). Authorizes the Secretary to administer certain congressionally designated National Forest System lands as wilderness. Directs the protection and preservation of these wilderness areas in their natural state, primarily affected by nature and not man's actions. Integrated pest management actions [including aquatic and terrestrial invasive species] in Wilderness are authorized to meet provisions of the Act and consistent with Forest Service policy and guidance for Wilderness management.

21. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. s/s 136 et seq.). Describes pesticide regulations and requirements related to hazardous material use and worker protection standards for employees in the planning and application of pesticides.

2901.02 - Regulations

The authority to manage for invasive species on National Forest System lands and other lands under Forest Service control is delegated from the Secretary of Agriculture to the Under Secretary for Natural Resources and Environment at Title 7, Code of Federal Regulations (CFR), section 2.20 (7 CFR 2.20). This authority has been delegated in turn from the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service at Title 7, Code of Federal Regulations, section 2.60 (7 CFR 2.60). Title 36, Code of Federal Regulations (including Parts 221, 222, 228, 241, 251, 261, 290, 292, 293, 296, and 297) provides additional authorities to manage and regulate invasive species across the National Forest System, including establishing requirements and prohibitions to prevent and control aquatic and terrestrial invasive

species. In addition, Forest Service regulations at 36 CFR 222.8 acknowledge the Agency's obligation to work cooperatively in identifying invasive species (including noxious weeds) problems and initiating control programs in aquatic and terrestrial areas of the National Forest System.

1. Policy on Noxious Weed Management. Departmental Regulation 9500-10 (DR 9500-10) (January 18, 1990)). Establishes U.S. Department of Agriculture (USDA) policy to manage and coordinate noxious weed activities among USDA agencies in order to improve the quality and ecological conditions of crop and rangeland in the United States.
2. Policy on the Management of Wildlife, Fish, and Plant Habitat. Departmental Regulation 9500-4 (DR 9500-4). Guides the management of Wildlife, Fish, and Plant Habitat on public lands.
3. Gypsy Moth Policy (USDA) of 1990. Departmental Regulation 5600-001 (DR 5600-001). This regulation establishes the Departmental Gypsy Moth Policy. It assigns responsibilities to USDA agencies and defines agency roles to avoid unnecessary duplication and to provide maximum coordination of USDA activities dealing with the gypsy moth. The Forest Service plays a significant role in the management of Gypsy Moths in the United States.
4. Departmental Regulation 9500-4. USDA policy on wildlife, fish, and plant habitat management on National Forest System lands and waters. This regulation provides that the Department will promote the concept and use of integrated pest management practices in carrying out its responsibilities for pest control, and will seek to alleviate damage by plant and animal pests to farm crops, livestock, poultry, forage, forest and urban trees, wildlife, and their habitats. Departmental agencies, through management and research programs, will develop or assist in developing new techniques and methodologies for the prevention of damage to agricultural or forestry production. The agencies also will strive to reduce potential depredation through improved management of USDA programs. Pest control techniques and considerations will be incorporated into appropriate management and education programs.
5. Native Plant Materials Policy (FSM 2070). Forest Service manual direction on the use of native plant materials in re-vegetation, rehabilitation, and restoration of both aquatic and terrestrial ecosystems across the National Forest System.
6. Pesticide Use Management and Coordination Policy (FSM 2150). Provides agency policy and guidance on the use of pesticides as part of an integrated pest management approach. Additional guidance provided in the Pesticide Use Management Handbook (FSH 2109).

2901.03 - Executive Orders

1. Executive Order 13112 issued February 3, 1999 (E.O. 13112). Directs Federal agencies to: (1) identify actions that may affect status of an invasive species; (2)(a) prevent introduction of such species; (b) detect and control such species; (c) monitor population of such species; (d) provide for restoration of native species; (e) conduct research on invasive species and develop technologies to prevent introduction of such species; (f) promote public education of such species; and (3) not authorize, fund, or carry out actions likely to cause the introduction or spread of invasive species in the United States or elsewhere unless the benefits of the action clearly outweigh the harm and the agencies take steps to minimize the harm.
2. Executive Order 10046 issued March 24, 1949 (E.O. 10046). Permanently withdrew all public domain lands within Land Utilization Projects (many in the West are now national grasslands) boundaries from all forms of appropriation under the public land laws, except the mining and mineral leasing laws, and reserved them for use, administration, and disposition by the U.S. Department of Agriculture in accordance with provisions of Title III of the Bankhead-Jones Farm Tenant Act.
3. Executive Order 11246 issued September 24, 1965 (E.O. 11246). Requires entities doing business on behalf of the Forest Service to comply with Title VI of the Civil Rights Act and applicable USDA regulations.

2902 - OBJECTIVES

Management activities for aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens) will be based upon an integrated pest management approach on all areas within the National Forest System, and on areas managed outside of the National Forest System under the authority of the Wyden Amendment (P.L. 109-54, Section 434), prioritizing prevention and early detection and rapid response actions as necessary. All National Forest System invasive species management activities will be conducted within the following strategic objectives:

1. Prevention. Take proactive approaches to manage all aquatic and terrestrial areas of the National Forest System in a manner to protect native species and ecosystems from the introduction, establishment, and spread of invasive species. Prevention can also include actions to design public-use facilities to reduce accidental spread of invasive species, and actions to educate and raise awareness with internal and external audiences about the invasive species threat and respective management solutions.
2. Early Detection and Rapid Response (EDRR). Inventory and survey susceptible aquatic and terrestrial areas of the National Forest System so as to quickly detect invasive species infestations, and subsequently implement immediate and specific actions to eradicate those infestations before they become established and/or spread. Coordinate

detection and response activities with internal and external partners to achieve an effective EDRR approach across all aquatic and terrestrial areas of the National Forest System. EDRR actions are grouped into three main categories: early detection, rapid assessment, and rapid response. EDRR systems will be consistent with guidance from the National Invasive Species Council, such as the ‘Guidelines for Early Detection and Rapid Response’.

3. Control and Management. Conducting integrated invasive species management activities on priority aquatic and terrestrial areas of the National Forest System will be consistent with guidance from the National Invasive Species Council, such as the ‘Control and Management Guidelines’, to contain, reduce, and remove established infestations of aquatic and terrestrial invasive species, and to limit the adverse effects of those infestations on native species, human health, and other National Forest System resources.

4. Restoration. Pro-actively manage aquatic and terrestrial areas of the National Forest System to increase the ability of those areas to be self-sustaining and resistant (resilience) to the establishment of invasive species. Where necessary, implement restoration, rehabilitation, and/or revegetation activities following invasive species treatments to prevent or reduce the likelihood of the reoccurrence or spread of aquatic or terrestrial invasive species.

5. Organizational Collaboration. Cooperate with other Federal agencies, State agencies, local governments, tribes, academic institutions, and the private sector to increase public awareness of the invasive species threat, and promote a better understanding of integrated activities necessary to effectively manage aquatic and terrestrial invasive species throughout the National Forest System. Coordinate National Forest System invasive species management activities with other Forest Service programs and external partners to reduce, minimize, or eliminate the potential for introduction, establishment, spread, and impact of aquatic and terrestrial invasive species. Coordinate and integrate invasive species research and technical assistance activities conducted by Forest Service Research and Development, and State and Private Forestry programs with National Forest System programs to increase the management effectiveness against aquatic and terrestrial invasive species infestations impacting or threatening the National Forest System.

2903 - POLICY

The following describes Forest Service’s policy for the management of aquatic and terrestrial invasive species (including vertebrates, invertebrates, plants, and pathogens), based on an integrated pest management approach, throughout the National Forest System:

1. Initiate, coordinate, and sustain actions to prevent, control, and eliminate priority infestations of invasive species in aquatic and terrestrial areas of the National Forest System using an integrated pest management approach, and collaborate with stakeholders to implement cooperative invasive species management activities in accordance with law and policy.
2. When applicable, invasive species management actions and standards should be incorporated into resource management plans at the forest level, and in programmatic environmental planning and assessment documents at the regional or national levels.
3. Determine the vectors, environmental factors, and pathways that favor the establishment and spread of invasive species in aquatic and terrestrial areas the National Forest System, and design management practices to reduce or mitigate the risk for introduction or spread of invasive species in those areas.
4. Determine the risk of introducing, establishing, or spreading invasive species associated with any proposed action, as an integral component of project planning and analysis, and where necessary provide for alternatives or mitigation measures to reduce or eliminate that risk prior to project approval.
5. Ensure that all Forest Service management activities are designed to minimize or eliminate the possibility of establishment or spread of invasive species on the National Forest System, or to adjacent areas. Integrate visitor use strategies with invasive species management activities on aquatic and terrestrial areas of the National Forest System. At no time are invasive species to be promoted or used in site restoration or re-vegetation work, watershed rehabilitation projects, planted for bio-fuels production, or other management activities on national forests and grasslands.
6. Use contract and permit clauses to require that the activities of contractors and permittees are conducted to prevent and control the introduction, establishment, and spread of aquatic and terrestrial invasive species. For example, where determined to be appropriate, use agreement clauses to require contractors or permittees to meet Forest Service-approved vehicle and equipment cleaning requirements/standards prior to using the vehicle or equipment in the National Forest System.
7. Make every effort to prevent the accidental spread of invasive species carried by contaminated vehicles, equipment, personnel, or materials (including plants, wood, plant/wood products, water, soil, rock, sand, gravel, mulch, seeds, grain, hay, straw, or other materials).
 - a. Establish and implement standards and requirements for vehicle and equipment cleaning to prevent the accidental spread of aquatic and terrestrial invasive species on the National Forest System or to adjacent areas.

- b. Make every effort to ensure that all materials used on the National Forest System are free of invasive species and/or noxious weeds (including free of reproductive/propagative material such as seeds, roots, stems, flowers, leaves, larva, eggs, veligers, and so forth).
8. Where States have legislative authority to certify materials as weed-free (or invasive-free) and have an active State program to make those State-certified materials available to the public, forest officers shall develop rules restricting the possession, use, and transport of those materials unless proof exists that they have been State-certified as weed-free (or invasive-free), as provided in 36 CFR 261 and Departmental Regulation 1512-1.
9. Monitor all management activities for potential spread or establishment of invasive species in aquatic and terrestrial areas of the National Forest System.
10. Manage invasive species in aquatic and terrestrial areas of the National Forest System using an integrated pest management approach to achieve the goals and objectives identified in Forest Land and Resource Management plans, and other Forest Service planning documents, and other plans developed in cooperation with external partners for the management of natural or cultural resources.
11. Integrate invasive species management funding broadly across a variety of National Forest System programs, while associating the funding with the specific aquatic or terrestrial invasive species that is being prioritized for management, as well as the purpose and need of the project or program objective.
12. Develop and utilize site-based and species-based risk assessments to prioritize the management of invasive species infestations in aquatic and terrestrial areas of the National Forest System. Where appropriate, use a structured decisionmaking process and adaptive management or similar strategies to help identify and prioritize invasive species management approaches and actions.
13. Comply with the Forest Service performance accountability system requirements for invasive species management to ensure efficient use of limited resources at all levels of the Agency and to provide information for adapting management actions to meet changing program needs and priorities. When appropriate, utilize a structured decisionmaking process to address invasive species management problems in changing conditions, uncertainty, or when information is limited.
14. Establish and maintain a national record keeping database system for the collection and reporting of information related to invasive species infestations and management activities, including invasive species management performance, associated with the

National Forest System. Require all information associated with the National Forest System invasive species management (including inventories, surveys, and treatments) to be collected, recorded, and reported consistent with national program protocols, rules, and standards.

15. Where appropriate, integrate invasive species management activities, such as inventory, survey, treatment, prevention, monitoring, and so forth, into the National Forest System management programs. Use inventory and treatment information to help set priorities and select integrated management actions to address new or expanding invasive species infestations in aquatic and terrestrial areas of the National Forest System.

16. Assist and promote cooperative efforts with internal and external partners, including private, State, tribal, and local entities, research organizations, and international groups to collaboratively address priority invasive species issues affecting the National Forest System.

17. Coordinate as needed with Forest Service Research and Development and State and Private Forestry programs, other agencies included under the National Invasive Species Council, and external partners to identify priority/high-risk invasive species that threaten aquatic and terrestrial areas of the National Forest System. Encourage applied research to develop techniques and technology to reduce invasive species impacts to the National Forest System.

18. As appropriate, collaborate and coordinate with adjacent landowners and other stakeholders to improve invasive species management effectiveness across the landscape. Encourage cooperative partnerships to address invasive species threats within a broad geographical area.

2904 - RESPONSIBILITY

The Chief delegates the authority and responsibility for the overall administration of the National Forest System invasive species management program in conformance with applicable Federal law, regulation, and policy, to the Deputy Chief, National Forest System (NFS). This delegated authority is reserved to the Deputy Chief, NFS, except for the delegations to the Director of Rangeland Management, regional foresters, forest/grassland supervisors, and/or district rangers. National Forest System invasive species management responsibilities and activities are integrated and coordinated with parallel and overlapping invasive species program activities conducted under the policies of the Deputy Chief, State and Private Forestry (FSM 3000-3900) and the Deputy Chief, Research and Development (FSM 4000-4900).

2904.01 - Chief

The responsibility of the Chief is to:

1. Retain overall authority over and responsibility for establishing national policy for the management of invasive species threatening aquatic and terrestrial areas of the National Forest System.
2. Promote cooperation and coordination between other Federal agencies, State agencies, Tribes, and local governments, and other public and private sector partners for the management of terrestrial and aquatic invasive species.
3. Provide coordination across all Forest Service program areas to ensure program activities are integrated and overall management effectiveness against aquatic and terrestrial invasive species is maximized.

2904.02 - Deputy Chief, National Forest System

The responsibility of the Deputy Chief for the National Forest System is to:

1. Ensure overall coordination and oversight of National Forest System invasive species management activities and associated program budget and performance integration, and coordination with the Deputy Chief, State and Private Forestry, and the Deputy Chief, Research and Development.
2. Issue national policy, direction, guidelines, protocols, and standards for the integrated management of invasive species on all aquatic and terrestrial areas of the National Forest System. Integrate invasive species management direction across programs within the National Forest System.
3. Promote coordination across all National Forest System program areas within the Deputy area to ensure program activities are integrated and overall management effectiveness against aquatic and terrestrial invasive species is maximized. Facilitate multi-disciplinary, cross-programmatic teams to coordinate National Forest System invasive species management activities with other Forest Service programs.
4. Represent the Chief on national committees, coalitions, teams, and ad hoc groups concerned with invasive species management and research relevant to, or affecting, the National Forest System, when necessary. Coordinate NFS participation and representation as needed with Deputy Chief, State and Private Forestry and the Deputy Chief, Research and Development.

5. Ensure that invasive species management activities and funding are integrated broadly across all National Forest System programs to meet requirements in law, policy, strategic plan objectives, and to increase overall management effectiveness against terrestrial and aquatic invasive species threatening the National Forest System.
6. Promote the development and use of a national recordkeeping database system for the collection and reporting of National Forest System information related to invasive species infestations and management activities, and associated program performance and accountability. Ensure national standards, protocols, and program requirements for record keeping and reporting are met across the National Forest System.
7. Promote cooperation and coordination between the National Forest System invasive species management program and other Federal agencies, State agencies, tribes, local governments, and other public and private sector partners for the management of aquatic and terrestrial invasive species across the landscape.

2904.03 - Deputy Chief, State and Private Forestry

The responsibility of the Deputy Chief for State and Private Forestry is to:

1. Approve funding requests recommended by the Director of Forest Health Protection for eradication, prevention, suppression, and restoration projects related to invasive forest insects and pathogens on the National Forest System, in coordination with the Deputy Chief, National Forest System.
2. Promote coordination between programs within State and Private Forestry and other Forest Service programs to ensure program activities are integrated and overall effectiveness against aquatic and terrestrial invasive species is maximized across the National Forest System.
3. Facilitate participation by State and Private Forestry programs on multi-disciplinary, cross-programmatic teams at the local, regional, and national levels to improve invasive species research and management activities across the agency.

2904.04 - Washington Office, Director of Rangeland Management

The responsibility of the Washington Office, Director of Rangeland Management is to:

1. Establish and support a National Invasive Species Program Coordinator to oversee all National Forest System invasive species management activities, including: invasive species program budget and performance integration; oversight and development of policies and regulations; development and oversight of invasive species management program requirements and standards; interagency and interdepartmental coordination; development and expansion of partnerships; promoting collaboration with other Forest

Service programs; reviewing invasive species management programs at the regional and field levels, providing technical and scientific support on invasive species issues; promoting and supporting technology development and research accomplished in the Forest Service State and Private Forestry and Research and Development programs, and sources outside the agency; and the development and review of plans, strategies, policies, and proposals relevant to the management of aquatic and terrestrial invasive species.

2. Coordinate national invasive species management activities across all programs and offices within the National Forest System, including but not limited to coordination with Washington Office staff directors, regional office staff directors, and other programs and offices across the National Forest System.
3. Collaborate with Forest Service State and Private Forestry programs, International programs, Research and Development, and other Forest Service programs conducting invasive species management activities and associated projects and partnerships.
4. Coordinate with other Federal agencies, the National Invasive Species Council, and national and international invasive species organizations, State government organizations, tribal government organizations, and other stakeholders in the establishment, application, and use of collaborative, proactive and integrated approaches for the management of invasive species affecting, or potentially affecting, the National Forest System.
5. Provide for National Forest System representation on internal interdisciplinary Forest Service teams, such as the Washington Office, National Invasive Species Issue Team (WO-ISIT), to facilitate cross-deputy area, cross-programmatic, and multi-disciplinary collaboration on invasive species management issues relevant to, or affecting the National Forest System.
6. Represent the Forest Service Chief or National Forest System Deputy Chief on external national committees, coalitions, teams, and ad hoc groups concerned with invasive species management and research relevant to, or affecting, the National Forest System, when necessary.
7. Coordinate with other Forest Service invasive species programs managed under the Deputy Chief, State and Private Forestry, International Programs, and the Deputy Chief, Research and Development to ensure the full spectrum of Forest Service invasive species management and research issues are represented on national or regional committees, coalitions, teams, and ad hoc groups.
8. Develop, review, establish, and implement national-level agreements or memorandums of understanding with other Federal agencies, national-level State organizations, national non-government organizations, tribal governments, and other partners concerning invasive species issues affecting the National Forest System.

9. Ensure that invasive species management activities, funding, and performance are integrated across all National Forest System programs to meet requirements in law, policy, the objectives in strategic plans, and to increase overall management effectiveness against terrestrial and aquatic invasive species threatening the National Forest System.

10. Provide oversight and guidance on the development and use of a national record keeping database system for the collection and reporting of National Forest System information related to invasive species infestations and management activities, and associated program performance and accountability.

11. Develop and issue national standards, protocols, business rules, and related invasive species program record keeping and reporting requirements associated with National Forest System invasive species management.

12. Monitor compliance with applicable law, policy, and other program requirements and guidance associated with the management of aquatic and terrestrial invasive species across the National Forest System. When requested, compile, summarize, and report National Forest System invasive species management performance results, financial information, and other National Forest System invasive species program records.

13. Maintain contact with the Forest Service research organizations, and other external research and development organizations to review invasive species research programs, identify additional research needs, set priorities, and help coordinate research efforts for management of invasive species affecting national forests and grasslands.

14. Coordinate with Forest Service regions, forests, and other program areas to establish and issue nationwide standards and requirements for invasive species management training for Agency personnel, including but not limited to training associated with pesticide use, integrated pest management planning, record keeping, invasive species identification and ecology, and inventory and monitoring activities. Ensure that training is developed and implemented consistent with national program objectives, policy, and law.

2904.05 - Washington Office, Director of Forest Health Protection

The responsibility of the Director, Forest Health Protection for State and Private Forestry is to:

1. Administer the functions of section 8 of the Cooperative Forestry Assistance Act as amended, codified at 16 U.S.C. 2104, in support of the management of invasive forest insects and forest pathogens conducted on the National Forest System.

2. Provide leadership, technical advice, and guidance to national forests and grasslands on the management of invasive forest insects and forest pathogens, including activities to survey and detect, evaluate, prevent, and suppress forest invasive insects and pathogens, and the restoration of lands damaged by those invasive species.
3. Provide leadership, technical advice, and guidance on the use of chemical and biological pesticides to prevent or control aquatic and terrestrial invasive species on national forests and grasslands.
4. Review and recommend to the Deputy Chief for State and Private Forestry all funding requests submitted by National Forests and Grasslands for eradication, prevention, suppression, and restoration projects related to invasive forest insects and forest pathogens, in accordance with FSM 3400 and other relevant guidance.

2904.06 - Regional Foresters

The responsibility of regional foresters is to:

1. Appoint at least one coordinator for all National Forest System invasive species management activities within the region and formally establish a multi-disciplinary regional Invasive Species Issue Team to collaborate on invasive species issues across Forest Service program areas within the region.
2. Provide National Forest System representation on the Regional Invasive Species Issue Team, and other agency or interagency committees, task forces, coalitions, teams, and ad hoc groups concerned with invasive species management relevant to, or affecting, the national forests or national grasslands within that region.
3. Ensure Forest Land and Resource Management plans, Regional Environmental Management System plans, and other regional resource and programmatic plans include objectives, desired conditions, guidelines, and specific elements and activities to address the management of aquatic and terrestrial invasive species, including but not limited to inventory, monitoring, prevention, and control of invasive vertebrates, invertebrates, plants, and pathogens.
4. Collect, maintain, and report regional information related to National Forest System invasive species management activities (including inventory, prevention, treatment, cost, needs assessments, and treatment efficacy information), and associated program performance and accountability information, in compliance with national protocols, rules, and requirements.

5. Develop, establish, and implement regional-level agreements or memorandums of understanding with other Federal and State agencies, non-government organizations, tribal governments, and other partner organizations to address invasive species issues at a forest or regional level. Foster collaborative efforts such as “cooperative weed management areas”, “cooperative invasive species management zones”, and similar collaborative partnerships.
6. Collaborate with internal and external partners to develop and implement National Forest System invasive species management training, consistent with national requirements, including training programs associated with record keeping, integrated pest management techniques, restoration, and other invasive species program training.
7. Collaborate with internal and external partners to develop public information and education programs to improve awareness and understanding of invasive species, their biology, impacts, and management. Projects should utilize expertise from the broad array of Forest Service program areas as appropriate.
8. Cooperate with State governments and Tribes to implement and enforce applicable regulations, plans, and guidance on invasive species management on national forests and grasslands across the region, including but not limited to:
 - a. State regulations related to prevention and control of aquatic and terrestrial invasive species (and noxious weeds);
 - b. State regulations associated with utilizing, storing, transporting, or certifying invasive species-free (and/or noxious weed-free) straw, hay, mulch, gravel, forage, seed, or other materials; or
 - c. Statewide aquatic nuisance species management plans, fish and wildlife management plans, early detection and rapid response plans, or other statewide or regionwide invasive species management plans within the respective Forest Service region.
9. Issue orders, rules, or other regulations under the authority of 36 CFR (Parts 221, 222, 228, 241, 251, 261, 290, 292, 293, 296, and 297), Departmental Regulation 1512-1, and consistent with national or regional Forest Service policy, to prevent and control the introduction and spread of aquatic and terrestrial invasive species (including noxious weeds) on the National Forest System, when necessary.

2904.07 - Forest and Grassland Supervisors

The responsibility of forest and grassland supervisors is to:

1. Appoint forest staff to coordinate the forest or grassland invasive species management program in accordance with law and policy, and other national and regional requirements.
2. Develop and implement a forest or grassland invasive species management program that is consistent with this chapter, annual program requirements, and the objectives, desired conditions, and guidelines identified in Forest Land and Resource Management plans, Environmental Management System plans, and the Forest Service and Departmental strategic plans.
3. Ensure all Forest Land and Resource Management plans, Forest Environmental Management System plans, and other resource and project-level plans are updated to include objectives, desired conditions, guidelines, specific elements and activities to manage aquatic and terrestrial invasive species, including but not limited to prevention, control, inventory and monitoring of invasive vertebrates, invertebrates, plants, and pathogens.
4. Establish agreements and memorandums of understanding with other Federal and State agencies, non-government organizations, tribal governments, and other partner organizations to address invasive species issues as appropriate. Foster collaborative efforts such as “cooperative weed management areas”, “cooperative invasive species management zones”, and similar collaborative partnerships to address invasive species.
5. Collect, maintain, and report information related to invasive species infestations, impacts, and management activities (including inventories, surveys, assessments, treatments, and treatment efficacy) occurring on the national forest or grassland and associated program performance and accountability information, in compliance with national invasive species program protocols, criteria, rules, and requirements.
6. Identify and record the spatial extent of site-specific invasive species treatment activities, and monitoring invasive species treatments to determine efficacy and evaluate impacts to effected resources. Collect and maintain treatment records and associated spatial information in the national database of record in compliance with national invasive species program protocols, rules, and requirements.
7. Provide opportunities for staff training for invasive species identification and management, consistent with national and regional requirements, including training associated with invasive species record keeping, integrated pest management techniques, invasive species inventory and treatment monitoring, and other invasive species program training.

8. Collaborate with internal and external partners to develop public information and educational materials/ programs to increase the awareness and understanding of aquatic and terrestrial invasive species, their biology, impacts, and management.
9. Cooperate with State governments and Tribes to implement and enforce applicable regulations, plans, and guidance on invasive species management across the national forest or grassland, including but not limited to:
 - a. State regulations related to prevention and control of aquatic and terrestrial invasive species (and noxious weeds);
 - b. State regulations associated with utilizing, storing, transporting, or certifying invasive species-free (and/or noxious weed-free) straw, hay, mulch, gravel, forage, seed, or other materials;
 - c. Statewide aquatic nuisance species management plans, fish and wildlife management plans, early detection and rapid response plans, or other statewide or regionwide invasive species management plans affecting the respective Forest or Grassland.
10. Issue orders, rules, or other regulations under the authority of 36 CFR (Parts 221, 222, 228, 241, 251, 261, 290, 292, 293, 296, and 297), Departmental Regulation 1512-1, and consistent with national and regional policy, to prevent and control the introduction and spread of aquatic and terrestrial invasive species (including noxious weeds) on the forest or grassland, when necessary.
11. Coordinate and cooperate with State and county agencies, Tribes, non-government organizations, and adjacent landowners in invasive species prevention, early detection and rapid response, control and containment, restoration and rehabilitation, and inventory and monitoring activities.
12. Ensure that contracts and permits contain clauses and specifications requiring the implementation of measures to prevent, control, and/or contain aquatic or terrestrial invasive species (including noxious weeds). Oversee contract and permit administration to ensure compliance with the provisions.

2904.08 - District Rangers

The responsibility of district rangers is to:

1. Appoint staff to coordinate invasive species management activities in accordance with law and policy.

2. Maintain working relationships with the State or local invasive species or noxious weed management committees, districts or boards, and other invasive species stakeholder organizations.
3. Establish, as appropriate, agreements and memorandums of understanding with other Federal and State agencies, non-government organizations, Tribes, and other partner organizations to address invasive species issues. Foster collaborative efforts such as “cooperative weed management areas”, “cooperative invasive species management areas”, and similar collaborative partnerships to address invasive species across the landscape.
4. Prevent the introduction and establishment, as well as providing for the containment and suppression, of aquatic and terrestrial invasive species, and coordinating with State and local agencies, Tribes, and landowners in the prevention, control, and restoration efforts associated with the management of invasive species. Outbreaks and newly detected infestations should be reported promptly.
5. Collect, maintain, and report information related to invasive species infestations, impacts, and management activities (including inventories, surveys, assessments, treatments, and treatment efficacy) occurring on the national forest or grassland and associated program performance and accountability information, in compliance with national invasive species program protocols, criteria, rules, and requirements.
6. Identify and record the spatial extent of site-specific invasive species treatment activities, and monitoring invasive species treatments to determine efficacy and evaluate impacts to effected resources. Collect and maintain treatment records and associated spatial information in the national database of record in compliance with national invasive species program protocols, rules, and requirements.
7. Implement the elements, activities, and measures associated with invasive species management in Forest Land and Resource Management plans, Forest Environmental Management System plans, and other resource management and project-level plans.
8. Determine the risk of invasive species introduction or spread as part of the project planning and analysis process for proposed actions, especially for ground disturbing and site altering activities, and public use activities.
9. Ensure that staff are properly trained on invasive species management consistent with national and regional, and State requirements, including training programs associated with invasive species record keeping, integrated pest management techniques, invasive species inventory and treatment monitoring, and other invasive species related training.

10. Collaborate with internal and external partners to develop public information and educational materials/ programs to increase the awareness and understanding of aquatic and terrestrial invasive species, their biology, impacts, and management.

11. Cooperate with State governments and Tribes to implement and enforce applicable regulations, plans, and guidance on invasive species management across the forest or grassland, including but not limited to:

a. State regulations related to prevention and control of aquatic and terrestrial invasive species (and noxious weeds);

b. State regulations associated with utilizing, storing, transporting, or certifying invasive species-free (and/or noxious weed-free) straw, hay, mulch, gravel, forage, seed, or other materials;

c. Statewide aquatic nuisance species management plans, fish and wildlife management plans, early detection and rapid response plans, or other statewide or regionwide invasive species management plans affecting the respective forest or grassland.

12. Issue orders, rules, or other regulations under the authority of 36 CFR (Parts 221, 222, 228, 241, 251, 261, 290, 292, 293, 296, and 297), Departmental Regulation 1512-1, and consistent with national or regional policy, to prevent and control the introduction and spread of aquatic and terrestrial invasive species (including noxious weeds), when necessary.

13. Coordinate and cooperate with State and county agencies, Tribes, non-government organizations, and adjacent landowners in invasive species prevention, early detection and rapid response, control and containment, restoration and rehabilitation, and inventory and monitoring activities.

14. Ensure that contracts and permits contain clauses and specifications requiring the implementation of measures to prevent, control, and/or contain aquatic or terrestrial invasive species (including noxious weeds) and restoration measures to offset associated impacts. Oversee contract and permit administration to ensure compliance with the invasive species provisions.

2905 - DEFINITIONS

Adaptive Management. A system of management practices based on clearly identified intended outcomes and monitoring to determine if management actions are meeting those outcomes; and, if not, to facilitate management changes that will best ensure that those outcomes are met or reevaluated. Adaptive management stems from the recognition that knowledge about natural resource systems is sometimes uncertain.

Control. With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), control is defined as any activity or action taken to reduce the population, contain, limit the spread, or reduce the effects of an invasive species. Control activities are generally directed at established free-living infestations, and may not necessarily be intended to eradicate the targeted infestation in all cases.

Early Detection. The process of finding, identifying, and quantifying new, small, or previously unknown infestations of aquatic or terrestrial invasive species prior to (or in the initial stages of) its establishment as free-living expanding population. Early detection of an invasive species is typically coupled with integrated activities to rapidly assess and respond with quick and immediate actions to eradicate, control, or contain it.

Eradication. With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), eradication is defined as the removal or elimination of the last remaining individual invasive species in the target infestation on a given site. It is determined to be complete when the target species is absent from the site for a continuous time period (that is, several years after the last individual was observed). Eradication of an infestation of invasive species is relative to the time-frame provided for the treatment procedures. Considering the need for multiple treatments over time, certain populations can be eradicated using proper integrated management techniques.

Integrated Pest Management (IPM). A pest (in this context an invasive species) control strategy based on the determination of an economic, human health, or environmental threshold that indicates when a pest population is approaching the level at which control measures are necessary to prevent a decline in the desired conditions (economic or environmental factors). In principle, IPM is an ecologically-based holistic strategy that relies on natural mortality factors, such as natural enemies, weather, and environmental management, and seeks control tactics that disrupt these factors as little as possible. Integrated pest management techniques are defined within four broad categories: 1) Biological, 2) Cultural, 3) Mechanical/Physical, and 4) Chemical techniques.

Invasive Species. Executive Order 13112 defines an invasive species as “an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.” The Forest Service relies on Executive Order 13112 to provide the basis for labeling certain organisms as invasive. Based on this definition, the labeling of a species as “invasive” requires closely examining both the origin and effects of the species. The key is that the species must cause, or be likely to cause, harm and be exotic to the ecosystem it has infested before we can consider labeling it as “invasive”. Thus, native pests are not considered “invasive”, even though they may cause harm. Invasive species infest both aquatic and terrestrial areas and can be identified within any of the following four taxonomic categories: Plants, Vertebrates, Invertebrates, and Pathogens. Additional information on this definition can be found in Executive Order 13112.

Invasive Species Management. Activities to prevent, control, contain, eradicate, survey, detect, identify, inventory, and monitor invasive species; includes rehabilitation and restoration of affected sites and educational activities related to invasive species. Management actions are based upon species-specific or site-specific plans (including forest plans, IPM plans, watershed restoration plans, and so forth), and support the accomplishment of plan goals and objectives and achieve successful restoration or protection of priority areas identified in the respective plan(s).

Inventory. Invasive species inventories are generally defined as the observance and collection of information related to the occurrence, population or infestation of the detected species across the landscape or with respect to a more narrowly-defined area or site. Inventory attributes and purposes will vary, but are typically designed to meet specific management objectives which need information about the extent of an invasive species infestation. Inventories are typically conducted to quantify the extent of, and other attributes related to, infestations identified during survey activities.

Memorandum of Understanding. A written agreement between the Forest Service and local, State, or Federal entities, or private organizations, entered into when there is no exchange of funds from one organization to another.

Monitoring. For the purposes of invasive species program performance and accountability, the term “monitoring” refers to the observance and recording of information related to the responses to treating an invasive species infestation, and reported as treatment efficacy. By monitoring the treatment results over time, a measure of overall programmatic treatment efficacy can be determined and an adaptive management process can be used in subsequent treatment activities.

Noxious Weed. The term “Noxious Weed” is defined for the Federal Government in the Plant Protection Act of 2000 and in some individual State statutes. For purposes of this chapter, the term has the same meaning as found in the Plant Protection Act of 2000 as follows: The term “noxious weed” means any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. The term typically describes species of plants that have been determined to be undesirable or injurious in some capacity. Federal noxious weeds are regulated by USDA-Animal and Plant Health Inspection Service under the Plant Protection Act of 2000, which superseded the Federal Noxious Weed Act of 1974. State statutes for noxious weeds vary widely, with some States lacking any laws defining or regulating noxious weeds. Depending on the individual State law, some plants listed by a State statute as “noxious” may be native plants which that State has determined to be undesirable. When the species are native, they are not considered invasive species by the Federal Government. However, in most cases, State noxious weed lists include only exotic (non-native) species.

Prevention. Prevention measures for invasive species management programs include a wide range of actions and activities to reduce or eliminate the chance of an invasive species entering or becoming established in a particular area. Preventative activities can include projects for education and awareness as well as more traditional prevention activities such as vehicle/equipment cleaning, boat inspections, or native plant restoration plantings. Restoration activities typically prevent invasive species infestations by improving site resilience, and reducing or eliminating the conditions on a site that may facilitate or promote invasive species establishment.

Priority Area Treated. Program or project plans (primarily at the district or forest level) will identify priority areas on which to focus integrated management actions to directly prevent, control, or eradicate a priority/high-risk aquatic or terrestrial invasive species. Priority areas identified for invasive species treatments may include any specifically-delineated project area. Examples include, but are not limited to: a fuels treatment area, a developed recreation area, a transportation corridor, a facility, a sensitive habitat for rare species, a wetland, a river, a lake, a stream, an irrigation ditch, a grazing allotment, a stock pond, a fire camp, wildlife winter range, a burned area, a fire-break, a timber sale area, a wilderness area, a Research Natural Area, an energy transmission right of way, and so forth). The size of the priority area treated will typically be measured in acres. For linear features (such as a stream/river, trail, roadway, power-line, ditch, and so forth) the area size can be calculated from the length and average width. In some cases, a smaller portion of a delineated project area infested by invasive species may be prioritized for treatment over the larger infestation. Guidance on determining and establishing priorities for invasive species management is provided in the Forest Service Invasive Species Management Handbook (FSH 2900).

Rapid Response. With respect to invasive species (plant, pathogen, vertebrate, or invertebrate species), rapid responses are defined as the quick and immediate actions taken to eradicate, control, or contain infestations that must be completed within a relatively short time to maximize the biological and economic effectiveness against the targeted invasive species. Depending on the risk of the targeted invasive species, rapid response actions may be supported by an emergency situation determination and emergency considerations would include the geographic extent of the infestation, distance from other known infestations, mobility and rate of spread of the invasive species, threat level and potential impacts, and available treatments.

Restored. With respect to performance specifically, the invasive species program is driven by an outcome-based performance measure centered on 'restoration'. An area treated (see "treatment" definition) against invasive species has been 'restored' when the targeted invasive species defined in the project plan was controlled or eradicated directly as a result of the treatment activity. In some instances, actions taken across particular areas to prevent the establishment and spread of specific invasive species are also included in this treatment definition. 'Restored' acres are a subset of 'treated' acres,

which are tracked annually to determine the effectiveness of treatments. Preventing, controlling, or eradicating invasive species assists in the recovery of the area's resilience and the capacity of a system to adapt to change if the environment where the system exists has been degraded, damaged, or destroyed (in this case by invasive species); and helps to reestablish ecosystem functions by modifying or managing composition and processes necessary to make terrestrial and aquatic ecosystems sustainable, and resilient, under current and future conditions (as described in FSM 2020). In most cases, this is a performance measure defined in the project plan, and project managers have the flexibility to set the parameters for determining when the treated areas have been restored. Absence of an individual invasive species organism, whether through eradication or prevention efforts, is most often the criteria used to determine when acres have been restored. Monitoring treatment efficacy is critical to reporting invasive species management performance.

Resilience. The capacity of an ecosystem to absorb disturbance and reorganize while undergoing change, so as to still retain essentially the same function, structure, identity, and feedbacks. By working toward the goals of diverse native ecosystems that are connected and can absorb disturbance, it is expected that over time, management would create ecological conditions that support the abundance and distribution of native species within a geographic area to provide for native plant and animal diversity.

State Agency. A State Department of Agriculture, State Department of Natural Resources, other State agency, or subdivision thereof, responsible for the administration or implementation of State laws pertaining to invasive species, noxious weeds, exotic species, or other pest/undesirable species.

Structured Decision Making (SDM). A general term for carefully-organized analysis of problems in order to reach decisions that are focused clearly on achieving fundamental objectives. Based in decision theory and risk analysis, SDM encompasses a simple set of concepts and helpful steps, rather than a rigidly-prescribed approach for problem solving. Key SDM concepts include making decisions based on clearly articulated fundamental objectives, dealing explicitly with uncertainty, and responding transparently to legal mandates and public preferences or values in decision making; thus, SDM integrates science and policy explicitly. Every decision consists of several primary elements, management objectives, decision options, and predictions of decision outcomes. By analyzing each component separately and thoughtfully within a comprehensive decision framework, it is possible to improve the quality of decision making. The core SDM concepts and steps to better decision making are useful across all types of decisions: from individuals making minor decisions to complex public sector decisions involving multiple decision makers, scientists and other stakeholders.

Survey. An invasive species survey is a process of systematically searching a geographic area for a particular (targeted) invasive species, or a group of invasive species, to determine if the species exists in that area. It is important to know where and when surveys have occurred, even if the object of the survey (target species) was not located. Information on the absence of an invasive species can be as valuable as information on the presence of the species, and can be used as a foundation to an early detection system. Unlike inventories, surveys typically do not collect additional detailed attributes of the infestation or the associated site.

Targeted Invasive Species. An individual invasive species or population of invasive species, which has been prioritized at the project-level for management action based upon risk assessments, project objectives, economic considerations, and other priority-setting decision support tools.

Treatment. Any activity or action taken to directly prevent, control, or eradicate a targeted invasive species. Treatment of an invasive species infestation may not necessarily result in the elimination of the infestation, and multiple treatments on the same site or population are sometimes required to affect a change in the status of the infestation. Treatment activities typically fall within any of the four general categories of integrated management techniques: Biological treatments, Cultural treatments, Mechanical treatments, or Chemical treatments. For example, the use of domestic goats to control invasive plants would be considered a biological treatment; the use of a pesticide to control invasive fishes would be characterized as a chemical treatment; planting of native seeds used to prevent invasive species infestations and restore a degraded site would be considered a cultural treatment technique; developing an aquatic species barrier to prevent invasive species from spreading throughout a watershed would be considered a physical treatment; cleaning, scraping, or otherwise removing invasive species attached to equipment, structures, or vehicles would be considered a mechanical treatment designed to directly control and prevent the spread of those species.

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Chapter 1: Invasive Species Policy

Originating Office: Office of Policy Analysis

524 DM 1

1.1 **Purpose.** This chapter establishes Department of the Interior (DOI) policy that directs Bureaus/offices to manage the risk of invasive species in their activities, and minimize that risk where applicable and practicable, in cooperation with others as appropriate. This includes helping prevent the introduction, establishment, and spread of invasive species; promoting early detection and rapid response; and providing for eradication and control to minimize adverse impacts, such as impacts to the environment, human health and safety, cultural resources, recreation, infrastructure, and the economy.

1.2 **Scope.** The policy in this chapter applies to all Bureaus/offices, excluding the Bureau of Indian Education.

1.3 **Authorities.** See Appendix I.

1.4 **Definitions.** See Appendix II.

1.5 **Policy.** It is the policy of DOI to cost-effectively help prevent the introduction, establishment, and spread of invasive species; detect and rapidly respond to invasive species; eradicate or control populations of invasive species that are established, and implement these actions in collaboration with states, tribes, territories, and others as appropriate. This includes complying with the principles and objectives provided in this chapter, where applicable.

1.6 **Principles.** Consistent with applicable authorities and regulations, Bureaus/offices must comply with the following principles:

A. **Collaborative Conservation.** Coordinate and cooperate across DOI and with other Federal departments and agencies; the National Invasive Species Council and other interagency bodies; tribal, state, local, and territorial governments, Alaska Native Corporations, and the Native Hawaiian Community; entities such as academic institutions, industry sectors and businesses, sportsmen, ranchers and farmers, landowners, local invasive species cooperatives, and other organizations. Leverage staff and funding across these groups to manage invasive species effectively and efficiently.

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B. Science-Based Decision-making. Use relevant and reliable science, without bias or regard to the source of that science, to inform and influence understanding of invasive species, their impacts, and how to manage them.

C. Integrated Planning. Recognize that invasive species affect multiple DOI activities and integrate the principles and objectives in this policy in management plans and programmatic documents as appropriate. When planning projects or activities, consider invasive species risks and provide for alternatives or mitigation measures, to the extent practicable, to reduce risks associated with the introduction, establishment, and spread of invasive species.

D. Integrated Pest Management. Apply integrated pest management (IPM) principles in a manner that balances risks to human health and the environment from invasive species management activities with the related consequences of failure to act expeditiously to control invasive species. The DOI IPM Policy is in 517 DM 1.

E. Strategic Approach. Emphasize the use of prevention, early detection, and rapid response approaches, which are the most cost-effective strategies for invasive species management.

F. Best Management Practices. Use best management practices in all activities to reduce risks associated with invasive species. Activities include but are not limited to natural resources management, construction or development, fire management, permitting, and monitoring.

G. Accountability. Develop specific, measurable, achievable, results-oriented, and time-fixed performance metrics to evaluate invasive species management activities. Aim for a substantive annual net reduction of invasive species populations or infested acreage on DOI-managed lands and waters. Report annually on performance results and share with Federal and nonfederal partners.

H. Adaptive Management. Use adaptive management, as appropriate, to improve invasive species management and policies. The DOI Adaptive Management Implementation Policy is in 522 DM 1.

I. Landscape-Level Approach. Use a landscape-level, watershed-level, or ecosystem-level approach, whenever possible, to achieve resource management goals at multiple spatial scales. Implement through collaborative and multi-jurisdictional mechanisms.

J. Ecosystem-Based Management. Use a systems approach that emphasizes the importance of maintaining ecological processes to restore or recover ecological communities previously invaded or to maintain the resistance and resilience of relatively intact communities, while balancing economic, cultural, and environmental priorities.

K. Innovative Solutions. Encourage innovative science and technology to manage invasive species.

L. Environmental Change Adaptation. Consider the role of environmental change as it directly or indirectly affects the introduction, establishment, or spread of invasive species. Management of invasive species (*e.g.*, prevention, early detection, rapid response, eradication, and control) can be a critical component of efforts to enhance the resilience of natural areas.

M. Cost-effectiveness. Prioritize the use of cost-effective methods that manage invasive species.

1.7 **Objectives**. Consistent with applicable authorities and regulations, Bureaus/offices will meet the following objectives to the extent practicable and permitted by law:

A. Prevent the introduction of invasive species. Reduce the risks of invasive species introduction, establishment, and spread associated with Bureau/office activities, projects, and people, including Bureau/office employees; entities working for, with, or on the behalf of Bureaus/offices; and, visitors to DOI-managed lands, waters, and facilities. Regulatory actions should support this objective.

(1) Manage risk-using tools, such as Hazard Analysis and Critical Control Point (HACCP), best management practices, and other methods to reduce the risk of introducing invasive species, particularly prior to implementing actions in the field. Provide training and support in the use of the tools.

(2) Predict potentially invasive species that pose risks to the United States and United States insular areas to inform decision-making and invasive species management.

(3) Manage pathways of introductions of invasive species into and within the United States and United States insular areas using both regulatory and non-regulatory approaches, including but not limited to the following pathways:

(a) Vehicles (motorized and non-motorized, such as cars, trucks, off-road vehicles, watercraft, aircraft, drones, and bicycles). Clean and decontaminate vehicles, appropriate to site conditions, to prevent the introduction and spread of invasive species to or from DOI-managed lands and waters.

(b) Materials. To the extent practicable, ensure that all materials used within DOI-managed lands and waters are free of invasive species, including such reproductive and propagative materials as seeds, roots, stems, flowers, leaves, larva, eggs, veligers, spores, and pathogens. Materials include plants, wood, plant products, firewood and other wood products, water, soil, rocks, sand, gravel, mulch, grain, hay, straw, and other related substances.

(c) Employees. Clean and decontaminate clothing and equipment, appropriate to site conditions, to prevent the introduction and spread of invasive species. Best practices should include, for example, starting fieldwork in non-emergency situations at the least infested site and finishing at the most infested site, and inspecting and decontaminating equipment and clothing between sites and after fieldwork.

(d) **Grazing Livestock.** Use relevant and reliable science for livestock grazing management practices on DOI-managed lands, including practices to reduce the probability of invasive species introductions; manage invasive species populations, including using prescribed livestock grazing; and maintain and enhance habitat to avoid further encroachment of invasive species. Incorporate those guidelines and measures into permitting documents.

(e) **Transportation and Organisms in Trade.** As applicable, strengthen and support the development of risk-based standards, guidelines, and methods to better understand invasive species and to assess the risk of invasive organisms moved nationally and globally as a result of human activity or action, such as pet, aquaculture, bait, biological supply, research, and ornamental display trades.

(4) Include best management practices for prevention in contracts, grants, permits, and cooperative agreements with entities working for, with, or on the behalf of Bureaus/offices. For example, where determined to be appropriate, use clauses requiring contractors or permittees to clean and decontaminate vehicles and equipment, appropriate to site conditions, prior to entering and when exiting DOI-managed lands, waters, and facilities.

B. Detect and respond rapidly to eradicate or control populations of invasive species in a manner that is cost-effective and reduces human, animal, plant, and environmental health risks.

(1) Survey susceptible areas of DOI-managed lands and waters to detect invasive species and implement timely actions to eradicate them, if feasible, before they establish and spread.

(2) Implement detection and response activities in Bureaus/offices and coordinate with external partners, as appropriate, particularly with regional associations of state, tribal, and territorial governments, to achieve an effective early detection and rapid response approach across DOI-managed lands and waters. This includes coordination in emergency response situations, such as after disasters, including wildland fires and floods, that may require emergency invasive species management actions, such as prevention, eradication, control, or monitoring efforts. Identify Bureau/office contacts at agency and sub-agency levels to serve as contacts for early detection notifications and rapid response activities to help facilitate coordinated action with states, tribes, territories, and other entities, as appropriate.

C. Eradicate or control invasive species in a cost-effective and environmentally sound manner.

(1) Prioritize the eradication or control of invasive species within DOI-managed lands and waters using site-based and species-based risk assessments. Assessments should consider resource management objectives; invasive species impacts; a comparative economic assessment of invasive species control and management methods to be used; costs and benefits of eradicating or controlling an established species with respect to harm to the environment, human health and safety, cultural resources, recreation, infrastructure, and the economy; probability of successful eradication or control; and resource availability, including fiscal and human capital.

(2) Eradicate or control invasive species within DOI-managed lands and waters when feasible. Use integrated pest management and an adaptive- and ecosystem-based management approach. Where appropriate, every effort should be made to ensure that DOI-managed lands and waters are not responsible for the spread of invasive species, including to adjacent nonfederal properties. Where applicable, work with adjacent land managers or landowners to reduce the spread of invasive species across jurisdictional boundaries.

(3) Expedite and streamline environmental compliance associated with invasive species management, such as consistently utilizing available categorical exclusions, programmatic environmental assessments, or programmatic environmental impact statements to satisfy National Environmental Policy Act compliance for invasive species early detection, rapid response, control, and eradication activities. Utilize emergency or programmatic section 7 consultations under the Endangered Species Act, where applicable and as appropriate.

D. Monitor invasive species. Monitor existing invasive species populations, as appropriate, and monitor the effectiveness of eradication and control measures within DOI-managed lands and waters. This should include leveraging a wide variety of partnerships. When possible, use standardized monitoring across sites to aid in assessing the effectiveness of eradication and control measures.

E. Implement restoration activities following invasive species eradication or control measures, where necessary and feasible, to prevent or reduce the likelihood of the reoccurrence or spread of aquatic or terrestrial invasive species. When restoring ecosystems, use native species where appropriate and where the habitat can sustain them. In this context, native species are those genotypes that are locally adapted to the specific regions, habitats, and species communities under consideration. Where the habitat is not initially able to sustain native species, it may be appropriate to use non-invasive, non-native species or inert materials as an interim step.

F. Conduct research on invasive species, including developing technologies to prevent introduction, improve early detection capabilities, and provide environmentally sound eradication and control. Foster development, application, and coordination of research on invasive species management. Identify, prioritize, and pursue shared invasive species research needs among Bureaus/offices and with non-DOI cooperators.

G. Promote education about invasive species and the means to address them.

(1) Inform and educate Bureau/office employees, partners, and visitors to DOI-managed lands, waters, and facilities about the risks associated with invasive species, ways they can be a part of the solution to manage invasive species, and pertinent Federal and other applicable laws.

(2) Coordinate with Bureaus/offices and with states, tribes, territories, and other organizations to adopt and promote standard messaging, and link to existing public education efforts as appropriate to optimize the effectiveness of education and outreach programs. Develop

outreach programs and materials that foster a sense of stewardship among employees, visitors, partners, and the public.

H. Facilitate and support invasive species data collection and sharing, management, integration, and dissemination, to enable widespread use of accurate information for management decisions, coordinating within DOI and with other Federal agencies, state, tribal, and territorial governments, and partners, as appropriate.

I. Manage invasive species risks related to disasters to reduce the likelihood that invasive species contribute to disasters and exacerbate their impacts. Invasive species can increase the frequency and severity of disasters (such as wildland fire and flooding). In addition, manage invasive species risks following disasters to reduce the likelihood of invasive species introduction, establishment, spread, and future harm to affected areas. Disasters (such as wildland fires, hurricanes, and flooding) can facilitate the establishment and spread of invasive species.

J. Prevent, eradicate, and control invasive species, as appropriate, where they might impair:

(1) Visitor experiences and outdoor recreation opportunities, including hunting, fishing, and boating.

(2) DOI's infrastructure and assets, including power, water, transportation, and housing, and;

(3) Infrastructure related to Trust assets.

K. Where consistent with applicable laws and regulations, prioritize invasive species management that benefits human health and safety and the economy or reduces the need to list native species under the Endangered Species Act.

1.8 **Responsibilities.**

A. Assistant Secretary – Policy, Management and Budget oversees DOI's compliance with this policy and serves as the Executive Sponsor of the DOI Invasive Species Task Force (Task Force).

B. Program Assistant Secretaries oversee implementation of this policy in their respective Bureaus/offices.

C. Heads of Bureaus/Offices ensure compliance with this policy, as appropriate, and:

(1) Issue and update policy and guidance to address invasive species; and guide management actions, including prevention, early detection and rapid response, control, and related activities as they relate to Bureau/office specific missions and authorities, consistent with this policy.

(2) Ensure planning processes consider invasive species risks, to the extent practicable; and, where necessary, provide for alternatives to reduce risks associated with the introduction, establishment, and spread of invasive species.

(3) Work with program managers to ensure that persons conducting invasive species management activities, including employees, contractors, financial assistance recipients, cooperators, and volunteers, have the relevant experience and training in IPM, best management practices, and pesticide use safety (DOI's policy on Pesticide Use Safety Training is in 517 DM 1).

(4) Designate a representative and an alternate to serve on the Task Force to facilitate decision-making from a policy and management perspective.

(5) Take the fullest possible advantage of National Environmental Policy Act categorical exclusions available with respect to invasive species management.

D. Director, Office of Policy Analysis provides management oversight and support staff (DOI Invasive Species Coordinator).

E. DOI Invasive Species Coordinator coordinates implementation of this policy; conducts reviews and updates the policy as needed; facilitates implementation of DOI invasive species action plans; coordinates the Task Force; and serves as DOI's liaison to the National Invasive Species Council.

F. DOI Invasive Species Task Force Representative and Alternate.

(1) Represent their Bureau/office in a decision-making capacity and coordinate with appropriate employees within their respective Bureau/office on the progress and activities of the Task Force.

(2) Participate in meetings convened by the DOI Invasive Species Coordinator and contribute toward the goals and successes of the Task Force through active involvement and commitment to the strategies, actions, and tasks that are generated and agreed to.

(3) Participate in, or designate staff to participate in, DOI-wide invasive species initiatives, as requested and as able.

G. Director, Office of Acquisition and Property Management and Bureau/Office Heads of Contracting Activity ensure that:

(1) Where appropriate, contracts and agreements with entities working for and on behalf of Bureaus/offices, include cost-effective standards to prevent the introduction, establishment, and spread of invasive species.

(2) Contracting Officers work with Program Managers to ensure that contractors performing work on DOI-managed lands, waters, and facilities are informed of risks associated with invasive species, as well as pertinent Federal and other applicable laws.

1.9 **DOI Invasive Species Task Force.**

A. Purpose. The purpose of the Task Force is to improve communication and coordination within DOI on invasive species issues, and facilitate a strategic, coordinated approach to invasive species management

B. Membership. The DOI Invasive Species Coordinator coordinates the Task Force. The following Bureaus/offices have representatives and alternates on the Task Force: Bureau of Indian Affairs, Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Reclamation, Bureau of Safety and Environmental Enforcement, U.S. Fish and Wildlife Service, U.S. Geological Survey, National Park Service, Office of Insular Affairs, Office of International Affairs, and Office of Surface Mining Reclamation and Enforcement. Heads of other Bureaus/offices are encouraged, but not required, to designate a representative to the Task Force.

C. Responsibilities. The Task Force responsibilities include:

(1) Developing, updating, and guiding implementation of DOI action plans that take a strategic, coordinated approach to management efforts; and, providing information on multi-year strategies and operations plans, as needed.

(2) Working collaboratively across Bureaus/offices to develop, use, and

institutionalize policies and practices to implement this policy, including efforts to conduct periodic reviews of the execution of invasive species activities to confirm consistency with the policy.

(3) Improving alignment of invasive species programs and providing regular briefings for DOI's senior leadership.

(4) Serving as a forum for disseminating information, communicating priorities, and informing DOI-wide invasive species initiatives and responses on invasive species issues.

(5) Advising the Assistant Secretary – Policy, Management and Budget, through the Office of Budget, on budget initiatives relating to invasive species.

07/15/20 #5020
Replaces 1/17/17 #4056

Appendix I

Authorities

The policy in this chapter is consistent with Federal laws and other authorities, including but not limited to the following:

- A. Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, section 7001(b) (2019).
- B. Plant Protection Act of 2000, 7 U.S.C. 7701 *et seq.* (supersedes all but Sections 1 and 15 of the Federal Noxious Weed Act of 1974).
- C. Sections 1 and 15 of the Federal Noxious Weed Act of 1974, 7 U.S.C. 2801 and 2814.
- D. Noxious Weed Control and Eradication Act of 2004, 7 U.S.C. 7781-7786.
- E. Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*
- F. Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) of 1990, as reauthorized and amended by the National Invasive Species Act (NISA) of 1996, 16 U.S.C. 4701 *et seq.*
- G. Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*
- H. Migratory Bird Treaty Act, 16 U.S.C. 703 *et seq.*
- I. Bald and Golden Eagle Protection Act, 16 U.S.C. 668-688d.
- J. National Environmental Policy Act of 1969, 42 U.S.C. 4321-4370f.
- K. National Historic Preservation Act of 1966, 54 U.S.C. 300101 *et seq.*
- L. Clean Water Act, 33 U.S.C. 1251 *et seq.*
- M. Surface Mining Control and Reclamation Act of 1997, 30 U.S.C. 1201 *et seq.*
- N. Lacey Act, 18 U.S.C. 42 and 16 U.S.C. 3371-3378.
- O. Alien Species Prevention Enforcement Act of 1992, 39 U.S.C. 3015 & note.
- P. Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*

- Q. Public Rangelands Improvement Act of 1978, 43 U.S.C 1901 *et seq.*
- R. Carlson-Foley Act of 1968, 43 U.S.C 1241 *et seq.*
- S. National Park Service Organic Act, 54 U.S.C 100101 *et seq.*
- T. National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. 668dd-668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997.
- U. American Indian Agricultural Resource Management Act of 1993, as amended, 25 U.S.C. 3701 *et seq.*
- V. Brown Tree Snake Control and Eradication Act of 2004, 7 U.S.C. 8501-8507.
- X. Executive Order 13112, *Invasive Species*, issued February 3, 1999; as amended by Executive Order 13751, *Safeguarding the Nation from the Impacts of Invasive Species*, issued December 5, 2016.

Appendix II

Definitions

- A. Adaptive Management. A decision process that promotes flexible decision-making that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. (Adapted from 522 DM 1)
- B. Best Management Practices. Methods or techniques found to be the most effective and practical means of achieving an objective while optimizing resources.
- C. Control. Containing, suppressing, or reducing populations of invasive species.
- D. Cultural Resources. Any prehistoric and historic districts, archaeological sites, buildings, structures, objects, cultural landscapes, sacred sites, and traditional cultural properties that are in, or eligible for, inclusion on the National Register of Historic Places; also, plant and animal species and populations traditionally used by individuals and communities to provide medicine, food, shelter, clothing, and other material culture, as well as landscapes that support these plant and animal species, and the human activities that reinforce cultural identity and religious expression.
- E. DOI-Managed Lands and Waters. Lands and waters that are under the jurisdiction of DOI, excluding tribal lands.
- F. Early Detection. A process of surveying for, reporting, and verifying the presence of a non-native species before the founding population becomes established or spreads so widely that eradication is no longer feasible.
- G. Ecosystem. A community of living organisms in conjunction with the nonliving components of their environment (air, water, and soil), interacting as a system. These biotic and abiotic components are linked together through nutrient cycles and energy flows.
- H. Ecosystem-Based Management. An environmental management approach that recognizes the full array of interactions within an ecosystem, including humans, rather than considering single issues, species, or ecosystem services in isolation.
- I. Eradication. Removal or destruction of an entire population of invasive species.
- J. Hazard Analysis and Critical Control Point (HACCP). A management planning tool that provides a structured method to identify risks associated with natural resource pathway activities. It involves understanding pathways and developing plans to reduce non-target species and prevent biological contamination to avoid unintended spread of species.
- K. Integrated Pest Management. An approach to managing pests that uses biological, cultural, physical, and chemical tools in a way that minimizes health, environmental, and economic risks. A science-based, decision-making process that incorporates management goals, consensus

building, pest biology, monitoring, environmental factors, and selection of the best available technology to achieve desired outcomes while minimizing effects to non-target species and the environment and preventing unacceptable levels of pest damage.

L. Introduction. As a result of human activity, the intentional or unintentional escape, release, dissemination, or placement of an organism into an ecosystem to which it is not native.

M. Invasive Species. With regard to a particular ecosystem, a non-native organism whose introduction causes or is likely to cause economic or environmental harm or harm to human, animal, or plant health. Invasive species may include plants, animals, pathogens, and other organisms in terrestrial and aquatic habitats.

N. Landscape-Level Approach. A set of principles that guides resource management decisions at multiple spatial scales, typically when diverse stakeholders seek multiple social, environmental, and economic goals.

O. Management. Activities including but not limited to planning (identification and inventory, prioritization, establishing action thresholds), monitoring, prevention, early detection, rapid response, eradication, control, restoration, research, and regulatory approaches used to minimize the threat of invasive species.

P. Native Species. With respect to a particular ecosystem, an organism, including its seeds, eggs, spores, or other biological material capable of propagating that species, that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

Q. Non-Native Species (also Alien Species). With respect to a particular ecosystem, an organism, including its seeds, eggs, spores, or other biological material capable of propagating that species, that occurs outside of its natural range.

R. Non-Regulatory Approach. Activity other than direct regulation of the private sector, such as cooperative efforts (such as government and industry working together to educate the public on environmentally responsible options to surrender unwanted pets), technical assistance (such as providing technical assistance to import industries for low-risk alternative methods and species), or Federal procurement (such as requiring contractors to use best practices to prevent the introduction, establishment, and spread of invasive species).

S. Prevention. The action of stopping invasive species from being introduced or spreading into a new ecosystem.

T. Rapid Response. A process that is employed to eradicate the founding population of a non-native species from a specific location before it becomes established or spreads so widely that eradication is no longer feasible.

Excerpts from Forest Service Manual 2320 – Wilderness Management

Effective Date: January 22, 2007

2323.2 - Management of Range

2323.21 - Objective

Manage wilderness range in a manner that utilizes the forage resource in accordance with established wilderness objectives (36 CFR 293.7).

2323.22 - Policy

Apply congressional guidelines and policies regarding grazing in National Forest Wilderness Areas (sec. 108, P.L. 96-560, H.R. Report 96-617 dated 11/14/79) (ex. 01), in a practical, reasonable, and uniform manner in all National Forest wildernesses. These guidelines and policies are applicable only to livestock grazing operations (FSM 2320.5).

2323.22 - Exhibit 01

Congressional Grazing Guidelines

Grazing in National Forest Wilderness Areas

Section 4(d)(4)(2) of the Wilderness Act states: "the grazing of livestock, where established prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture."

The legislative history of this language is very clear in its intent that livestock grazing, and activities and the necessary facilities to support a livestock grazing program, will be permitted to continue in National Forest wilderness areas, when such grazing was established prior to classification of an area as wilderness.

Including those areas established in the Wilderness Act of 1964. Congress has designated some 188 areas, covering lands administered by the Forest Service, Fish and Wildlife Service, National Park Service and Bureau of Land Management as components of the National Wilderness Preservation System. A number of these areas contain active grazing programs, which are conducted pursuant to existing authorities. In all such cases, when enacting legislation classifying an area as wilderness, it has been the intent of the Congress, based on solid evidence developed by testimony at public hearings, that the practical language of the Wilderness Act would apply to grazing within wilderness areas administered by all Federal agencies, not just the Forest Service. In fact, special language

appears in all wilderness legislation, the intent of which is to assure that the applicable provisions of the Wilderness Act, including Section 4(d)(4)(2), will apply to all wilderness areas, regardless of agency jurisdiction.

2323.22 - Exhibit 01--Continued

Further during the 95th Congressional committees became increasingly disturbed that, despite the language of section 4(d)(4)(2) of the Wilderness Act and despite a history of nearly 15 years in addressing and providing guidance to the wilderness management agencies for development of wilderness management policies, National Forest administrative regulations and policies were acting to discourage grazing in wilderness, or unduly restricting on-the-ground activities necessary for proper grazing management. To address this problem, two House Committee on Interior and Insular Affairs Reports (95-620 and 95-1821) specifically provided guidance as to how section 4(d)(4)(2) of the Wilderness Act should be interpreted. This guidance appeared in these reports as follows:

Section 4(d)(4)(2) of the Wilderness Act states that grazing in wilderness areas, if established prior to designation of the area as wilderness, "shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture". To clarify any lingering doubts, the committee wishes to stress that this language means that there shall be no curtailment of grazing permits or privileges in an area simply because it is designated as wilderness. As stated in the Forest Service regulations (36 CFR 293.7), grazing in wilderness areas ordinarily will be controlled under the general regulations governing grazing of livestock on National Forests* * *. This includes the establishment of normal range allotments and allotment management plans. Furthermore, wilderness designation should not prevent the maintenance of existing fences or other livestock management improvements, nor the construction and maintenance of new fences or improvements which are consistent with allotment management plans and/or which are necessary for the protection of the range.

Despite the language of these two reports, RARE II hearings and field inspection trips in the 96 Congress have revealed that National Forest administrative policies on grazing in wilderness are subject to varying interpretations in the field, and are fraught with pronouncements that simply are not in accordance with section 4(d)(4)(2) of the Wilderness Act. This had led to demands on the part of grazing permittees that section 4(d)(4)(2) of the Wilderness Act be amended to clarify the intentions of Congress. However, because of the great diversity of

2323.22 - Exhibit 01--Continued

conditions under which grazing uses (including different classes of livestock) are managed on the public lands, the Conferees feel that the original broad language of the Wilderness Act is best left unchanged. Any attempts to draft specific statutory language covering grazing in the entire wilderness system (presently administered by four separate agencies in two different Departments) might prove to be unduly rigid in a specific area, and deprive the land management agencies of flexible opportunities to manage grazing in a creative and realistic site specific fashion.

Therefore, the conferees declined to amend section 4(d)(4)(2) of the Wilderness Act, agreeing instead to reaffirm the existing language and to include the following nationwide guidelines and specific statements of legislative policy. It is the intention of the conferees that the guidelines and policies be considered in the overall context of the purposes and direction of the Wilderness Act of 1964 and this Act, and that they be promptly, fully, and diligently implemented and made available to Forest Service personnel at all levels and to all holders of permits for grazing in National Forest Wilderness areas:

1. There shall be no curtailments of grazing in wilderness areas simply because an area is, or has been designated as wilderness, nor should wilderness designations be used as an excuse by administrators to slowly "phase out" grazing. Any adjustments in the numbers of livestock permitted to graze in wilderness areas should be made as a result of revisions in the normal grazing and land management planning and policy setting process, giving consideration to legal mandates, range condition, and the protection of the range resource from deterioration.

It is anticipated that the numbers of livestock permitted to graze in wilderness would remain at the approximate levels existing at the time an area enters the wilderness system. If land management plans reveal conclusively that increased livestock numbers or animal unit months (AUMs) could be made available with no adverse impact on wilderness values such as plant communities, primitive recreation, and wildlife populations or habitat, some increases in AUMs may be permissible. This is not to imply, however, that wilderness lends itself to AUM or livestock increases and construction of substantial new facilities that might be appropriate for intensive grazing management in non-wilderness areas.

2323.22 - Exhibit 01--Continued

2. The maintenance of supporting facilities, existing in the area prior to its classification as wilderness (including fences, line cabins, water wells and lines, stock tanks, etc.), is permissible in wilderness. Where practical alternatives do not exist, maintenance or other activities may be accomplished through the occasional use of motorized equipment. This may include, for example, the use of backhoes to maintain stock ponds, pickup trucks for major fence repairs, or specialized equipment to repair stock watering facilities. Such occasional use of motorized equipment should be expressly authorized in the grazing permits for the area involved. The use of motorized equipment should be based on a rule of practical necessity and reasonableness. For example, motorized equipment need not be allowed for the placement of small quantities of salt or other activities where such activities can reasonably and practically be accomplished on horseback or foot. On the other hand, it may be appropriate to permit the occasional use of motorized equipment to haul large quantities of salt to distribution points. Moreover, under the rule of reasonableness, occasional use of motorized equipment should be permitted where practical alternatives are not available and such use would not have a significant adverse impact on the natural environment. Such motorized equipment uses will normally only be permitted to those portions of a wilderness area where they had occurred prior to the area's designation as wilderness or are established by prior agreement.

3. The placement or reconstruction of deteriorated facilities or improvements should not be required to be accomplished using "natural materials", unless the material and labor costs of using natural materials are such that their use would not impose unreasonable additional costs on grazing permittees.

4. The construction of new improvements or replacement of deteriorated facilities wilderness is permissible if in accordance with those guidelines and management plans governing the area involved. However, the construction of new improvements should be primarily for the purpose of resource protection and the more effective management of these resources rather than to accommodate increased numbers of livestock.

5. The use of motorized equipment for emergency purposes such as rescuing sick animals or the placement of feed in emergency situations is also permissible. This privilege is to be exercised only in true emergencies, and should not be abused by permittees.

2323.22 - Exhibit 01--Continued

In summary, subject to the conditions and policies outlined above, the general rule of thumb on grazing management in wilderness should be that activities or facilities established prior to the date of an area's designation as wilderness should be allowed to remain in place and may be replaced when necessary for the permittee to properly administer the grazing program. Thus, if livestock grazing activities and facilities were established in an area at the time Congress determined that the area was suitable for wilderness and placed the specific area in the wilderness system, they should be allowed to continue. With respect to areas designated as wilderness prior to the date of this Act, these guidelines shall not be considered as a direction to re-establish uses where such uses have been discontinued.

2323.23 - Grazing Management

Use the direction in the forest plan (FSM 1920), the allotment management plan (FSM 2210), and the Grazing Guidelines to manage livestock grazing operations in designated wilderness.

2323.24 - Permits

Authorize livestock grazing operations on grazing allotments within wilderness areas by grazing permit (FSM 2230). Issue permits for livestock operations only in areas where grazing was established as defined below:

1. Grazing may be continued on any allotment where a grazing permit was in existence at the time of designation and where there is recent history of grazing use immediately prior to wilderness designation. This includes permits that were in non-use status for either personal convenience or range protection. It also includes situations where there were no actual permits in existence on the designation date because permit waivers were in process or because the expiration date of term permits happened to have coincided with the designation date.

At any time after designation, new term permits and livestock use permits may be issued, in the event of waiver, because of sale of base property or permitted livestock.

At any time after designation, new term or temporary permits and livestock-use permits may be issued to other applicants if an existing permit is terminated voluntarily by the holder, or canceled for cause by the Forest Service, or if surplus forage otherwise becomes available.

2. Grazing may be authorized on an allotment which, although vacant on date of wilderness designation, previously included grazing that was only temporarily discontinued and that was clearly documented for such purposes as range restoration.

2323.25 - Range Analysis

Follow the standards in FSM 2210 for range analysis in wilderness. Where an approved allotment management plan exists at the time an area is designated as wilderness, review it in context with the congressional guidelines and policy. Document necessary modifications in the Forest or allotment management plan.

2323.26 - Range Improvements

See FSM 2240 for a definition of range improvements. Follow the grazing guidelines and direction in FSH 2309.19 for the construction and maintenance of range improvements. Criteria for the use of motorized equipment in constructing, maintaining, or applying improvements and practices is in FSH 2309.19.

Conduct an environmental analysis for range improvement construction and/or maintenance and the use of motor vehicles, motorized equipment, and mechanical transport (FSM 1950 and

FSH 1909.15). List all range improvements in the allotment management plan along with the maintenance schedule.

2323.26a - Structural Range Improvements

Modify permits for the construction of new range improvements or for the replacement of existing range improvements in accordance with FSM 2241.31. Consider the wilderness resource when preparing range improvement construction standards and techniques.

1. Maintenance. Allow permittees to continue to maintain existing necessary range improvements. On a schedule agreed to by the permittee, phase out and remove those improvements determined to be unnecessary. Review existing use and requests for new use of motor vehicles, motorized equipment, or other forms of mechanical transport, including emergency use, and apply Congressional Grazing Guidelines (sec. 2323.22, ex. 01). Permit the occasional use of motor vehicles, motorized equipment, or mechanical transport where practical alternatives are not available (FSM 2326).

2. New Improvements. Construction of new range improvements may be approved if they are necessary for resource protection (range and/or wilderness) and for the effective management of these resources. Do not approve construction solely to accommodate increased grazing.

3. Types of Materials. When permitted, ensure that new improvements are constructed of materials that harmonize with the wilderness character of the area. Use natural (native) materials for improvements unless costs are prohibitive or they do not harmonize with the wilderness.

4. Replacement of Existing Improvements. Use the following procedures when considering replacement of an existing range improvement:

- a. Examine whether the range improvement is necessary for livestock grazing operations, resource protection, or protection of wilderness values. Explore other alternatives for meeting these needs.
- b. Ensure that the design, location, and type of materials needed harmonize with natural features of the wilderness.
- c. Consult with permittees in determining what is reasonable for the permittee's livestock grazing operation. Balance the particular wilderness values involved and the cost of material and labor.

2323.26b - Nonstructural Range Improvements

Nonstructural range improvement practices may be approved in cases where they were part of the management of the area at the time the wilderness was established and where their continued use is necessary to maintain livestock grazing operations (FSM 2240).

Use the following specific criteria in addition to the procedures in section 2323.26 and section 2323.26a in approving nonstructural range improvements.

1. Seeding. Seed only species that are indigenous or naturalized to the area. Use broadcast seeding methods.

Approve seeding only for:

- a. Areas where human activities have caused the loss or threaten the existence of indigenous plant species.
 - b. Areas where human activities, including their livestock, have denuded or caused loss of soil, providing that the actions or activities responsible for the deterioration no longer exist and that natural revegetation is insufficient and/or ineffective.
 - c. Maintenance of livestock grazing operations where seeding was practiced before the area was designated as wilderness.
2. Plant Control. Approve plant control only for:
- a. Indigenous plants when needed to maintain livestock grazing operations that were in effect before the area was designated as wilderness.
 - b. Noxious farm weeds by grubbing or with chemicals when they threaten lands outside wilderness or when they are spreading within the wilderness, provided that it is possible to effect control without causing serious adverse impacts on wilderness values.
3. Irrigation. Use irrigation or water spreading only to maintain livestock grazing operations and only where practiced before the designation of wilderness.
4. Fertilizing. Use fertilization only as an aid to revegetation of the areas provided in item 1 or to maintain livestock grazing operations where practiced before the designation of wilderness. Liming is considered a fertilization practice in this context.
5. Prescribed Fire. Use management ignited prescribed fire only where:
- a. It is necessary to maintain livestock grazing operations; and
 - b. It was practiced before the designation of wilderness; and
 - c. Lightning caused prescribed fire does not meet the livestock management purpose (FSM 2324.2).

§ 8224.2

(i) Operations on oil and gas leases issued before October 30, 1984, are subject to the applicable provisions of Group 3100 of this title, including those set forth in §3162.5-1, and such other terms, stipulations, and conditions as the authorized officer deems necessary to avoid significant disturbance of the land surface or impairment of the area's existing natural, educational, and scientific research values, including paleontological study, excavation, and interpretation.

(j) The regulations in 43 CFR part 7 apply to the management and protection of archaeological resources in Fossil Forest.

(k) The paleontological resources of the Fossil Forest shall not be willfully destroyed, defaced, damaged, vandalized, or otherwise altered.

[50 FR 42123, Oct. 17, 1985; 67 FR 68778, Nov. 13, 2002]

§ 8224.2 Penalties.

(a) Any person who willfully violates any prohibition under either §8224.1(b), (c) or (k) of this title shall be subject to a fine not to exceed \$1,000 or imprisonment of not to exceed 12 months, or both.

(b) Any person who willfully and without authorization collects or removes paleontological resources whose value is greater than \$100, for which a permit is required under §8224.1(a) or (b) of this title, shall be subject to a fine not to exceed \$10,000, or imprisonment not to exceed 10 years, or both (18 U.S.C. 641).

PART 8340—OFF-ROAD VEHICLES

Subpart 8340—General

Sec.

- 8340.0-1 Purpose.
- 8340.0-2 Objectives.
- 8340.0-3 Authority.
- 8340.0-5 Definitions.
- 8340.0-7 Penalties.
- 8340.0-8 Applicability.

Subpart 8341—Conditions of Use

- 8341.1 Regulations governing use.
- 8341.2 Special rules.

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Subpart 8342—Designation of Areas and Trails

- 8342.1 Designation criteria.
- 8342.2 Designation procedures.
- 8342.3 Designation changes.

Subpart 8343—Vehicle Operations

- 8343.1 Standards.

Subpart 8344—Permits

- 8344.1 Permit requirements.

AUTHORITY: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601-6a, 16 U.S.C. 1241 *et seq.*, and 43 U.S.C. 1701 *et seq.*

SOURCE: 44 FR 34836, June 15, 1979, unless otherwise noted.

Subpart 8340—General

§ 8340.0-1 Purpose.

The purpose of this part is to establish criteria for designating public lands as open, limited or closed to the use of off-road vehicles and for establishing controls governing the use and operation of off-road vehicles in such areas.

§ 8340.0-2 Objectives.

The objectives of these regulations are to protect the resources of the public lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

§ 8340.0-3 Authority.

The provisions of this part are issued under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*); the Taylor Grazing Act (43 U.S.C. 315a); the Endangered Species Act (16 U.S.C. 1531 *et seq.*); the Wild and Scenic Rivers Act (16 U.S.C. 1281c); the Act of September 15, 1960, as amended (16 U.S.C. 670 *et seq.*); the Land and Water Conservation Fund Act (16 U.S.C. 460 1-6a); the National Trails System Act (16 U.S.C. 1241 *et seq.*) and E.O. 11644 (Use of Off-Road Vehicles on the Public Lands), 37 FR 2877, 3 CFR part 74, 332, as amended by E.O. 11989 42 FR 26959 (May 25, 1977).

§ 8340.0-5 Definitions.

As used in this part:

(a) *Off-road vehicle* means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding:

(1) Any nonamphibious registered motorboat;

(2) Any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes;

(3) Any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved;

(4) Vehicles in official use;

(5) E-bikes, as defined in paragraph (j) of this section:

(i) While being used on roads and trails upon which mechanized, non-motorized use is allowed;

(ii) That are being used in a manner where the motor is not exclusively propelling the e-bike for an extended period of time; and

(iii) Where the authorized officer has expressly determined, as part of a land-use planning or implementation-level decision, that e-bikes should be treated the same as non-motorized bicycles; and

(6) Any combat or combat support vehicle when used in times of national defense emergencies.

(b) *Public lands* means any lands the surface of which is administered by the Bureau of Land Management.

(c) *Bureau* means the Bureau of Land Management.

(d) *Official use* means use by an employee, agent, or designated representative of the Federal Government or one of its contractors, in the course of his employment, agency, or representation.

(e) *Planning system* means the approach provided in Bureau regulations, directives and manuals to formulate multiple use plans for the public lands. This approach provides for public participation within the system.

(f) *Open area* means an area where all types of vehicle use is permitted at all times, anywhere in the area subject to the operating regulations and vehicle standards set forth in subparts 8341 and 8342 of this title.

(g) *Limited area* means an area restricted at certain times, in certain areas, and/or to certain vehicular use. These restrictions may be of any type,

but can generally be accommodated within the following type of categories: Numbers of vehicles; types of vehicles; time or season of vehicle use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; and other restrictions.

(h) *Closed area* means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

(i) *Spark arrester* is any device which traps or destroys 80 percent or more of the exhaust particles to which it is subjected.

(j) *Electric bicycle* (also known as an e-bike) means a two- or three-wheeled cycle with fully operable pedals and an electric motor of not more than 750 watts (1 h.p.) that meets the requirements of one of the following three classes:

(1) Class 1 electric bicycle shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour.

(2) Class 2 electric bicycle shall mean an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of 20 miles per hour.

(3) Class 3 electric bicycle shall mean an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 28 miles per hour.

[85 FR 69223, Nov. 2, 2020]

§ 8340.0-7 Penalties.

Any person who violates or fails to comply with the regulations of subparts 8341 and 8343 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than \$1,000 or imprisonment for not longer than 12 months, or both.

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Displaying title 36, up to date as of 4/05/2023. Title 36 was last amended 2/21/2023.

Title 36 - Parks, Forests, and Public Property
Chapter II - Forest Service, Department of Agriculture
Part 220 - National Environmental Policy Act (NEPA) Compliance

§ 220.6 Categorical exclusions.

- (a) **General.** A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:
- (1) The proposed action is within one of the categories established by the Secretary at 7 CFR part 1b.3; or
 - (2) The proposed action is within a category listed in § 220.6(d) and (e).
- (b) **Resource conditions.**
- (1) Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:
 - (i) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;
 - (ii) Flood plains, wetlands, or municipal watersheds;
 - (iii) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;
 - (iv) Inventoried roadless area or potential wilderness area;
 - (v) Research natural areas;
 - (vi) American Indians and Alaska Native religious or cultural sites; and
 - (vii) Archaeological sites, or historic properties or areas.
 - (2) The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions, and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.
- (c) **Scoping.** If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.
- (d) **Categories of actions for which a project or case file and decision memo are not required.** A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:
- (1) Orders issued pursuant to 36 CFR part 261 - Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include but are not limited to:
 - (i) Closing a road to protect bighorn sheep during lambing season, and
 - (ii) Closing an area during a period of extreme fire danger.
 - (2) Rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. Examples include but are not limited to:
 - (i) Adjusting special use or recreation fees using an existing formula;
 - (ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses;
 - (iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default;
 - (iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations;
 - (v) Establishing a servicewide process for responding to offers to exchange land and for agreeing on land values; and
 - (vi) Establishing procedures for amending or revising forest land and resource management plans.

(3) Repair and maintenance of administrative sites. Examples include but are not limited to:

36 CFR 220.6(d)(3)(i)) Mowing lawns at a district office;

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(i) Replacing a roof or storage shed;

(iii) Painting a building; and

(iv) Applying registered pesticides for rodent or vegetation control.

(4) Repair and maintenance of roads, trails, and landline boundaries. Examples include but are not limited to:

(i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;

(ii) Grading a road and clearing the roadside of brush without the use of herbicides;

(iii) Resurfacing a road to its original condition;

(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and

(v) Surveying, painting, and posting landline boundaries.

(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground;

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;

(iii) Repaving a parking lot; and

(iv) Applying registered pesticides for rodent or vegetation control.

(6) Acquisition of land or interest in land. Examples include but are not limited to:

(i) Accepting the donation of lands or interests in land to the NFS, and

(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

(7) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to:

(i) Selling or exchanging land pursuant to the Small Tracts Act;

(ii) Exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices;

(iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity; and

(iv) Exchange of administrative sites involving other than NFS lands.

(8) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of NFS land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

(9) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) for an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples include, but are not limited to:

(i) Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area;

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities; and

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

This content is from the eCFR and is authoritative but unofficial.



Displaying title 36, up to date as of 4/05/2023. Title 36 was last amended 2/21/2023.

Title 36 - Parks, Forests, and Public Property
Chapter II - Forest Service, Department of Agriculture
Part 220 - National Environmental Policy Act (NEPA) Compliance

§ 220.4 General requirements.

(a) **Proposed actions subject to the NEPA requirements.** As required by 42 U.S.C. 4321 *et seq.*, a Forest Service proposal is subject to the NEPA requirements when all of the following apply:

- (1) The Forest Service has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated (see 40 CFR 1508.23);
- (2) The proposed action is subject to Forest Service control and responsibility (see 40 CFR 1508.18);
- (3) The proposed action would cause effects on the natural and physical environment and the relationship of people with that environment (see 40 CFR 1508.14); and
- (4) The proposed action is not statutorily exempt from the requirements of section 102(2)(C) of the NEPA (42 U.S.C. 4332(2)(C)).

(b) **Emergency responses.** When the responsible official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and any required documentation in accordance with the provisions in §§ 220.5, 220.6, and 220.7 of this part, then the following provisions apply.

36 CFR 220.4(b)(1))
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The responsible official may take actions necessary to control the immediate impacts of the emergency and are urgently needed to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

- (2) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section, and such actions are not likely to have significant environmental impacts, the responsible official shall document that determination in an EA and FONSI prepared in accord with these regulations. If the responsible official finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or an EA and FONSI, the responsible official shall consult with the Washington Office about alternative arrangements for NEPA compliance. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for environmental assessments, findings of no significant impact and categorical exclusions (FSM 1950.41a). Consultation with the Washington Office shall be coordinated through the appropriate regional office.
- (3) If the responsible official proposes emergency actions other than those actions described in paragraph (b)(1) of this section and such actions are likely to have significant environmental impacts, then the responsible official shall consult with CEQ, through the appropriate regional office and the Washington Office, about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

(c) **Agency decisionmaking.** For each Forest Service proposal (§ 220.4(a)), the responsible official shall coordinate and integrate NEPA review and relevant environmental documents with agency decisionmaking by:

- (1) Completing the environmental document review before making a decision on the proposal;
- (2) Considering environmental documents, public and agency comments (if any) on those documents, and agency responses to those comments;
- (3) Including environmental documents, comments, and responses in the administrative record;
- (4) Considering the alternatives analyzed in environmental document(s) before rendering a decision on the proposal; and
- (5) Making a decision encompassed within the range of alternatives analyzed in the environmental documents.

(d) **Schedule of proposed actions (SOPA).** The responsible official shall ensure the SOPA is updated and notify the public of the availability of the SOPA.

(e) **Scoping (40 CFR 1501.7).**

- (1) Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded from further analysis and documentation in an EA or an EIS (§ 220.6).

- (2) Scoping shall be carried out in accordance with the requirements of 40 CFR 1501.7. Because the nature and complexity of a proposed action determine the scope and intensity of analysis, no single scoping technique is required or prescribed.
- (3) The SOPA shall not be used as the sole scoping mechanism for a proposed action.
- (f) **Cumulative effects considerations of past actions.** Cumulative effects analysis shall be carried out in accordance with 40 CFR 1508.7 and in accordance with "The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis" dated June 24, 2005. The analysis of cumulative effects begins with consideration of the direct and indirect effects on the environment that are expected or likely to result from the alternative proposals for agency action. Agencies then look for present effects of past actions that are, in the judgment of the agency, relevant and useful because they have a significant cause-and-effect relationship with the direct and indirect effects of the proposal for agency action and its alternatives. CEQ regulations do not require the consideration of the individual effects of all past actions to determine the present effects of past actions. Once the agency has identified those present effects of past actions that warrant consideration, the agency assesses the extent that the effects of the proposal for agency action or its alternatives will add to, modify, or mitigate those effects. The final analysis documents an agency assessment of the cumulative effects of the actions considered (including past, present, and reasonable foreseeable future actions) on the affected environment. With respect to past actions, during the scoping process and subsequent preparation of the analysis, the agency must determine what information regarding past actions is useful and relevant to the required analysis of cumulative effects. Cataloging past actions and specific information about the direct and indirect effects of their design and implementation could in some contexts be useful to predict the cumulative effects of the proposal. The CEQ regulations, however, do not require agencies to catalogue or exhaustively list and analyze all individual past actions. Simply because information about past actions may be available or obtained with reasonable effort does not mean that it is relevant and necessary to inform decisionmaking. (40 CFR 1508.7)
- (g) **Classified information.** To the extent practicable, the responsible official shall segregate any information that has been classified pursuant to Executive order or statute. The responsible official shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the responsible official must withhold the entire analysis document from the public; however, the responsible official shall otherwise prepare the analysis documentation in accord with applicable regulations. (40 CFR 1507.3(c))
- (h) **Incorporation by reference.** Material may be incorporated by reference into any environmental or decision document. This material must be reasonably available to the public and its contents briefly described in the environmental or decision document. (40 CFR 1502.21)
- (i) **Applicants.** The responsible official shall make policies or staff available to advise potential applicants of studies or other information foreseeably required for acceptance of their applications. Upon acceptance of an application as provided by 36 CFR 251.54(g) the responsible official shall initiate the NEPA process.
- (j) **Determination of NEPA Adequacy (DNA).**
- (1) An existing environmental analysis prepared pursuant to NEPA and the Council on Environmental Quality regulations may be used in its entirety for a new proposed action if the Responsible Official determines that the existing NEPA analysis adequately assesses the environmental effects of the proposed action and reasonable alternatives. The responsible official must determine and document that each of the following elements is met:
- (i) The new proposed action is substantially the same as a previously analyzed proposed action or alternative analyzed in detail in the existing NEPA analysis.
- (ii) The range of alternatives analyzed in the existing NEPA document(s) is appropriate with respect to the new proposed action.
- (iii) Any new information or circumstances relevant to environmental concerns would not substantially change the analysis in an existing NEPA document(s).
- (iv) The environmental effects that would result from implementation of the new proposed action are similar to those analyzed in the existing NEPA document(s).
- (2) A DNA for a new proposed action shall be included in the project record for the new proposed action. Proposed actions undergoing a DNA review shall:
- (i) Be included on the SOPA;
- (ii) Be subject to scoping;
- (iii) Be subject to pre-decisional administrative review, if applicable; and
- (iv) Include issuance of a new decision document (decision memo, decision notice, or record of decision) when approved.

[73 FR 43093, July 24, 2008, as amended at 85 FR 73630, Nov. 19, 2020]

This content is from the eCFR and is authoritative but unofficial.

Title 43 – Public Lands: Interior

Subtitle B – Regulations Relating to Public Lands

Chapter II – Bureau of Land Management, Department of the Interior

Subchapter H – Recreation Programs Group 8100—Cultural Resource Management [Reserved]

Group 8200—Natural History Resource Management

Part 8360 – Visitor Services

Subpart 8364 – Closures and Restrictions

Authority: 16 U.S.C. 470aaa, *et seq.*; 670, *et seq.*; 877, *et seq.*; 1241, *et seq.*; and 1281c; and 43 U.S.C. 315a and 1701 *et seq.*

Source: 48 FR 36384, Aug. 10, 1983, unless otherwise noted.

§ 8364.1 Closure and restriction orders.

- (a) To protect persons, property, and public lands and resources, the authorized officer may issue an order to close or restrict use of designated public lands.
- (b) Each order shall:
 - (1) Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use;
 - (2) Specify the uses that are restricted;
 - (3) Specify the period of time during which the closure or restriction shall apply;
 - (4) Identify those persons who are exempt from the closure or restrictions;
 - (5) Be posted in the local Bureau of Land Management Office having jurisdiction over the lands to which the order applies;
 - (6) Be posted at places near and/or within the area to which the closure or restriction applies, in such manner and location as is reasonable to bring prohibitions to the attention of users;
 - (7) Include a statement on the reasons for the closure; and
- (c) In issuing orders pursuant to this section, the authorized officer shall publish them in the FEDERAL REGISTER.
- (d) Any person who fails to comply with a closure or restriction order issued under this subpart may be subject to the penalties provided in § 8360.0–7 of this title.



U.S. DEPARTMENT OF THE INTERIOR
**BUREAU OF LAND
 MANAGEMENT**

REQUIREMENTS FOR PROCESSING AND APPROVING TEMPORARY PUBLIC LAND CLOSURE AND RESTRICTION ORDERS

IM 2016-128

Instruction Memorandum

UNITED STATES DEPARTMENT OF THE INTERIOR
 BUREAU OF LAND MANAGEMENT
 WASHINGTON, D.C. 20240
<http://www.blm.gov>

July 26, 2016

In Reply Refer To:

8340, 8341, 8342 (250) P

EMS TRANSMISSION 08/02/2016

Instruction Memorandum No. 2016-128

Expires: 09/30/2019

To: All Washington Office and Field Office Officials
 Attention: State, District, and Field Office Program Leads including Recreation, National Landscape Conservation System, and Planning

From: Acting Assistant Director, Resources and Planning

Subject: Requirements for Processing and Approving Temporary Public Land Closure and Restriction Orders

Program Areas: Recreation, National Landscape Conservation System, and Planning,

Purpose: This Instruction Memorandum (IM) establishes policy and procedures related to processing, reviewing, and implementing temporary closures and restrictions on Bureau of Land Management (BLM)-managed public lands. This is necessary to ensure that proper authorities are used and *Federal Register* notices are approved and published in a timely manner.

Policy/Action: All state and field offices must process closure and restriction orders in accordance with the policies and procedures contained in this guidance. States may develop supplemental procedures to implement this guidance as necessary.

1. Closures and Restriction Orders Using 43 CFR subpart 8364 (Closures and Restrictions)

Closure and restriction orders are enacted at the discretion of the authorized officer to protect persons, property, and public lands and resources. A closure or restriction order should be considered only after other management strategies and alternatives have been explored including, but not limited to, increased law enforcement, cooperative efforts with local governments and organizations, engineering (e.g., fencing, barriers, or trail improvements), education, and outreach. Closure and restriction orders enacted under this authority should generally be limited to 24 months or less; however, occasionally situations may require longer and/or iterative temporary closures or restrictions. Long-term (more than 24 months) closures and restrictions should be resolved through appropriate planning and National Environmental Policy Act (NEPA) compliance with Supplementary Rules issued to allow for enforcement of the decision..

2. Supplementary Rules

Supplementary rules (see 43 CFR 8365.1-6) should be promulgated to implement long-term closures or use restrictions in conformance with the decisions in the applicable Land Use Plan. Use restrictions set forth in supplementary rules which are necessary to achieve the goals and objectives of a Recreation Management Area as set forth in the applicable land use plan, may be considered implementation level decisions and, if appropriate, may be analyzed through an implementation or activity level plan and associated NEPA analysis. See Land Use Planning Handbook, H-1601-1, Appx. C. at 16-17; Planning for Recreation and Visitor Services Handbook 8320-1, I-10.

3. Off-Highway Vehicle Closures Mandated by 43 CFR subpart 8341 (Conditions of Use)

Under 43 CFR 8341.2(a), the BLM is required to immediately close affected areas when off-highway vehicles (OHV) “are causing or will cause considerable adverse effect upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources...” Though compliance with NEPA is required in advance of a closure action under 43 CFR 8341.2(a), use of the Categorical Exclusion that provides for temporary road or trail closures (516 DM 11.9 (G)(3)) can often be employed to satisfy this requirement. See the discussion in Section 6 on NEPA compliance.

Managers are encouraged to take action to correct developing OHV problems well in advance of confronting the “considerable adverse effects” trigger making the closure requirement mandatory under 43 CFR 8341.2. In many circumstances, managers are aware of OHV problems well in advance of confronting a “considerable adverse effect,” and can take timely actions to reduce the impacts of OHV use or conduct a NEPA analysis with public participation before it becomes necessary to close or restrict public lands under this authority. For additional guidance on OHV closures refer to M-1626 Travel and Transportation and Manual.

4. National Trails System, Wild and Scenic Rivers System, and Wilderness

See 43 CFR subpart 8351 (Designated National Area) for closures and restrictions related to National Scenic Trails and lands and water surface within the boundary of any component of the National Wild and Scenic River System. See 43 CFR subpart 6302 (Use of Wilderness Areas, Prohibited Acts, and Penalties) for closures and restrictions within the boundaries of a BLM wilderness area.

5. Duration and Scope of Closures and Restrictions

Closures and restrictions should be implemented for the shortest time and in the smallest area necessary to protect resources, public health, and safety. Temporary closures and restrictions should generally be limited to 24 months or less in duration. This policy is necessary to ensure that closures and restrictions are done with appropriate planning and public involvement and with a defined time frame for resolution. If there are extenuating circumstances that do not allow the temporary closure to end within 24 months, a new closure or restriction order must be issued in accordance with this IM.

In circumstances where a manager knows in advance that a temporary closure or restriction must remain in effect for longer than 24 months in order to effectively resolve an issue (e.g., mandatory soil stability/re-vegetation requirements), the manager may provide a rationale and justification for an extended duration for the closure or restriction in the closure order, the *Federal Register* Notice, and the associated briefing package submitted to the Washington Office (WO) for review and approval.

In special cases (e.g., pending litigation) it may be necessary to indefinitely extend temporary closures or restrictions established before the issuance of this policy. In such circumstances, field offices should consult with the WO for further direction.

6. NEPA Compliance

Compliance with NEPA is generally required prior to the BLM closing or restricting the use of the public lands. (See below for discussion of emergency situations/alternative arrangements.)

Compliance with NEPA in the context of temporary closures may include:

- Categorical Exclusions (e.g., 516 DM 11.9 (G)(3), for temporary road or trail closure).
- Environmental Assessments.
- Environmental Impact Statements (i.e., specific closure or restriction decisions adopted in a completed Resource Management Plan).

A Determination of NEPA Adequacy can also be used to document that the action has been adequately covered in an existing NEPA document (such as an RMP).

Emergency Actions

Emergencies or unforeseen events may require immediate action to avoid unacceptable health, safety, natural resources or property consequences. The following actions are typically considered emergency actions, provided they are immediately taken to protect public health and safety or important resources (H-1790-1, Section 2.3):

- Cleanup of an oil spill or hazardous substance release.
- Fire suppression activities related to ongoing wildland fires.
- Emergency stabilization actions following wildland fires or other disasters

In the event of an emergency, an immediate closure or restriction of uses of the public lands may be necessary to prevent or reduce risk to public health or safety, property, or important resources.

Typical closures and restrictions imposed in response to known or planned events occurring on public lands, or long-occurring activities such as target shooting, OHV use, camping, or parking, for example, are not emergencies. Please note that *Federal Register* Notice drafted to promulgate a temporary closure or restriction should not be referred to as an “emergency closure.” Closures or restrictions using the 43 CFR 8364.1 authority may be addressing an emergency situation, but the agency action remains a “closure.” The same 30 day appeal period applies regardless of the situation the closure seeks to resolve.

The Council on Environmental Quality regulations (40 CFR 1506.11) provide that in an emergency, “alternative arrangements” may be established to comply with NEPA. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance. Alternative arrangements are limited to the actions necessary to control the immediate effects of the emergency. For actions that cannot be categorically excluded from NEPA compliance, the decision maker must contact the Branch Chief, Planning and NEPA (WO-210) to determine how NEPA requirements will be met.

7. Authorities

Attachment 1 includes a list of appropriate authorities available to temporarily close and restrict specified uses on public lands, the requirements for NEPA compliance, and the requirements for publication and posting of the temporary closure order.

8. State and Washington Office Review for Publication of *Federal Register* Notices

All notices of temporary closure and restriction under 43 CFR subpart 8364, 43 CFR subpart 6302, or section 8341.2 must be approved by the state director before submission to the WO. Once a manager decides to temporarily close areas or restrict uses, all supporting information must be immediately prepared and sent to the state office. The state office should send the package to the WO in a timely manner. The WO will file the notice for publication in the *Federal Register*. As noted below, timely filing of the *Federal Register* Notice can affect the enforceability of the closure. For closures or restrictions that can be reasonably foreseen, (e.g., a closure for an annual event such as the Reno Air Races), field offices are encouraged to obtain necessary approvals through state offices and forward required materials to the WO at least 3 months before the order is intended to take effect. Where possible, renewal of temporary closures or restrictions should also be initiated at least 3 months before the original order is scheduled to expire.

Closure and restriction orders submitted for review and approval must be accompanied by a briefing paper, maps, and aerial or other photographs showing geographic areas and affected resources, along with other supporting documentation that would help reviewers understand the need for the action.

9. Procedures and Effective Date of *Federal Register* Notices

A closure or restriction order is appealable to the Interior Board of Land Appeals (IBLA) and is not a "full force and effect" decision as it will not be effective until 30 days after the date of publication in the *Federal Register*. See 43 CFR 4.21(a)(1); 43 CFR 4.411(a) (setting forth the Rules of Procedure for Appeals to the IBLA). As such, BLM must publish notice of a closure or restriction order at least 30 days in advance of the date that it intends for the order to be effective. It is suggested that the BLM field office contact the Office of the Solicitor for further guidance on this issue.

See Attachments 1 and 2 for more information on the topic of effective dates and publication requirements, and for *Federal Register* Notice procedures for closure and restriction orders.

10. Memorandum of Understanding Obligations and Coordination with the Federal Land Hunting, Fishing, and Shooting Sports Roundtable

Temporary closure and restriction orders that may affect hunting access, shooting sport activities, or the discharge of firearms must comply with the Federal Land Hunting, Fishing and Shooting Sports Roundtable Memorandum of Understanding (MOU). This MOU requires notification of the action to shooting organizations and alerts them of opportunities for public involvement.

Timeframe: This policy is effective immediately.

Budget Impact: None.

Background: As resource uses and demands for public access have increased, so has the need for the BLM to temporarily close or restrict areas to certain uses in order to protect resources, public health, and safety. However, it is important that closure and restriction orders are established only after other management strategies and alternatives have been explored, and it is determined that a closure or restriction order is necessary. Closures and restrictions must be established in accordance with applicable authorities, and the Department of the Interior and BLM policies and procedures.

Manuals/Handbook Sections Affected: None.

Coordination: Development of this policy was coordinated with the Resources and Planning Directorate, National Landscape Conservation System and Community Partnerships Directorate, the Division of Decision Support, Planning and NEPA, the Office of the Solicitor, and the Division of Regulatory Affairs.

Contact: Any questions or concerns may be directed to Dorothy Morgan, Recreation and Visitor Services Division (WO-250) at 202-912-7412, or by e-mail at dmorgan@blm.gov.

Signed by:

Nancy Haug

Acting, Assistant Director

Resources and Planning

Authenticated by:

Robert M. Williams

Division of IT Policy and Planning, WO-870

2 Attachments

1 - [Authorities and Purposes for Closure and Restriction Orders, Recreation and the National Landscape Conservation System \(1 p\)](#).

2 - [Closure and Restriction Order Notice Procedures and Template \(7 pp\)](#).

FISCAL YEAR 2016

This content is from the eCFR and is authoritative but unofficial.

Title 36 – Parks, Forests, and Public Property
Chapter II – Forest Service, Department of Agriculture
Part 261 – Prohibitions
Subpart B – Prohibitions in Areas Designated by Order

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 460l–6d, 472, 551, 620(f), 1133(c)–(d)(1), 1246(i).

Source: 42 FR 2957, Jan. 14, 1977, unless otherwise noted.

§ 261.53 Special closures.

When provided in an order, it is prohibited to go into or be upon any area which is closed for the protection of:

- (a) Threatened, endangered, rare, unique, or vanishing species of plants, animals, birds or fish.
- (b) Special biological communities.
- (c) Objects or areas of historical, archeological, geological, or paleontological interest.
- (d) Scientific experiments or investigations.
- (e) Public health or safety.
- (f) Property.
- (g) The privacy of tribal activities for traditional and cultural purposes. Closure to protect the privacy of tribal activities for traditional and cultural purposes must be requested by an Indian tribe; is subject to approval by the Forest Service; shall be temporary; and shall affect the smallest practicable area for the minimum period necessary for activities of the requesting Indian tribe.

[42 FR 2957, Jan. 14, 1977, as amended at 76 FR 3017, Jan. 19, 2011]

Forest Service Special Orders and Emergency Closure Orders

Land managers prefer helping visitors understand best practices to protect natural resources instead of restricting visitors with regulations and enforcement of regulations. However, sometimes either short-term or long-term regulations need to be applied to address changed conditions and protect resources or visitor experiences.

As the coronavirus pandemic canceled or changed most Americans' travel plans, people flocked to public lands in record numbers—many for the first time. Although the outdoor spaces we manage are a vital haven to visitors trying to cope with the pandemic, land managers are finding that there's a steep learning curve when it comes to these visitors' responsible use. Many wilderness areas experienced higher use in 2020 and, in some cases, with increased use comes increased problems: driving or parking in fragile locations, trampling vegetation, not packing out trash, camping in inappropriate locations, such as close to water or alongside trails, and not completely putting out campfires. Some of these problems present significant safety risks.

With increased visitation even at traditionally less frequented areas, public land managers have recognized the need to promote responsible recreation as well as place some restriction on use. To address these changes in use and impacts to the resource, land managers need to be aware of all the tools at their disposal. This document is intended to help managers understand how they can use regulations and special orders.

REGULATIONS

The rules described in 36 Code of Federal Regulations 261 (CFR) apply to all National Forests. These regulations have been made by the Secretary of Agriculture to insure the enjoyment of all users of the National Forest System. These CFRs provide commonsense rules meant to control actions that cause damage to natural resources and facilities, as well as actions that cause unreasonable disturbances or safety risks for National Forest visitors.

SPECIAL ORDERS

Regional Foresters and Forest Supervisors may issue additional special orders closing or restricting the use of certain areas, if the need arises to address particular management problems. The special orders signed by Regional Foresters and Forest Supervisors may vary in duration. Special orders are posted on forest websites and at Forest Service Ranger District offices and Forest Supervisor's offices in the office nearest to the area affected.

Some reasons for implementation of special orders include to protect public safety, prevent resource damage, preserve a particular area's setting (such as non-motorized access), and protect wildlife populations, among others. Special orders may prohibit a specific activity or impose permit requirements.

In the event of emergency conditions that may threaten public or employee safety, natural resources, or Government property, an order may be approved by the responsible line officer

without going through the sometimes-lengthy review process that a longer-term special order requires.

Forest Service Handbook 5309.11 – Law Enforcement Handbook, Chapter 30 outlines how to establish local special orders to address long-term concerns as well as immediate needs. The sections provided below are directly from Chapter 30 and apply to issuing long-term and short-term special orders. Some key information is highlighted. The Chapter 30 material is followed by examples of special orders from the Daniel Boone and Hoosier National Forests.

32 - ISSUING ORDERS UNDER TITLE 36, CODE OF FEDERAL REGULATIONS, PART 261, SUBPART B

32.1 - Scope of Orders

Orders issued under the authority provided in Title 36, CFR, sections 261.50(a) and (b) are for the purpose of closing or restricting an area or National Forest System road or trail in which the Chief, each regional forester, each station director, the Administrator of the Lake Tahoe Basin Management Unit, and each forest supervisor has jurisdiction. These sections require the signature of the named line officer; therefore, neither deputies nor actings should sign orders.

Where the line officer position is vacant or exigencies exist, coordinate designation or delegation needs with the Office of the General Counsel (OGC).

Prohibitions contained within 36 CFR Part 261, Subpart B orders may not prohibit more than what is specified in the cited regulation. They may however be less restrictive, by either dropping a restriction or making an exception. Exercise care when changing wording to assure that the prohibition is not being made more restrictive and to avoid changing the concept or purpose of the basic prohibition. Assistance in modifying such prohibitions may be requested from the OGC.

32.11 - Exemptions

An order may exempt any of the following persons from any of the prohibitions contained in the order:

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.
2. Owners or lessees of land in the area.
3. Residents in the area.
4. Any Federal, State, or local officer, or member of an organized rescue or firefighting force in the performance of an official duty.
5. Persons engaged in a business, trade, or occupation in the area.
6. Any other person meeting exemption requirements specified in the order.

32.2 - Legality of Orders

Each order must be drafted properly so that it can withstand legal challenge. Violation of a regional or forest order constitutes a criminal offense and has the potential result of placing a citizen in jail; specific justification and documentation must support each order. To ensure that future orders can withstand court challenges, an order review process should be implemented by the originating unit that will involve forest resource staff, law enforcement personnel, and the Office of the General Counsel.

32.2 - Exhibit 01

Example of a Properly Formatted Order

CHUGACH NATIONAL FOREST
Glacier Ranger District
Girdwood, Alaska

Order No. 10-07-10-00-01

FOREST ORDER

Use of Motorized Vehicle off National Forest System Roads

Pursuant to 36 CFR 261.50(a), the following acts are prohibited on the Chugach National Forest:

Possession or use of a motorized vehicle off road in the Bear Valley area as shown on the attached map. (36 CFR 261.56)

Pursuant to 36 CFR 261.50(e), the following persons are exempt from this Order:

1. Persons with a permit specifically authorizing the otherwise prohibited act or omission.
2. Any Federal, State or Local Law Enforcement Officer or member of an organized rescue or fire fighting force in the performance of an official duty.

These prohibitions are in addition to the general prohibitions in 36 CFR Part 261, Subpart A.

Executed in Anchorage, Alaska, this 13th day of February 2007.

Jane Doe
Forest Supervisor
Chugach National Forest

Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. (16 U.S.C. 551 and 18 U.S.C. 3559 and 3571).

32.2 - Exhibit 02

Content of Assessment of Need and Enforcement Plan

1. **Background** - Description of problem, why the Order is proposed, and what should be accomplished by implementation of the Order.
2. **Intent of Subpart B Order** - The rationale behind the order and what should be accomplished. Defines the affected area, road, and trail, the regulated use or user group, exempted persons, and the duration of the order. Any necessary attachments or exhibits shall be prepared by the appropriate staff and included in this plan.
3. **Enforcement Plan** - Describes action to be taken to inform the affected public and effectively implement the provisions of the order in a manner that results in public acceptance, compliance, and safety (for example, planned patrol dates and locations, staffing needs, enforcement strategies, media contacts, and coordination with local public agencies).

32.2 - Exhibit 03

SAMPLE ORDER CHECKLIST

<u>Action</u>	<u>Responsible Official(s)</u>	<u>Initials/Date</u>
Prepare proposed Order	Appropriate staff(s)	_____
NEPA requirements completed	Appropriate staff	_____
CRIA requirements completed	Appropriate staff	_____
Prepare enforcement plan	LEI with appropriate staff input	_____
Review proposed Order & approve enforcement plan	Patrol Captain or Special Agent in Charge	_____
Review by OGC (as needed)	Regional OGC	_____
Approve Order	Forest Supervisor or Regional Forester (Deputy or Acting Should Not Sign)	_____
Post Order (36 CFR 261.51)	District Ranger/Forest Supervisor	_____
Prepare news releases for Order describing the order and management objectives Describe implementation/action taken for order, such as planned patrols, enforcement strategies, tolerance, contacts to local public agencies.	PAO (with Appropriate Staff/LEI)	_____
Implement plan	LEO/field going personnel	_____
Complete Case File Filing	Order Records Officer	_____
Update Regional Order Database	Special Agent in Charge	_____

32.21 - Order Case Files

An order case file must be maintained for each proposed or issued order. The case file should contain an Assessment of Need and Enforcement Plan (sec. 32.4, ex. 01), appropriate National Environmental Policy Act (NEPA) and Civil Rights Impact Analysis (CRIA) documentation and order checklist. Each National Forest System line officer authorized to issue orders shall designate a unit records custodian for all orders issued by that officer. The records custodian is responsible for compiling and maintaining a complete case file for each order, maintaining an original of all signed orders, providing certified authentic copies of orders and relevant case file documents for court or litigation purposes, maintaining the integrity of the case file and ensuring the records, for both current and terminated orders, are kept in a secure file in compliance with FSH 6209.11, section 41. The order case file must be retained in open agency files until the order is terminated, all civil and criminal cases related to the order are resolved, and all appeal periods have expired. Then normal record retention requirements may be followed.

32.22 - Maps

Clear, concise and legible maps should be attached to the proposed order to depict a designated area, road, or trail whenever appropriate and possible. The maps should be of high quality, and computer generated when possible.

32.23 - Compliance with the National Environmental Policy Act of 1969

Follow procedural guidance in FSH 1909.15 for implementing the National Environmental Policy Act of 1969 (NEPA) relative to regional and forest orders. Orders typically fall within a category of actions that the Secretary of Agriculture and the Chief of the Forest Service have determined may be categorically excluded from documentation in an Environmental Impact Statement (EIS) or Environmental Assessment (EA) (FSH 1909.15, sec. 31). These actions include routine administrative, maintenance, and other actions which normally do not individually or cumulatively have a significant effect on the quality of the human environment (FSH 1909.15, sec. 31.12, category 1). Examples include but are not limited to:

1. Closing a road to protect bighorn sheep during lambing season.
2. Closing an area during a period of extreme fire danger.

If scoping indicates there may be extraordinary circumstances related to and affected by the proposal, further analysis may be necessary. A project file and decision memo are not required, but may be prepared for the categories of actions set forth in section 31.12 at the discretion of the responsible official (forest supervisor or regional forester). Although “short-term” is not defined, orders intended to be in effect permanently or over a long term should receive careful consideration for law enforcement.

While preparation of a NEPA project file and decision memo is discretionary, responsible officials must prepare an order case file that includes documentation in support of issuing an order. Documentation of completion of requirements in sections 32.21 should be included.

32.24 - Civil Rights Impact Analysis

A Civil Rights Impact Analysis (CRIA) must be completed when required per FSM 1730 and FSH 1709.11. Responsible Forest Service officers shall examine proposed policy actions for civil rights implications (FSM 1730.3). A CRIA is required for actions such as decisions affecting program delivery which will not be published in the Federal Register. Normally routine orders are not policy actions with civil rights implications, however, documentation of the civil rights assessment and determination should be kept in the order case file. A CRIA is integral with the procedures for the social impact analysis included in an EIS or EA, when required (FSH 1709.11, section 31.11).

32.25 - Assessment of Need and Enforcement Plan

Ensure an Assessment of Need and Enforcement Plan is completed and approved containing these actions. See section 32.2, exhibit 02 for an example.

32.26 - Draft Order Preparation and Review

The appropriate resource staff at the unit level in which the order will be signed shall prepare the draft order and ensure that all other required documentation, as set forth above, is included for the specific case file.

Orders should be prepared in the following sequence:

1. Describe the area to which the order applies in such a manner that a person can clearly recognize the area. Utilize rivers, streams, marshes, lakeshores, roads, geographic names, and other natural or constructed features, in addition to legal land descriptions.
2. Describe the road or trail to which the order applies as indicated in paragraph 1.
3. Specify the times during which the prohibitions apply; for example, May through August.
4. State clearly each prohibition that is applied.

An example of a properly formatted forest order (sec. 32.2, ex. 01) follows. Each proposed order should be routed to the appropriate staff which will perform its respective duty, sign off on the checklist and forward the materials to the next staff area. The checklist should accompany the

proposed order throughout the process to ensure that proper documentation and review is **completed**. Any National Environmental Policy Act and Civil Rights Impact Analysis documentation prepared by the responsible official must accompany the proposed order.

A copy of the proposed order case file and order checklist shall be submitted to the unit's assigned Law Enforcement and Investigations patrol captain (PC) for a forest supervisor's order, or to the special agent in charge (SAC) for a regional forester's order. The PC or SAC shall review the proposed order to ensure that:

1. The proposed order is formatted properly;
2. The correct 36 CFR Part 261, Subpart B regulation is applied and properly cited;
3. The text of the order describing the prohibited act, exemptions, and applicable locations are sufficient, understandable, enforceable, and all necessary exhibits and attachments are clear, concise and defensible;
4. The order meets the local prosecutorial guidelines;
5. The order complies with the Assessment of Need and Enforcement Plan and 36 CFR 261.50 (a)-(e).

After review by the appropriate PC or SAC, law enforcement personnel will facilitate any necessary legal review by Office of the General Counsel, coordinate any necessary edits or correction with the proposing unit, and track the timely return of the proposed order to the originating forest or regional staff.

After the review process is completed and the draft order returned to the proposing unit, it shall be executed and dated by the applicable line officer for implementation and posting as required by 36 CFR 261.51. The unit records custodian shall keep the original approved order in the order case file for maintenance and protection. A database of all orders should be maintained by the SAC to ensure consistency and accuracy with an order's status region wide (that is, active, superseded, or terminated). A consistent numbering format shall be established by each region. The suggested national standard is: Order # 10-05-20-07-01, where:

1. 10 is the Region, regional orders will designate forest and district as 00.
2. 05 is the forest.
3. 20 is the district.
4. 07 is the fiscal year.
5. 01 is the sequential numbering of the order for the issuing officer.

In the event of emergency conditions that may threaten public or employee safety, natural resources, or Government property, an order may be approved by the responsible line officer without prior completion of the above requirements. However, any interdisciplinary review and required supporting documentation for the relevant case file must be completed as soon as practicable.

Sample Emergency Closure Orders for Resource Protection

DANIEL BOONE NATIONAL FOREST
Cumberland Ranger District
Stanton, KY

ORDER NO. 08-02-12-20-070

EMERGENCY CLOSURE ORDER

"Red River Gorge Safety & Protection Closure"

Pursuant to the provisions of 16 U.S.C., Section 551, and Title 36 C.F.R., Section 261.50 (a) and 261.50 (b), the following prohibition applies to The "Red River Gorge Geologic Area and Special Recreation Permit Boundary" located on the Cumberland Ranger District of the Daniel Boone National Forest in Wolfe, Menifee, and Powell Counties. The area is signed closed from entering or being on national forest lands on any and all national forest lands that are part of the Red River Gorge Geological Area, Clifty Wilderness, and Red River Gorge Special Recreation Permit boundary, lands which lay west of Hwy 746, south of Hwy 460, East of FSR 165 "Hatton Ridge Road," and north/northeast of Hwy 11 and north of the portion of Bert T. Combs Mountain Parkway that lays east of the Slade exit. All the National Forest System roads and trails within the defined area are also closed with this order. The area is further indicated on the attached map and attached list of roads and trails in the Red River Gorge.

Going into or upon National Forest Lands within the Red River Gorge (36 C.F.R. 261.53 (e)) See attached map and list of roads and trails.

Being on Closed Road (36 C.F.R. 261.54 (e))

Being on Closed Trail (36 C.F.R. 261.55 (a))

Entering or being in the Wilderness Area (36 C.F.R. 261.57 (a)), and

Entering or being upon any area which is closed for the protection of property (36 C.F.R. 261.53 (f)).

Pursuant to 36 C.F.R. 261.50(e) the following persons are exempt from the above Prohibitions:

Any Federal, State or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty

Any person with a permit specifically authorizing the act and or engaged in official administrative duties regarding National Forest Administration.

Prepared at Winchester, KY,

This 27 day of March, 2020



Dan Olsen
Forest Supervisor, DBNF

ORDER EXPIRES 120 DAYS FROM DATE OF SIGNATURE OR UNTIL RESCINDED BY THE APPROPRIATE OR AUTHORIZED PERSONNEL.



ORDER NO. 09-12-20-08

**EMERGENCY CLOSURE ORDER OF THE FOREST SUPERVISOR
RESTRICTING OCCUPANCY AND USE, TO WIT:
HOOSIER NATIONAL FOREST, INDIANA**

Under the authority of the Act of Congress dated June 4, 1897, as amended (16 U.S.C. 551), and pursuant to the Secretary of Agriculture's Regulations set forth as 36 CFR Part 261, Subpart B (36 CFR 261.50(a) and (b)), the following acts and omissions are prohibited on the Tell City Ranger District of the Hoosier National Forest located in Crawford County within the state of Indiana due to the hazards created by the COVID-19 pandemic. Said areas being described and designated as shown on the map set forth as Appendix A, which is attached hereto and made a part hereto:

1. The following are prohibited:

- a. Being within an area or facility listed in this Order, and as shown on the map attached hereto and made a part hereof as Exhibit, as closed for reasons of public health and safety. 36 CFR § 261.53(e).

The following areas are ordered closed on the Hoosier National Forest:

- The Hemlock Cliffs Trails System and surrounding area: Trail (including a 100 foot buffer around the trail), rockshelter, area above and below the waterfalls, associated parking area, and road leading to the parking lot;
- The dispersed camping site located in the southeast portion of Section 8 of T3SR1W, Crawford County.

2. **Duration:** The prohibitions of this Order shall remain in effect until terminated by the Forest Supervisor.

3. **Exemption:** Pursuant to 36 CFR §261.50 (e), the following persons are exempt from the prohibitions contained in this Order:

- a. Persons with a permit specifically authorizing the otherwise prohibited act or omission (36 CFR 261.50(e)(1));
- b. Any Federal, State, or local officer, or member of any organized rescue or fire fighting force in the performance of an official duty (36 CFR 261.50(e)(4)).

4. **General Prohibitions:** The General Prohibitions set forth in 36 CFR Part 261, Subpart A (§§261.1-261.23), remain in effect. The prohibitions set forth herein pursuant to 36 CFR Part 261, Subpart B (§§261.50-261.58) are in addition to the General Prohibitions.

Violation of these prohibitions is punishable by a fine of not more than \$5,000.00 for an individual or \$10,000.00 for an organization, or imprisonment for not more than six (6) months, or both (16 U.S.C. 551 and 18 U.S.C. 3559 and 3571).

Dated this 14th day of May 2020, at Bedford, Indiana.

MICHAEL CHAVEAS Digitally signed by MICHAEL CHAVEAS
Date: 2020.05.14 13:04:17 -0400

Michael Chaveas
Forest Supervisor

**Forest Service Handbook
Service Wide (WO)
Washington, DC**

Forest Service Handbook 1909.15 – National Environmental Policy Act Handbook

Chapter 30 – Categorical Exclusion from Documentation

Amendment Number: 1909.15-2023-2

Effective date: March 3, 2023

Duration: This amendment is effective until superseded or removed.

Previous Directive: 1909.15-2020-1 to chapter 30, March 16, 2020, 44 pages

Approved by: Jacqueline Emanuel, Associate Deputy Chief, NFS

Date approved: February 23, 2023

Responsible Staff: Ecosystem Management Coordination (EMC)

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

Chapter 30: Updates to 508 compliant format.

Section 32.12: Updates list of “Categories Established by the Chief” to incorporate categorical exclusions and modifications included in the 36 CFR 220 Final Rule on 11/19/2020 (73620 FR Vol. 85, No. 224). Removes Category 36 CFR 220.6(d)(10); this category was incorporated into 36 CFR 220.6(d)(11) when the regulations were updated. Adds 36 CFR 220.6(d)(11) and 36 CFR 220.6(d)(12).

Section 32.2: Changes title from “Categories of Actions for Which a Project or Case File and Decision Memo Are Required” to “Categories for Which a Project or Case File and Decision Memo Are Required” and sets forth direction.

Section 32.2: Updates list of “Categories for Which a Project or Case File and Decision Memo Are Required” to incorporate categorical exclusions and modifications included in the 36 CFR 220 Final Rule on 11/19/2020 (73620 FR Vol. 85, No. 224). Modifies 36 CFR 220.6(e)(3) to include the acres of National Forest System (NFS) lands. Makes clerical changes to 36 CFR 220.6(e)(10). Removes Category 36 CFR 220.6(e)(15); this category was incorporated into 36 CFR 220.6(d)(11) when the regulations were updated. Makes clarification to 36 CFR 220.6(e)(20). Adds 36 CFR 220.6(e)(21), 36 CFR 220.6(e)(22), 36 CFR 220.6(e)(23), 36 CFR 220.6(e)(24), and 36 CFR 220.6(e)(25).

Section 32.3: Updates list of “Categories and Exceptions Established by Statute” based on current regulatory requirements. Makes clerical change to category 4 to add year category enacted. Adds categorical exclusion established in section 40806 of the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58).

Section 32.3: Makes clerical changes to 4. “Oil and Gas Leases.” Incorporates and corrects relevant guidance from exhibits into the section 4 and deletes the “Energy Policy Act of 2005” exhibits. Previous exhibits included: 2011 Letter from Deputy Chief to Regional Foresters entitled “Energy Policy Action of 2005, Adjusted Use of Section 390 Categorical Exclusions for Oil and Gas due to Western Energy Alliance v. Salazar;” and, 2010 Guidance memo from the Deputy Chief entitled “Energy Policy Act of 2005, Use of Section 390 Categorical Exclusions for Oil and Gas.”

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The Council of Environmental Quality (CEQ) regulations provide for categorical exclusions (CEs) to implement the National Environmental Policy Act (NEPA) for the purpose of reducing delay and paperwork. CEQ regulations allow Federal agencies to exclude from documentation in an environmental assessment (EA) or environmental impact statement (EIS) categories of actions that do not individually or cumulatively have a significant effect on the human environment. Based on the Agency's experience and knowledge, the responsible official can conclude that if the action fits within an identified category and analysis shows there are no extraordinary circumstances, then the action would not have significant effects. The following guidance on appropriate use of CE must be read in conjunction with applicable sections of this handbook, specifically chapter 10.

For ease of reference, [Council on Environmental Quality \(CEQ\) regulations](#) for implementing requirements of the NEPA are set out in boldface type and block-indented and [Forest Service regulations](#), that supplement the CEQ regulations, are in boldface type and italicized and block-indented.

31 – Factors to Consider

31.1 – General

A proposed action may be categorically excluded from further analysis and documentation in an EIS or EA only if there are no extraordinary circumstances related to the proposed action and if:

- (1) The proposed action is within one of the categories established by the Secretary at [7 CFR part 1b.3](#); or***
- (2) The proposed action is within a category listed in sections 220.6 (d) and (e).***

(36 CFR 220.6(a))

31.2 – Extraordinary Circumstances

Resource conditions that should be considered in determining whether extraordinary circumstances related to a proposed action warrant further analysis and documentation in an EA or an EIS are:

- (1) Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species;***
- (2) Flood plains, wetlands, or municipal watersheds;***
- (3) Congressionally designated areas, such as wilderness, wilderness study areas, or national recreation areas;***
- (4) Inventoried roadless areas or potential wilderness areas;***

- (5) Research natural areas;**
- (6) American Indians and Alaska Native religious or cultural sites,
and**
- (7) Archaeological sites, or historic properties or areas.**

The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion (CE). It is the existence of a cause-effect relationship between a proposed action and the potential effect on these resource conditions and if such a relationship exists, the degree of the potential effect of a proposed action on these resource conditions that determine whether extraordinary circumstances exist.

(36 CFR 220.6(b))

In considering extraordinary circumstances, the responsible official should determine whether or not any of the listed resources are present, and if so, the degree of the potential effects on the listed resources. If the degree of potential effect raises uncertainty over its significance, then an extraordinary circumstance exists, precluding use of a categorical exclusion.

31.3 – Scoping

If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an EA. If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an EIS.

(36 CFR 220.6(c))

Scoping is required for all Forest Service proposed actions, including those that would appear to be categorically excluded (section 11). Scoping is important to discover information that could point to the need for an EA or EIS versus a CE. Scoping is the means to identify the presence or absence of any extraordinary circumstances that would warrant further documentation in an EA or EIS. Scoping should also reveal any past, present, or reasonably foreseeable future actions with the potential to create uncertainty over the significance of cumulative effects. Scoping complexity should be commensurate with project complexity.

The flow chart at section 11.6, exhibit 01, shows how scoping can be applied in the CE process to help determine at an early point whether the use of a CE is appropriate.

32 –Categories of Actions Excluded From Documentation

32.1 – Categories for Which a Project or Case File and Decision Memo Are Not Required

At the discretion of the responsible official, a project or case file and a decision memo are not required but may be prepared for the categories of actions set forth in sections 32.11 and 32.12.

32.11 – Categories Established by the Secretary

The rules at [7 CFR 1b.3](#) exclude from documentation in an EIS or an EA the following categories. A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared.

1. Policy development, planning, and implementation that relate to routine activities, such as personnel, organizational changes, or similar administrative functions (cite this category as 7 CFR 1b.3(a)(1)).
2. Activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds (cite this category as 7 CFR 1b.3(a)(2)).
3. Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity (cite this category as 7 CFR 1b.3(a)(3)).
4. Educational and informational programs and activities (cite this category as 7 CFR 1b.3(a)(4)).
5. Civil and criminal law enforcement and investigative activities (cite this category as 7 CFR 1b.3(a)(5)).
6. Activities that are advisory and consultative to other agencies and public and private entities, such as legal counseling and representation (cite this category as 7 CFR 1b.3(a)(6)).
7. Activities related to trade representation and market development activities abroad (cite this category as 7 CFR 1b.3(a)(7)).

32.12 – Categories Established by the Chief

The following categorical exclusions are found at [36 CFR 220.6\(d\)](#):

Categories of Actions for Which a Project or Case File and Decision Memo Are Not Required.

A supporting record and a decision memo are not required, but at the discretion of the responsible official, may be prepared for the following categories:

- (1) Orders issued pursuant to [36 CFR part 261](#) - Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include but are not limited to:**
- (i) Closing a road to protect bighorn sheep during lambing season and***
 - (ii) Closing an area during a period of extreme fire danger.***

Cite this category as 36 CFR 220.6(d)(1)

- (2) Rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions. Examples include but are not limited to:**
- (i) Adjusting special use or recreation fees using an existing formula;***
 - (ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses;***
 - (iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default;***
 - (iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations;***
 - (v) Establishing a service-wide process for responding to offers to exchange land and for agreeing on land values; and***
 - (vi) Establishing procedures for amending or revising forest land and resource management plans.***

Cite this category as 36 CFR 220.6(d)(2)

- (3) Repair and maintenance of administrative sites. Examples include but are not limited to:**
- (i) Mowing lawns at a district office;***
 - (ii) Replacing a roof or storage shed;***
 - (iii) Painting a building; and***
 - (iv) Applying registered pesticides for rodent or vegetation control.***

Cite this category as 36 CFR 220.6(d)(3)

(4) Repair and maintenance of roads, trails, and landline boundaries.

Examples include but are not limited to:

- (i) Authorizing a user to grade, resurface, and clean the culverts of an established NFS road;**
- (ii) Grading a road and clearing the roadside of brush without the use of herbicides;**
- (iii) Resurfacing a road to its original condition;**
- (iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and**
- (v) Surveying, painting, and posting landline boundaries.**

Cite this category as 36 CFR 220.6(d)(4)

(5) Repair and maintenance of recreation sites and facilities. Examples include but are not limited to:

- (i) Applying registered herbicides to control poison ivy on infested sites in a campground;**
- (ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;**
- (iii) Repaving a parking lot; and**
- (iv) Applying registered pesticides for rodent or vegetation control.**

Cite this category as 36 CFR 220.6(d)(5)

(6) Acquisition of land or interest in land. Examples include but are not limited to:

- (i) Accepting the donation of lands or interests in land to the NFS, and**
- (ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.**

Cite this category as 36 CFR 220.6(d)(6)

(7) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include but are not limited to:

- (i) Selling or exchanging land pursuant to the Small Tracts Act;**
- (ii) Exchanging National Forest System lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices;**
- (iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity; and**

(iv) Exchange of administrative sites involving other than NFS lands.

Cite this category as 36 CFR 220.6(d)(7)

(8) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of National Forest System lands. Examples include but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of National Forest System land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

Cite this category as 36 CFR 220.6(d)(8)

(9) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 ([16 U.S.C. 497b](#)) for an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples include but are not limited to:

(i) Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area;

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities; and

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

Cite this category as 36 CFR 220.6(d)(9)

(10) [Reserved]

(11) Issuance of a new special use authorization to replace an existing or expired special use authorization, when such issuance is to account only for administrative changes, such as a change in ownership of authorized improvements or expiration of the current authorization, and where there are no changes to the authorized facilities or increases in the

scope or magnitude of authorized activities. The applicant or holder must be in compliance with all the terms and conditions of the existing or expired special use authorization. Subject to the foregoing conditions, examples include but are not limited to:

- (i) Issuing a new authorization to replace a powerline facility authorization that is at the end of its term;***
- (ii) Issuing a new permit to replace an expired permit for a road that continues to be used as access to non-NFS lands; and***
- (iii) Converting a transitional priority use outfitting and guiding permit to a priority use outfitting and guiding permit.***

Cite this category as 36 CFR 220.6(d)(11)

(12) Issuance of a new authorization or amendment of an existing authorization for recreation special uses that occur on existing roads or trails, in existing facilities, in existing recreation sites, or in areas where such activities are allowed. Subject to the foregoing condition, examples include but are not limited to:

- (i) Issuance of an outfitting and guiding permit for mountain biking on NFS trails that are not closed to mountain biking;***
- (ii) Issuance of a permit to host a competitive motorcycle event;***
- (iii) Issuance of an outfitting and guiding permit for backcountry skiing;***
- (iv) Issuance of a permit for a one-time use of existing facilities for other recreational events; and***
- (v) Issuance of a campground concession permit for an existing campground that has previously been operated by the Forest Service.***

Cite this category as 36 CFR 220.6(d)(12)

32.2 – Categories for Which a Project or Case File and Decision Memo Are Required

A supporting record is required and the decision to proceed must be documented in a decision memo for the categories of action in paragraphs (e)(1) through (e)20 of this section. As a minimum, the project or case file should include any records prepared, such as: the names of interested and affected people, groups, and agencies contacted; the determination that no extraordinary circumstances exist; a copy of the decision memo; and a list of the people notified of the decision. (36 CFR 220.6(e))

The following categorical exclusions are at [36 CFR 220.6\(e\)](#).

- (1) Construction and reconstruction of trails. Examples include but are not limited to:***

- (i) Constructing or reconstructing a trail to a scenic overlook and*
- (ii) Reconstructing an existing trail to allow use by handicapped individuals.*

Cite this category as 36 CFR 220.6(e)(1)

- (2) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include but are not limited to:*
 - (i) Replacing an underground cable trunk and adding additional phone lines, and*
 - (ii) Reconstructing a power line by replacing poles and wires.*

Cite this category as 36 CFR 220.6(e)(2)

- (3) Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands. Subject to the preceding condition, examples include but are not limited to:*
 - (i) Approving the construction of a meteorological sampling site;*
 - (ii) Approving the use of land for a one-time group event;*
 - (iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;*
 - (iv) Approving the use of land for a utility corridor that crosses a national forest;*
 - (v) Approving the installation of a driveway or other facilities incidental to use of a private residence; and*
 - (vi) Approving new or additional communication facilities, associated improvements, or communication uses at a site already identified as available for these purposes.*

Cite this category as 36 CFR 220.6(e)(3)

- (4) [Reserved]*

- (5) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include but are not limited to:*
 - (i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth, and*
 - (ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.*

Cite this category as 36 CFR 220.6(e)(5)

- (6) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include but are not limited to:**
- (i) Girdling trees to create snags;**
 - (ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;**
 - (iii) Prescribed burning to control understory hardwoods in stands of southern pine; and**
 - (iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.**

Cite this category as 36 CFR 220.6(e)(6)

- (7) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include but are not limited to:**
- (i) Reconstructing a gabion with stone from a nearby source;**
 - (ii) Adding brush to lake fish beds; and**
 - (iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.**

Cite this category as 36 CFR 220.6(e)(7)

- (8) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include but are not limited to:**
- (i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;**
 - (ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods;**
 - (iii) Trenching to obtain evidence of mineralization;**
 - (iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities;**
 - (v) Redesigning or rearranging surface facilities within an approved site;**
 - (vi) Approving interim and final site restoration measures; and**
 - (vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of 1/3 mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.**

Cite this category as 36 CFR 220.6(e)(8)

- (9) Implementation or modification of minor management practices to improve allotment condition or animal distribution when an allotment management plan is not yet in place. Examples include but are not limited to:**
- (i) Rebuilding a fence to improve animal distribution;**
 - (ii) Adding a stock watering facility to an existing water line; and**
 - (iii) Spot seeding native species of grass or applying lime to maintain forage condition.**

Cite this category as 36 CFR 220.6(e)(9)

(10) [Reserved]

“[T]he Forest Service is enjoined from implementing the Fuels CE pending its issuance of a new decision that is consistent with the [Court’s opinion in Sierra Club v. Bosworth](#), 510 F.3d 1016 (9th Cir. 2007) and that complies with 40 C.F.R. §1507.3 (including prior public notice and comment).” *Sierra Club v. Bosworth*, No. 04-2114 (E.D. Cal. November 25, 2008). Unless and until the Agency complies with these requirements, **this category is not to be used**. See also the [Chief’s 1570-1 memo dated December 1, 2008](#).

- (11) Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:**
- (i) Shall be conducted consistent with Agency and Departmental procedures and applicable land and resource management plans;**
 - (ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and**
 - (iii) Shall be completed within 3 years following a wildland fire.**

Cite this category as 36 CFR 220.6(e)(11)

- (12) Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:**
- (i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and**

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

Cite this category as 36 CFR 220.6(e)(12)

(13) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees and***
- (ii) Harvest of fire-damaged trees.***

Cite this category as 36 CFR 220.6(e)(13)

(14) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

- (i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and***
- (ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.***

Cite this category as 36 CFR 220.6(e)(14)

(15) [Reserved]

(16) Land management plans, plan amendments, and plan revisions developed in accordance with [36 CFR 219 et seq.](#) that provide broad guidance and information for project and activity decisionmaking in a NFS unit. Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category and shall be considered separately under Forest Service NEPA procedures.

Cite this category as 36 CFR 220.6(e)(16)

- (17) Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:**
- (i) One mile of new road construction;**
 - (ii) One mile of road reconstruction;**
 - (iii) Three miles of individual or co-located pipelines and/or utilities disturbance; and**
 - (iv) Four drill sites.**

Cite this category as 36 CFR 220.6(e)(17)

- (18) Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. Examples include but are not limited to:**
- (i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill , and does not involve releasing hazardous substances;**
 - (ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;**
 - (iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and.**
 - (iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed.**

Cite this category as 36 CFR 220.6(e)(18)

- (19) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/ engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site**

conditions will not impede or negatively alter natural processes.

Examples include but are not limited to:

- (i) Removing an unstable debris jam on a river following a flood event and relocating it back in the floodplain and stream channel to restore water flow and local bank stability;*
- (ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and*
- (iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).*

Cite this category as 36 CFR 220.6(e)(19)

(20) Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, including unauthorized roads and trails and National Forest System roads and National Forest System trails, to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainage-ways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:

- (i) Decommissioning a road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns;*
- (ii) Restoring a trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and*
- (iii) Installing boulders, logs, and berms on a road segment to promote naturally regenerated grass, shrub, and tree growth.*

Cite this category as 36 CFR 220.6(e)(20)

(21) Construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing

administrative site, as that term is defined in section 502(1) of Public Law No. 109-54 (119 Stat. 559; 16 U.S.C. 580d note). Examples include but are not limited to:

- (i) Relocating an administrative facility to another existing administrative site;**
- (ii) Construction, reconstruction, or expansion of an office, a warehouse, a lab, a greenhouse, or a fire-fighting facility;**
- (iii) Surface or underground installation or decommissioning of water or waste disposal system infrastructure;**
- (iv) Disposal of an administrative building; and**
- (v) Construction or reconstruction of communications infrastructure.**

Cite this category as 36 CFR 220.6(e)(21)

(22) Construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at an existing recreation site, including infrastructure or improvements that are adjacent or connected to an existing recreation site and provide access or utilities for that site. Recreation sites include but are not limited to campgrounds and camping areas, picnic areas, day use areas, fishing sites, interpretive sites, visitor centers, trailheads, ski areas, and observation sites. Activities within this category are intended to apply to facilities located at recreation sites managed by the Forest Service and those managed by concessioners under a special use authorization. Examples include but are not limited to:

- (i) Constructing, reconstructing, or expanding a toilet or shower facility;**
- (ii) Constructing or reconstructing a fishing pier, wildlife viewing platform, dock, or other constructed feature at a recreation site;**
- (iii) Installing or reconstructing a water or waste disposal system;**
- (iv) Constructing or reconstructing campsites;**
- (v) Disposal of facilities at a recreation site;**
- (vi) Constructing or reconstructing a boat landing;**
- (vii) Replacing a chair lift at a ski area;**
- (viii) Constructing or reconstructing a parking area or trailhead;**
and
- (ix) Reconstructing or expanding a recreation rental cabin.**

Cite this category as 36 CFR 220.6(e)(22)

(23) Road management activities on up to 8 miles of NFS roads and associated parking areas. Activities under this category cannot include construction or realignment. Examples include but are not limited to:

- (i) Rehabilitating an NFS road or parking area where management activities go beyond repair and maintenance;*
- (ii) Shoulder-widening or other safety improvements within the right-of-way for an NFS road; and*
- (iii) Replacing a bridge along an NFS road.*

Cite this category as 36 CFR 220.6(e)(23)

- (24) Construction and realignment of up to 2 miles of NFS roads and associated parking areas. Examples include but are not limited to:*
 - (i) Constructing an NFS road to improve access to a trailhead or parking area;*
 - (ii) Rerouting an NFS road to minimize resource impacts; and*
 - (iii) Improving or upgrading the surface of an NFS road to expand its capacity.*

Cite this category as 36 CFR 220.6(e)(24)

- (25) Forest and grassland management activities with a primary purpose of meeting restoration objectives or increasing resilience. Activities to improve ecosystem health, resilience, and other watershed and habitat conditions may not exceed 2,800 acres.*
 - (i) Activities to meet restoration and resilience objectives may include, but are not limited to:*
 - (A) Stream restoration, aquatic organism passage rehabilitation, or erosion control;*
 - (B) Invasive species control and reestablishment of native species;*
 - (C) Prescribed burning;*
 - (D) Reforestation;*
 - (E) Road and/or trail decommissioning (system and non-system);*
 - (F) Pruning;*
 - (G) Vegetation thinning; and*
 - (H) Timber harvesting.*
 - (ii) The following requirements or limitations apply to this category:*
 - (A) Projects shall be developed or refined through a collaborative process that includes multiple interested persons representing diverse interests;*
 - (B) Vegetation thinning or timber harvesting activities shall be designed to achieve ecological restoration objectives, but shall not include salvage harvesting as defined in Agency policy; and*

(C) Construction and reconstruction of permanent roads is limited to 0.5 miles.

Construction of temporary roads is limited to 2.5 miles, and all temporary roads shall be decommissioned no later than 3 years after the date the project is completed. Projects may include repair and maintenance of NFS roads and trails to prevent or address resource impacts; repair and maintenance of NFS roads and trails is not subject to the above mileage limits.

Cite this category as 36 CFR 220.6(e)(25)

32.3 – Categories and Exceptions Established by Statute

Congress has statutorily established the following CEs and exceptions from NEPA. Excluding the exception for organizational camp special use authorizations, all of the following items must be published to the Schedule of Proposed Actions and must be entered into PALS. Specific requirements on public input, collaboration, documentation, and extraordinary circumstances vary by each statute and are specified below. The responsible official should be familiar with each statute, as they have varying procedural requirements.

1. **Organizational camp special use authorizations.** The National Forest Organizational Camp Fee Improvement Act of 2003 (16 U.S.C. 6231 et seq.) established that the ministerial issuance or amendment of an organizational camp special use authorization is not subject to NEPA. Sections 502(c) and 507 (16 U.S.C. 6231, 6236) provide as follows:

502 (c) Definitions. In this Act:

- (1) The term “organizational camp” means a public or semipublic camp that—
 - (A) is developed on National Forest System lands by a nonprofit organization or governmental entity;
 - (B) provides a valuable service to the public by using such lands as a setting to introduce young people or individuals with a disability to activities that they may not otherwise experience and to educate them on natural resource issues; and
 - (C) does not have as its primary purpose raising revenue through commercial activities.

507 (a) NEPA EXCEPTION.—The ministerial issuance or amendment of an organizational camp special use authorization shall not be subject to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

- (b) RULE OF CONSTRUCTION.—For purposes of subsection (a), the ministerial issuance or amendment of an authorization occurs only when the issuance or amendment of the authorization would not change the physical

environment or the activities, facilities, or program of the operations governed by the authorization, and at least one of the following apply.

- (1) The authorization is issued upon a change in control of the holder of an existing authorization.
- (2) The holder, upon expiration of an authorization, is issued a new authorization.
- (3) The authorization is amended—
 - (A) to effectuate administrative changes, such as modification of the land use fee or conversion to a new special use authorization form; or
 - (B) to include nondiscretionary environmental standards or to conform with current law.

Cite this authority as 16 U.S.C. 6236.

2. **Applied Silvicultural Assessments.** Section 404 of the Healthy Forests Restoration Act of 2003 categorically excludes applied silvicultural assessments for information gathering and research purposes. Section 404 (16 U.S.C 6554) provides as follows:

Applied silvicultural assessment and research treatments carried out under this section on not more than 1,000 acres for an assessment or treatment may be categorically excluded from documentation in an environmental impact statement and environmental assessment under the National Environmental Policy Act of 1969.

Applied silvicultural assessments must be peer reviewed by scientific experts including non-Federal experts. This CE is subject to the extraordinary circumstances provisions (section 31.4). For guidance on use of this CE, see Title IV of the Healthy Forests Restoration Act 16 U.S.C 6551-6556.

Cite this authority as 16 U.S.C. 6554(d).

3. **Oil and Gas Leases.** [Section 390 of the Energy Policy Act of 2005](#) directs that certain activities shall be subject to a rebuttable presumption that the use of a CE under NEPA would apply if the activity is conducted pursuant to the Mineral Leasing Act ([30 U.S.C. et seq., as amended](#)) for the purpose of exploration or development of oil or gas. Section 390 identifies five categories of actions that are subject to the statutory categorical exclusion.

The categorical exclusions apply exclusively to oil and gas exploration and development activities conducted pursuant to the Mineral Leasing Act on Federal oil and gas leases. They do not apply to geothermal leases.

Section 390 (42 U.S.C. 15942) provides as follows:

- a. *NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas.*
- b. *ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are the following:*
 - (1) *Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.*
 - (2) *Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.*
 - (3) *Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.*
 - (4) *Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.*
 - (5) *Maintenance of a minor activity, other than any construction or major renovation or a building or facility.”*

The following is the additional guidance for each of the five activities listed above.

CATEGORY SPECIFIC GUIDANCE, CATEGORY 1:

The factors for determining the availability of Section 390(b)(1) are the following three criteria: 1) individual five-acre disturbance threshold, 2) 150-acre unreclaimed disturbance limit, and 3) prior site-specific analysis of oil or gas exploration/development in a NEPA document. Use of this category requires the Authorized Forest Officer to consider the following three things:

- 1) **Individual five-acre disturbance threshold** – The Authorized Forest Officer must determine and document that each individual action under consideration will disturb less than five acres on the site. If more than one activity is proposed for a lease (e.g., two individual wells or when reviewing a Master Development Plan (MDP) collectively adding several wells), each activity is counted separately and each must disturb less than five acres.

The five-acre disturbance threshold is per Surface Use Plan of Operations

(SUPO) - It includes all surface disturbance associated with the proposed action on the lease and off the lease if the off-lease activities are authorized pursuant to the Mineral Leasing Act. For example in the case of an Application for Permit to Drill (APD), the five-acre threshold would include disturbances for construction of the well pad, roads, utilities, and production facilities.

Proposed impacts to existing unreclaimed disturbed areas do not count towards the individual five-acre surface disturbance constraint (e.g., maintenance of an existing road would not be counted since it represents an existing disturbance).

- 2) **150-acre unreclaimed disturbance limit** – The Authorized Forest Officer must determine and document that the current unreclaimed surface disturbance readily visible on the entire leasehold is not greater than 150 acres, including the action under consideration. This would include disturbance from previous rights-of-way issued in support of lease development. If one or more Federal leases are committed to a BLM approved unit or communitization agreement, the 150 acre threshold applies separately to each lease. For larger leases, the requirement for adequate documentation would be satisfied with a copy of the most recent aerial photograph in the file with an explanation of recent disturbance that may not be shown on the aerial photos. Maps, tally sheets, or other visuals may be substituted for aerial photographs.

The 150-acre unreclaimed disturbance threshold includes only disturbance associated with oil and gas activities and associated rights-of-ways on the leasehold regardless of surface ownership. It does not include disturbance from other activities.

Activities without surface disturbance or successfully reclaimed surface areas would not be included in the 150-acre constraint (e.g., an above ground pipeline).

- 3) **Site-specific analysis of oil or gas exploration/development in a prior NEPA document** – The Authorized Forest Officer must determine and document that a site-specific NEPA document exists that previously analyzed oil or gas exploration and/or development. For the purposes of this categorical exclusion, the site-specific NEPA document can be: an exploration and/or development EA/EIS, an EA/EIS for a specific Master Development Plan (MDP), a multi-well EA/EIS, or an individual permit approval EA/EIS. The NEPA document must have analyzed the exploration and/or development of oil and gas (not just leasing) and the proposed activity must be within the general boundaries of the area analyzed in the EA or EIS. The NEPA document need not have addressed the specific permit or application being considered.

This categorical exclusion may also be applied to geophysical exploration activities provided the above criteria are met. The same or better mitigating measures considered in the parent NEPA documents must be applied to all actions approved under this categorical exclusion.

CATEGORY SPECIFIC GUIDANCE, CATEGORY 2:

The factors for determining the availability of Section 390(b)(2) are the following two criteria: 1) drilling at a location or well pad previously drilled, and 2) five-year limitation from previous drilling. Use of this category requires the Authorized Forest Officer to consider the following two things:

- 1) **Drilling at a location or well pad previously drilled** – The Authorized Forest Officer must determine and document that the action under consideration (drilling) would occur on an oil and gas location or well pad that had previous drilling. A previous location or well pad will be recognized only where a previously disturbed or constructed well pad was used in support of drilling a well. Previous drilling refers to any drilled well including injection, water source, or any other service well. Additional disturbance or expansion of the existing well pad is not restricted as long as it is tied to the original location or well pad. This exclusion does not extend to new well sites merely in the general vicinity of the original location or well pad.
- 2) **Five-year limitation from previous drilling** – The Authorized Forest Officer must determine and document that the previous drilling has occurred within five years prior to the date of spudding the proposed well. The five-year constraint is based on when the most recent previous drilling occurred. This means that the most recent drilling activity resets the time period clock for determining the five year limit. Documentation for determining the five-year constraint must include the date when the last applicable previous drilling activity was completed.

If delays in spudding the new well and the time period between the previous well completion and spudding exceeds the five-year limitation, preparation for drilling operations must be suspended until appropriate NEPA compliance occurs for the proposed well and a new decision is issued. Therefore, a condition of approval (COA) must state that, "If the well has not been spudded by **(the date the categorical exclusion is no longer applicable)**, this approval will expire and all operations related to preparing to drill the well must cease."

CATEGORY SPECIFIC GUIDANCE, CATEGORY 3:

The factors for determining the availability of Section 390(b)(3) are the following three criteria: 1) proposed drilling is within a developed oil or gas field, 2) analysis of drilling as a reasonably foreseeable activity in a NEPA document, and 3) five-year limitation

from when the aforementioned NEPA document was finalized or supplemented. Use of this category requires the Authorized Forest Officer to consider the following three things:

- 1) **Proposed drilling is within a developed oil or gas field** – The Authorized Forest Officer must determine and document that the action under consideration (drilling) is within a developed oil or gas field. A developed field will be recognized as: (a) defined by the BLM Field Office where activity is proposed, or (b) any field in which a confirmation well has been completed.
- 2) **Analysis of drilling as a reasonably foreseeable activity in a NEPA document** – The Authorized Forest Officer must determine and document that a NEPA document exists addressing reasonably foreseeable activity (see 36 CFR 228.102(c)(3-4)) that encompasses the action under consideration (drilling). For the purposes of this categorical exclusion, the site-specific NEPA document can be of any type that analyzed such drilling as reasonably foreseeable regardless of which agency prepared the analysis and may include land management plans when such an analysis was performed.

The statute identifies no particular requirement regarding the degree or specificity of detail required for use of Section 390(b)(3). Ensure that the NEPA document provides an adequate consideration of effects of such drilling and the proposed activity is within the range of identified environmental effects for oil or gas development. It is adequate if the proposed well is in the general geographic vicinity of the predicted development disclosed in the prior NEPA document. The same or better mitigating measures considered in the parent NEPA documents must be applied to all actions approved under this categorical exclusion.

- 3) **Five-year limitation from when the aforementioned NEPA document was finalized or supplemented** – The Authorized Forest Officer must determine and document that the NEPA document, referred to in criteria 2 above, was completed within five years prior to the date of spudding the proposed well. The five-year constraint is based on when the most recent NEPA document was finalized or supplemented. This means that the most recent NEPA document resets the time period clock for determining the five year limit. Documentation must identify the date and title of the last applicable NEPA document.

If delays in spudding the new well and the time period between the previous well completion and spudding exceeds the five-year limitation, preparation for drilling operations must be suspended until appropriate NEPA compliance occurs for the proposed well and a new decision is issued.

Therefore, a condition of approval (COA) must state that, "If the well has not been spudded by **(the date the categorical exclusion is no longer applicable)**, this approval will expire and all operations related to preparing to drill the well must cease."

CATEGORY SPECIFIC GUIDANCE, CATEGORY 4:

The factors for determining the availability of Section 390(b)(4) are the following two criteria: 1) an approved right-of-way corridor, and 2) five-year limitation from corridor approval (or amendment). Use of this category requires the Authorized Forest Officer to consider the following two things:

- 1) **Approved right-of-way corridor** – The Authorized Forest Officer must determine and document the action under consideration would occur within an approved right-of-way corridor. The term "right-of-way corridor" is a general term that includes any preexisting or approved corridor or right-of-way (whether on or off lease). The Authorized Forest Officer is not limited to any particular types of corridors or rights of way but should identify the date, location and underlying authority for the approval or authorization in the documentation. Approved right-of-way corridors of any type may be used for new pipeline placement, including those approved for the burial of a pipeline or pipeline conduit in an existing roadbed or along a power line right-of-way. Minor variations that allow additional disturbance or width needed to properly or safely install a new pipeline are permissible under this exclusion. Creation of a new right-of-way outside and not materially overlapping the existing corridor is not permissible. The extent of additional disturbance or width needed to properly or safely install the new pipeline is at the discretion of the Responsible Official who shall assure that any variation will minimize effects on surface resources and prevent unnecessary or unreasonable surface resource disturbance, including effects to cultural and historical resources and fisheries, wildlife and plant habitat. There is no requirement for the approved right-of-way to be currently in use or occupied.

For purposes of Section 390(b)(4), the approved right-of-way corridor may be either on or off lease. *However, if off lease, then this categorical exclusion is only available where approval and placement of the pipeline is authorized pursuant to the Mineral Leasing Act and does not include instances where a pipeline is approved pursuant to other general authorities.*

- 2) **Five-year limitation from ROW corridor approval (or amendment)** – The Authorized Forest Officer must determine and document that use of the right-of-way or corridor, referred to in criteria 1 above, was approved or amended within 5 years prior to the date of the proposed pipeline placement. Determination of the five-year constraint is based on when the most recent decision (NEPA or permit authorization, as applicable) was approved to allow use of the corridor. The time period extends to the date placement

(installation) of any portion of the new pipeline is concluded, provided that placement activities began within the five-year constraint. Documentation for determining the five- year constraint must include the date of the last applicable corridor approval or amendment.

If the operator delays in beginning to place the pipeline and the time period between the approval of the corridor and placement exceed the five-year limitation, the Authorized Forest Officer must suspend the right-of-way authorization until the appropriate NEPA compliance occurs for the proposed right-of-way use and a new decision is issued. Therefore, the right-of-way approval must contain a condition of approval (COA) that provides for the suspension of the authorization if placement does not begin before the last date that the categorical exclusion is available, thus requiring the operator to obtain a new right-of-way if placement has not occurred. Therefore, a condition of approval (COA) must state that, "If the pipeline has not been installed by (**the date the categorical exclusion is no longer applicable**), this approval will expire and all operations related to installing the pipeline must cease."

CATEGORY SPECIFIC GUIDANCE, CATEGORY 5:

The factor in determining the availability of Section 390(b)(5) is: 1) Maintenance of a minor activity. Use of this category requires the Authorized Forest Officer to consider the following:

- 1) **Maintenance of a minor activity** – The Authorized Forest Officer must determine and document that the activity under consideration constitutes maintenance of a minor activity. Actions would include maintenance of a well, wellbore, road, wellpad, or production facility having surface disturbance. Actions would not include construction or major renovation of a building or facility.

Road maintenance, as defined in Forest Service Transportation System procedures at FSM 7705, is considered a minor maintenance activity within the scope of Section 390(b)(5). Road reconstruction or construction is not considered a minor activity for use of this CE. For off-lease road maintenance, determine if 36 CFR 220.6(d)(4) applies.

Per *Western Energy Alliance v. Salazar*, No. 10-237 (D. Wyo. August 12, 2011), a review of extraordinary circumstances is not required for use of Section 390 CEs. A decision memo is required to document:

- 1) Identification of the applicable categories.
- 2) A brief narrative stating the rationale for making the determination that use of the categorical exclusion(s) applies to the activity under consideration, specifically addressing the applicable review criteria.

- 3) Any additional information required to demonstrate compliance with all applicable laws, regulations, and policies (e.g., Biological Assessment/Biological Evaluation, cultural/heritage resource clearance, etc.).
- 4) Copies or reference to materials used to support the determination.

Cite this authority as 42 U.S.C 15942

4. **Lake Tahoe Basin Hazardous Fuel Reduction Projects.** The 2009 Omnibus Appropriations Act (Public Law (Pub. L.) 111-8) established a CE for hazardous fuels reduction projects within the Lake Tahoe Basin Management Unit.

Within the Lake Tahoe Basin Management Unit, projects carried out under this authority are limited to the following size limitations:

a proposal to authorize a hazardous fuel reduction project, not to exceed 5,000 acres, including no more than 1,500 acres of mechanical thinning. (Section 423 (a))

This CE can be used if the project:

is consistent with the Lake Tahoe Basin Multi-Jurisdictional Fuel Reduction and Wildfire Prevention Strategy published in December 2007 and any subsequent revision to the strategy;

is not conducted in any wilderness areas; and

does not involve any new permanent roads. (Section 423 (a))

A proposal using this CE shall be subject to:

the extraordinary circumstances procedures...; and

an opportunity for public input. (Section 423 (b))

Document this category in a decision memo (FSH 1909.15, 33.2 – 33.3). The decision memo should include a description of the efforts taking by the Lake Tahoe Basin Management Unit provide an opportunity for public input.

Cite this authority as Pub. L. 111-8, Sec. 423

5. **Insect and Disease Infestation.** Section 8204 of the Agriculture Act of 2014 (Pub. L. 113-79) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to add sections 602 and 603. Section 8407 of the Agriculture Improvement Act of 2018 (Pub. L. 115-334) later amended sections 602 and 603 to add hazardous fuels reduction projects to the types of projects that may be carried out under sections 602 and 603. Projects completed using the section 603 provisions are considered categorically

excluded from the requirements of NEPA and evaluation of extraordinary circumstances is not required.

Section 603 can be used for qualifying insect and disease or hazardous fuels reduction projects in areas designated by the Secretary under section 602 on National Forest System lands. Landscape scale areas may be designated by the Secretary if they meet at least one of the criteria found in HFRA, sections 602(c)(1)(2) & (3). An insect and disease or hazardous fuels project that may be carried out under this authority is a project that is designed to reduce the risk or extent of, or increase the resilience to, insect or disease infestation, or to reduce hazardous fuels in the areas (HFRA, Sections 602(d) and 603(a)).

Within designated landscape scale areas, projects carried out under this authority are limited to areas in:

the wildland-urban interface; or

Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland urban interface.

(HFRA, Sections 603(c)(2)(A) & (B))

Projects carried out under this authority may not be implemented in any of the following areas:

a component of the National Wilderness Preservation System;

any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

a congressionally designated wilderness study area; or

an area in which activities... would be inconsistent with the applicable land and resource management plan.

(HFRA, Sections 603(d)(1) - (4))

A project under this authority must either carry out a forest restoration treatment that:

complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

(HFRA, Sections 603(b)(2))

Or a project under this authority must carry out a forest restoration treatment that:

maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease;

considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and

is developed and implemented through a collaborative process that—

includes multiple interested persons representing diverse interests; and

is transparent and nonexclusive; or

meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125).

(HFRA, Sections 603(b)(1)(A) - (C)).

Projects carried out under this authority are subject to the following size limitation on the number of acres treated:

may not exceed 3000 acres.

(HFRA, Section 603(c)(1))

Projects carried out under this authority are subject to the following limitations relating to roads:

A project shall not include the establishment of permanent roads.

The Secretary may carry out necessary maintenance and repairs on existing permanent roads for purposes of this section.

The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed.

(HFRA, Section 603(c)(3))

All projects and activities carried out under this authority:

shall be consistent with the land and resource management plans..."

(HFRA, Section 603(e))

For projects and actions carried out under this authority:

The Secretary shall conduct public notice and scoping for any project or action.

(HFRA, Section 603(f))

Document this category in a decision memo (FSH 1909.15, 33.2 - 33.3). The decision memo should include a description of the efforts taken by the Agency to meet the collaborative process requirements in HFRA, Section 603(b)(1).

Cite this authority as Section 603 of HFRA (16 U.S.C.6591b)

6. **Grazing Permits and Leases.** The Carl Level and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291) amended section 402 of the Federal Land Policy and Management Act (43 U.S.C. 1752) to add a grazing permit categorical exclusion (402(h)(1)).

(1) In general. – The issuance of a grazing permit or lease by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if –

(a) the issued permit or lease continues the current grazing management of the allotment; and

(b) the Secretary concerned—

(i) has assessed and evaluated the grazing allotment associated with the lease or permit; and

(ii) based on the assessment and evaluation under clause (i), has determined that the allotment—

(II) with respect to National Forest System land...

(aa) is meeting objectives in the applicable land and resource management plan; or

(bb) is not meeting the objectives in the applicable land and resource management plan due to factors other than existing livestock grazing.

The category is subject to extraordinary circumstances review and should be documented in a decision memo (FSH 1909.15, 33.2 – 33.3).

Cite this authority as section 402(h)(1) of FLPMA (43 U.S.C. 1752)

7. **Trailing and Crossing of Livestock.** The Carl Level and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291) amended section 402 of the Federal Land Policy and Management Act (U.S.C. 1752) to add a trailing and crossing categorical exclusion (402(h)(2)).

(2) *The trailing and crossing of livestock across public land and the implementation of trailing and crossing practices by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).*

This category is subject to extraordinary circumstances review and should be documented in a decision memo (FSH 1909.15, 33.2 – 33.3).

Cite this authority as section 402(h)(2) of FLPMA (43 U.S.C. 1752)

8. **Lake Tahoe Basin Forest Management Activities.** In 2016, the Water Infrastructure Improvements for the Nation Act (WIIN) (Pub. L. 114-322) amended the Lake Tahoe Restoration Act (Pub. L. 106-506; 114 Stat. 2353) by establishing a CE for forest management activities in the Lake Tahoe Basin Management Unit for the purpose of reducing forest fuels.

Within the Lake Tahoe Basin Management Unit, projects carried out under this authority can be carried out using the CE if the forest management activity:

notwithstanding section 423 of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2009 (division E of Public Law 111–8; 123 Stat. 748), does not exceed 10,000 acres, including not more than 3,000 acres of mechanical thinning;

(Pub. L. 114-322, Sec. 3603(c))

Projects must be developed:

in coordination with impacted parties, specifically including representatives of local governments, such as county supervisors or county commissioners; and in consultation with other interested parties

(Pub. L. 114-322, Sec. 3603(c))

All projects and activities carried out under this authority must be:

consistent with the Lake Tahoe Basin Management Unit land and resource management plan.

(Pub. L. 114-322, Sec. 3603(c))

Document this category in a decision memo (FSH 1989.15, 33.2 – 33.3). The decision memo should include a description of the efforts taking by the Lake Tahoe Basin Management Unit to meet the coordination and consultation requirements.

Cite this authority as Pub. L. 114-322, Sec. 3603

9. **Wildfire Resilience.** The Consolidated Appropriations Act of 2018 (Public Law 115-171) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to add Section 605. Section 605 establishes a categorical exclusion for hazardous fuels reduction projects in designated areas on National Forest System lands. A hazardous fuels reduction project that may be categorically excluded under this authority is a project that is designed to maximize the retention of old-growth and large trees, to the extent that the trees promote stands that are resilient to insects and disease, and reduce the risk or extent of, or increase the resilience to, wildfires (HFRA, Sections 605(b)(1)(A)).

This categorical exclusion may be used to carry out a hazardous fuels project in an insect and disease treatment area that was designated by the Secretary under HFRA section 602(b) by March 23, 2018. (HFRA, Section 605(c)(2)(C)).

Within designated landscape scale areas, projects carried out under this authority are:

Prioritized in the wildland-urban interface; or

If located outside the wildland-urban interface, limited to Condition Classes 2 or 3 in Fire Regime Groups I, II, or III that contain very high wildfire hazard potential.

(HFRA, Sections 605(c)(2)(A) & (B))

Projects carried out under this authority may not be implemented in any of the following areas:

a component of the National Wilderness Preservation System;

any Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

a congressionally designated wilderness study area; or

an area in which activities... would be inconsistent with the applicable land and resource management plan.

(HFRA, Sections 605(d)(1) - (4))

A project under this authority must either carry out a forest restoration treatment that:

complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

(HFRA, Sections 605(b)(2))

Or, a project under this authority must carry out a forest restoration treatment that:

maximizes the retention of old-growth and large trees, as appropriate for the forest type, to the extent that the trees promote stands that are resilient to insects and disease, and reduce the risk or extent of, or increase the resilience to, wildfires;

considers the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity; and

is developed and implemented through a collaborative process that—

includes multiple interested persons representing diverse interests; and

is transparent and nonexclusive; or

meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125).

(HFRA, Sections 605(b)(1)(A) - (C)).

Projects carried out under this authority are subject to the following size limitation on the number of acres treated:

may not exceed 3000 acres.

(HFRA, Section 605(c)(1))

Projects carried out under this authority are subject to the following limitations relating to roads:

A project shall not include the establishment of permanent roads.

The Secretary may carry out necessary maintenance and repairs on existing permanent roads for purposes of this section.

The Secretary shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed.

(HFRA, Section 605(c)(3))

All projects and activities carried out under this authority:

shall apply the extraordinary circumstances procedures under section 220.6 or title 36, code of Federal regulations (or successor regulations) when using the categorical exclusion under this section.

(HFRA, Section 605 (c)(4))

shall be consistent with the land and resource management plans...

(HFRA, Section 605(e))

For projects and actions carried out under this authority:

The Secretary shall conduct public notice and scoping for any project or action.

(HFRA, Section 605(f))

Document this category in a decision memo (FSH 1909.15, 33.2 - 33.3). The decision memo should include a description of the efforts taken by the Agency to meet the collaborative process requirements in HFRA, Section 605(b)(1).

Cite this authority as Section 605 of HFRA (16 U.S.C.6591d)

- 10. Greater Sage-Grouse and Mule Deer Habitat.** The Agriculture Improvement Act of 2018 (Public Law 115-334) amended Title VI of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6591 et seq.) to add Section 606. Section 606 establishes a categorical exclusion for covered vegetation management activities carried out to protect, restore, or improve habitat for greater sage-grouse or mule deer. (HFRA, Section 606(b)(1))

This categorical exclusion may be used to carry out a covered vegetation management activity on National Forest System land that was designated under HFRA section 602(b), by December 20, 2018. (HFRA, Section 606(g)(2))

Projects carried out under this authority are subject to the following size limitation on the number of acres treated:

may not exceed 4,500 acres.

(HFRA, Sections 606(g)(1))

Covered vegetation management activities under this authority include:

manual cutting and removal of juniper trees, pinyon pine trees, other associated conifers, or other nonnative or invasive vegetation;

mechanical mastication, cutting, or mowing, mechanical piling and burning, chaining, broadcast burning, or yarding;

removal of cheat grass, medusa head rye, or other nonnative, invasive vegetation;

collection and seeding or planting of native vegetation using a manual, mechanical, or aerial method;

seeding of nonnative, noninvasive, ruderal vegetation only for the purpose of emergency stabilization;

targeted use of an herbicide, subject to the condition that the use shall be in accordance with applicable legal requirements, Federal agency procedures, and land use plans;

targeted livestock grazing to mitigate hazardous fuels and control noxious and invasive weeds;

temporary removal of wild horses or burros in the area in which the activity is being carried out to ensure treatment objectives are met;

in coordination with the affected permit holder, modification or adjustment of permissible usage under an annual plan of use of a grazing permit issued by the Secretary... to achieve restoration treatment objectives;

installation of new, or modification of existing, fencing or water sources intended to control use or improve wildlife habitat; or

necessary maintenance of, repairs to, rehabilitation of, or reconstruction of an existing permanent road or construction of temporary roads to accomplish the activities described in this subparagraph.

(HFRA, Sections 606(a)(1)(B))

A covered vegetation management activity that may be categorically excluded under this authority is a project that:

is carried out on National Forest System land administered by the Forest Service;

conforms to an applicable forest plan;

protects, restores, or improves greater sage-grouse or mule deer habitat in a sagebrush steppe ecosystem as described in—

Circular 1416 of the United States Geological Survey entitled 'Restoration Handbook for Sagebrush Steppe Ecosystems with Emphasis on Greater Sage-Grouse Habitat—Part 1. Concepts for Understanding and Applying Restoration' (2015); or

the habitat guidelines for mule deer published by the Mule Deer Working Group of the Western Association of Fish and Wildlife Agencies;

will not permanently impair—

the natural state of the treated area;

outstanding opportunities for solitude;

outstanding opportunities for primitive, unconfined recreation;

economic opportunities consistent with multiple-use management; or

the identified values of a unit of the National Landscape Conservation System;

restores native vegetation following a natural disturbance; prevents the expansion into greater sage-grouse or mule deer habitat of juniper, pinyon pine, or other associated conifers; or nonnative or invasive vegetation; reduces the risk of loss of greater sage-grouse or mule deer habitat from wildfire or any other natural disturbance; or provides emergency stabilization of soil resources after a natural disturbance; and provides for the conduct of restoration treatments that—

maximize the retention of old-growth and large trees, as appropriate for the forest type;

consider the best available scientific information to maintain or restore the ecological integrity, including maintaining or restoring structure, function, composition, and connectivity;

are developed and implemented through a collaborative process that—

includes multiple interested persons representing diverse interests; and

is transparent and nonexclusive; or

meets the requirements for a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act of 2000 (16 U.S.C. 7125); and may include the implementation of a proposal that complies with the eligibility requirements of the Collaborative Forest Landscape Restoration Program under section 4003(b) of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7303(b)).

(HFRA, Sections 606(a)(1)(A))

Covered vegetation management activities under this authority do not include:

any activity conducted in a wilderness area or wilderness study area;

any activity for the construction of a permanent road or permanent trail;

any activity conducted on Federal land on which, by Act of Congress or Presidential proclamation, the removal of vegetation is restricted or prohibited;

any activity conducted in an area in which activities under subparagraph (B) would be inconsistent with the applicable land and resource management plan; or

any activity conducted in an inventoried roadless area.

(HFRA, Sections 606(a)(1)(C))

This categorical exclusion shall:

comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or successor regulations), in determining whether to use the categorical exclusion; and

consider the relative efficacy of landscape-scale habitat projects; the likelihood of continued declines in the populations of greater sage-grouse and mule deer in the absence of landscape-scale vegetation management; and the need for habitat restoration activities after wildfire or other natural disturbances.

(HFRA, Sections 606(b))

If the categorical exclusion...is used to implement a covered vegetative management activity in an area within the range of both greater sage-grouse and mule deer, the covered vegetative management activity shall protect, restore, or improve habitat concurrently for both greater sage-grouse and mule deer.

(HFRA, Sections 606(c))

In regards to the disposal of vegetation material under this authority:

Subject to applicable local restrictions, any vegetative material resulting from a covered vegetation management activity under this authority may be used for fuel wood; or other products; or piled or burned, or both.

(HFRA, Sections 606(e))

Any temporary road constructed in carrying out a covered vegetation management activity under this authority:

shall be used...for not more than 2 years; and

shall be decommissioned...not later than 3 years after the earlier of the date on which—

the temporary road is no longer needed; and

the project is completed;

shall include reestablishing native vegetative cover as soon as practicable; but not later than 10 years after the date of completion of the applicable covered vegetation management activity.

(HFRA, Sections 606(f))

Under this authority, a temporary road means a road that is:

authorized by a contract, permit, lease, other written authorization; or pursuant to an emergency operation;

not intended to be part of the permanent transportation system of a Federal department or agency;

not necessary for long-term resource management;

designed in accordance with standards appropriate for the intended use of the road, taking into consideration safety; the cost of transportation; and impacts to land and resources; and

managed to minimize erosion; and the introduction or spread of invasive species.

(HFRA, Sections 606(a)(3))

Document this category in a decision memo (FSH 1989.15, 33.2 – 33.3). The decision memo should include a description of the efforts taken by the Agency to meet the collaborative process requirements in HFRA, Section 606(a)(1)(A)(vii)(III).

Cite this authority as Section 606 of HFRA (16 U.S.C. 6591e)

11. **Fuel Breaks.** Section 40806 of the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58) establishes a categorical exclusion for the creation of linear fuel breaks.

(a) *DEFINITION OF SECRETARY CONCERNED.*—*In this section, the term “Secretary concerned” means—*

- (1) *the Secretary of Agriculture, with respect to National Forest System land; and*
- (2) *the Secretary of the Interior, with respect to public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) administered by the Bureau of Land Management.*

(b) *CATEGORICAL EXCLUSION ESTABLISHED.*—*Forest management activities described in subsection (c) are a category of actions designated as being categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the categorical exclusion is documented through a supporting record and decision memorandum.*

(c) *FOREST MANAGEMENT ACTIVITIES DESIGNATED FOR CATEGORICAL EXCLUSION.*—

(1) *IN GENERAL.*—*The category of forest management activities designated under subsection (b) for a categorical exclusion are forest management activities described in paragraph (2) that are carried out by the Secretary concerned on public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) administered by the Bureau of Land Management or National Forest System land the primary purpose of which is to establish and maintain linear fuel breaks that are—*

- (A) *up to 1,000 feet in width contiguous with or incorporating existing linear features, such as roads, water infrastructure, transmission and distribution lines, and pipelines of any length on Federal land; and*
- (B) *intended to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community.*

(2) *ACTIVITIES.*—*Subject to paragraph (3), the forest management activities that may be carried out pursuant to the categorical exclusion established under subsection (b) are—*

- (A) *mowing or masticating;*
- (B) *thinning by manual and mechanical cutting;*
- (C) *piling, yarding, and removal of slash or hazardous fuels;*
- (D) *selling of vegetation products, including timber, firewood, biomass, slash, and fenceposts;*
- (E) *targeted grazing;*

- (F) application of—
 - (i) pesticide;
 - (ii) biopesticide; or
 - (iii) herbicide;
 - (G) seeding of native species;
 - (H) controlled burns and broadcast burning; and
 - (I) burning of piles, including jackpot piles.
- (3) *EXCLUDED ACTIVITIES.*—A forest management activity described in paragraph (2) may not be carried out pursuant to the categorical exclusion established under subsection (b) if the activity is conducted—
- (A) in a component of the National Wilderness Preservation System;
 - (B) on Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress, Presidential proclamation (including the applicable implementation plan), or regulation;
 - (C) in a wilderness study area; or
 - (D) in an area in which carrying out the activity would be inconsistent with the applicable land management plan or resource management plan.
- (4) *EXTRAORDINARY CIRCUMSTANCES.*—The Secretary concerned shall apply the extraordinary circumstances procedures under section 220.6 of title 36, Code of Federal Regulations (or a successor regulation), in determining whether to use a categorical exclusion under subsection (b).
- (d) *ACREAGE AND LOCATION LIMITATIONS.*—Treatments of vegetation in linear fuel breaks covered by the categorical exclusion established under subsection (b)—
- (1) may not contain treatment units in excess of 3,000 acres;
 - (2) shall be located primarily in—
 - (A) the wildland-urban interface or a public drinking water source area;
 - (B) if located outside the wildland-urban interface or a public drinking water source area, an area within Condition Class 2 or 3 in Fire Regime Group I, II, or III that contains very high wildfire hazard potential; or
 - (C) an insect or disease area designated by the Secretary concerned as of the date of enactment of this Act; and
 - (3) shall consider the best available scientific information.
- (e) *ROADS.*—
- (1) *PERMANENT ROADS.*—A project under this section shall not include the establishment of permanent roads.

- (2) *EXISTING ROADS.*—*The Secretary concerned may carry out necessary maintenance and repairs on existing permanent roads for the purposes of this section.*
- (3) *TEMPORARY ROADS.*—*The Secretary concerned shall decommission any temporary road constructed under a project under this section not later than 3 years after the date on which the project is completed.*
- (f) *PUBLIC COLLABORATION.*—*To encourage meaningful public participation during the preparation of a project under this section, the Secretary concerned shall facilitate, during the preparation of each project—*
 - (1) *collaboration among State and local governments and Indian Tribes; and*
 - (2) *participation of interested persons.*

Cite this authority as Public Law 117-58, section 40806.

33 – Documentation

33.1 – Decision Memo Not Required

If a proposed action has been categorically excluded from documentation in an EIS or an EA under USDA categories ([7 CFR 1b.3](#)) or the categories listed in section 32.12, a decision memo is not required; however, any interested and affected persons shall be informed in an appropriate manner of the decision to proceed with the proposed action (section 11.7).

The responsible official may choose to prepare a decision memo and create a record supporting the use of a CE. Examples where additional documentation may be beneficial are:

1. Where reasonable questions regarding the existence of extraordinary circumstances may arise (section 31.4),
2. Where findings are required by other laws such as, but not limited to National Forest Management Act (consistency with forest land and resource management plan), Endangered Species Act, and the National Historic Preservation Act, or
3. Where it was determined that public interest on the proposed action was high.

33.2 – Decision Memo Required

If the proposed action has been categorically excluded from documentation in an EIS or an EA under the categories listed in section 32.2, document the decision to proceed with the proposed action in a decision memo. Section 33.3 sets forth the format and content of a decision memo. Ensure that the administrative record supports findings made in a decision memo.

When the Chief or the Secretary of Agriculture is the responsible official, the appropriate field unit prepares the decision memo with assistance from the Washington Office Ecosystem Management Coordination staff. The Washington Office Director of Ecosystem Management Coordination coordinates the review and signing of the decision memo, involving the appropriate staff(s), Deputy Chiefs, Chief, or Secretary, as necessary. The signed original is filed in the Ecosystem Management Coordination staff office files. The Director of Ecosystem Management Coordination forwards a copy to the appropriate field unit or Washington Office staff for necessary distribution.

If the proposed action is approval of a land management plan, plan amendment, or plan revision, the plan approval document required by 36 CFR 219 satisfies the decision memo requirements of this section.

(36 CFR 220.6(e))

33.3 – Format and Content of a Decision Memo

While sections may be combined or rearranged in the interest of clarity and brevity, decision memos must include the following content:

- (1) A heading, which must identify:***
 - (i) Title of document: Decision Memo;***
 - (ii) Agency and administrative unit;***
 - (iii) Title of the proposed action; and***
 - (iv) Location of the proposed action, including administrative unit, county, and State.***
- (2) Decision to be implemented and the reasons for categorically excluding the proposed action, including:***
 - (i) The category of the proposed action;***
 - (ii) The rationale for using the category and, if more than one category could have been used, why the specific category was chosen; and***
 - (iii) A finding that no extraordinary circumstances exist.***
- (3) Any interested and affected agencies, organizations, and persons contacted;***
- (4) Findings required by other laws such as, but not limited to findings of consistency with the forest land and resource management plan as required by the National Forest Management Act or a public interest determination ([36 CFR 254.3\(c\)](#));***
- (5) The date when the responsible official intends to implement the decision and any conditions related to implementation;***
- (6) Whether the decision is subject to review or appeal, the applicable regulations, and when and where to file a request for review or appeal;***

- (7) Name, address, and phone number of a contact person who can supply further information about the decision; and***
- (8) The responsible official's signature and date when the decision is made.***

(36 CFR 220.6(f))

If comments are received on a proposed action, briefly explain in the decision memo how those comments were considered.

34 – Notice and Distribution Of Decision Memo

The responsible official shall notify interested or affected parties of the availability of the decision memo as soon as practical after signing.

(36 CFR 220.6(f))

Distribute a decision memo or notice thereof to agencies, organizations, and persons interested in or affected by the proposed action.

1. Provide other forms of notice appropriate to the importance of the decision.
2. Enter the date of the decision memo into the PALS database (section 06). In addition to the decision itself, the ability of the decision to be implemented is also tracked in the PALS. The voluntary withdrawal of a decision, the reversal of a decision in appeal, or a court case directing constraint of a decision all require notation (action) in PALS.
3. When required by [Executive Order 12372, Intergovernmental Review of Federal Programs](#), send copies to the State single point of contact or, in cases where a State has elected not to establish a single point of contact, the State official(s) involved.