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FSM 2700 – SPECIAL USES MANAGEMENT

2740 – VEGETATION MANAGEMENT PILOT PROJECTS

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40 – Establishes chapter and sets forth direction for authorizing vegetation management pilot projects conducted under section 8630 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-343, 43 U.S.C. 1772 note, by non-federal entities on National Forest System lands that are not covered by the special use authorization for the corresponding powerline facility or natural gas pipeline.

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This chapter addresses requirements for authorizing vegetation management pilot projects conducted under section 8630 of the Agriculture Improvement Act of 2018 (section 8630 of the 2018 Farm Bill), Pub. L. No. 115-343, 43 U.S.C. 1772 note, by non-federal entities on National Forest System (NFS) lands that are not covered by a special use authorization for a powerline facility or natural gas pipeline, hereinafter “pilot projects.”

This chapter does not apply to vegetation management conducted by federal entities on NFS lands that are not covered by a special use authorization for a powerline facility or natural gas pipeline. Federal entities operating a powerline facility or natural gas pipeline on NFS lands are subject to different tort liability standards than commercial entities.

In addition, this chapter does not apply to vegetation management conducted on NFS lands that are covered by a special use authorization for a powerline facility or natural gas pipeline. Vegetation management conducted on NFS lands that are covered by a special use authorization for a powerline facility is governed by Title V of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1761-1772, and vegetation management conducted on NFS lands that are covered by a special use authorization for a natural gas pipeline is governed by section 28 of the Mineral Leasing Act (MLA), 30 U.S.C. 185, as well as the Forest Service’s special use regulations at 36 CFR Part 251, Subpart B; their implementing directives; and the special use authorization for the powerline facility or natural gas pipeline.

2740.1 – Authority

The principal laws and regulations governing pilot projects include:

1. Section 8630 of the 2018 Farm Bill, Pub. L. No. 115-343, 43 U.S.C. 1772 note. This act establishes requirements for authorizing pilot projects on NFS lands, including the scope of authorizations and applicable liability standards for those projects.
2. Title V of FLPMA, 43 U.S.C. 1761-1772. This act establishes requirements for authorizing powerline facilities on NFS lands, including the scope of authorizations and applicable liability standards for powerline facilities.
3. Section 28 of the MLA, 30 U.S.C. 185. This act establishes requirements for authorizing natural gas pipelines on NFS lands, including the scope of authorizations and applicable liability standards for natural gas pipelines.
4. Special Uses Regulations, 36 CFR Part 251, Subpart B. These regulations govern issuance of special use authorizations for use and occupancy of NFS lands.

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2740.2 – Objective

This chapter implements the requirements in section 8630 of the 2018 Farm Bill regarding authorization of pilot projects on NFS lands consistent with the requirements in Title V of FLMPA regarding authorization of powerline facilities on NFS lands and section 28 of the MLA regarding authorization of natural gas pipelines on NFS lands and their implementing regulations and directives.

2740.3 – Policy

It is the policy of the Forest Service to authorize pilot projects consistent with section 8630 of the 2018 Farm Bill, Title V of FLPMA, section 28 of the MLA, applicable Forest Service regulations and directives, their implementing regulations and directives, and the corresponding special use authorization for the powerline facility or natural gas pipeline.

2740.4 – Responsibility

2740.41 – Washington Office Director of Lands and Realty Management

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

1. Developing, issuing, and maintaining the directives implementing section 8630 of the 2018 Farm Bill consistent with Title V of FLPMA and section 28 of the MLA and their implementing regulations and directives, including developing a standard clause addressing the requirements of section 8630; and
2. Preparing and submitting a report to Congress as required by section 8630 of the 2018 Farm Bill and described in section 2747.

2740.42 – Authorized Officers

Authorized officers may include forest or grassland supervisors; district rangers; station, institute, and area directors; and deputy station, deputy institute, and assistant area directors.

Authorized officers are responsible for ensuring that all the requirements in this chapter are met for issuance and administration of a special use permit for a pilot project.

2740.5 – Definitions

For additional definitions pertaining to special uses, see FSM 2700, Special Uses Management.

Fuel. A combustible, wildland vegetative material, either living or dead.

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Activity Fuel. A fuel resulting from or altered by forestry practices such as timber harvesting or thinning, as opposed to a naturally created fuel.

Ladder Fuel. A fuel that provides vertical continuity, thereby allowing a fire to spread relatively easily from surface fuels into the crowns of trees or shrubs, thus initiating and ensuring the continuation of movement of the fire through the crowns of trees independently of the fire on the ground.

Shaded Fuel Break. A fuel break built in timbered areas where the trees are thinned and pruned to reduce their fire potential yet retain enough canopy to make a less favorable microclimate for surface fires.

Surface Fuel. Loose vegetative litter on the ground typically consisting of fallen leaves or needles, twigs, bark, cones, and small branches that have not yet decayed enough to lose their identity and interspersed with or partially replaced by grasses, forbs, low and medium shrubs, tree seedlings, heavier branch wood, downed logs, and stumps.

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

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

Linear Right-of-Way. An authorized right-of-way for a linear facility, such as a road, trail, pipeline, powerline facility, fence, water transmission facility, or fiber optic cable, whose linear boundary is delineated by its legal description (36 CFR 251.51).

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

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Minimum Vegetation Clearance Distance. A calculated minimum distance stated in feet or meters measured from a powerline facility conductor (wire) at maximum operating sag to vegetation on NFS lands within the linear right-of-way for a powerline facility and on NFS lands adjacent to either side of the right-of-way to remove or prune hazard trees, which the owner or operator uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

NFS Lands. For purposes of this directive, lands within the NFS as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)), other than a National Grassland or a land utilization project on land designated as a National Grassland and administered pursuant to sections 31, 32, and 33 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010, 1011, 1012).

NFS Lands Covered by the Special Use Authorization for the Natural Gas Pipeline. The linear right-of-way for the natural gas pipeline associated with a pilot project, which generally has a total width of no more than 50 feet (30 U.S.C. 185(d)).

NFS Lands Covered by the Special Use Authorization for the Powerline Facility. For purposes of this directive, the linear right-of-way for the powerline facility associated with a pilot project and hazard trees adjacent to either side of that linear right-of-way (43 U.S.C. 1772; 36 CFR 251.56(h); FSH 2709.11, Ch. 80).

NFS Lands Not Covered by the Special Use Authorization for the Natural Gas Pipeline. NFS lands outside the linear right-of-way for the natural gas pipeline associated with a pilot project (30 U.S.C. 185(d)).

NFS Lands Not Covered by the Special Use Authorization for the Powerline Facility. For purposes of this directive, NFS lands, except for hazard trees, outside the linear right-of-way for the powerline facility associated with a pilot project (43 U.S.C. 1772; 36 CFR 251.56(h); FSH 2709.11, Ch. 80).

Owner or Operator. For purposes of this directive, the owner or operator of the powerline facility or natural gas pipeline associated with a pilot project or a contractor or other agent engaged by the owner or operator of that powerline facility or natural gas pipeline.

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

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2741 – LIMITATIONS ON THE LOCATION OF PILOT PROJECTS

Pilot projects:

1. May be conducted only on NFS lands that are not covered by the special use authorization for the powerline facility or natural gas pipeline;
2. May not extend for more than 150 feet from either side of the powerline facility or natural gas pipeline;
3. May have a total width of no more than 200 feet including both sides of the powerline facility or natural gas pipeline; and
4. May not be conducted in wilderness; in a wilderness study area; in an inventoried roadless area; or on federal land on which removal of vegetation is restricted or prohibited by federal statute or presidential proclamation.

2742 – APPLICATIONS FOR PILOT PROJECTS

1. Ensure that applicants for a pilot project permit are the owner or operator.
2. In issuing pilot project permits, give priority to owners or operators that have developed their utility infrastructure protection prescriptions in coordination with Forest Service fire scientists or fire managers.
3. Do not require proponents for a pilot project to submit a special use proposal for initial and second-level screening. Rather, require proponents for a pilot project to submit a special use application that, at a minimum:
 - a. Specifies the pilot project's location; the powerline facility or natural gas pipeline and the identification number for its special use authorization; the pilot project's anticipated starting and ending date; and the type of vegetation management to be conducted;
 - b. Includes a proposed operating plan that, at a minimum:
 - (1) Addresses reporting of removal of vegetation, including slash, and road use and repair;
 - (2) Describes the area where the pilot project would occur in sufficient detail to allow the authorized officer to determine where it would be conducted relative to the NFS lands covered by the special use authorization for the powerline

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facility or natural gas pipeline and to determine that the pilot project would be conducted on NFS lands that are not covered by that authorization;

- (3) Describes how the proponent would mark the location of the pilot project on the ground in a manner that would demonstrate that the pilot project would be conducted on NFS lands that are not covered by the special use authorization for the powerline facility or natural gas pipeline;
- (4) Provides that the pilot project would not be conducted simultaneously with vegetation management conducted under the special use authorization for the powerline facility or natural gas pipeline; and
- (5) Demonstrates how the proposed pilot project would involve only limited vegetation management activities that create the least ground disturbance and least disturbance to wildlife reasonably necessary to protect powerline facility or natural gas pipeline infrastructure from a wildfire originating on NFS lands that are not covered by the special use authorization for the powerline facility or natural gas pipeline, based on applicable models, including Forest Service fuel models.

4. In evaluating pilot project applications:

- a. Determine whether the proposed pilot project would be consistent with the applicable land management plan;
- b. Review the proposed operating plan; and
- c. Conduct the requisite environmental analysis on the application, taking into consideration any applicable categorical exclusions and programmatic analyses that would expedite environmental compliance.

5. Collect required processing fees for pilot project applications.

2743 – AUTHORIZATION OF PILOT PROJECTS

In authorizing pilot projects, ensure that all the requirements in paragraphs 1 through 4 are met.

1. Special Use Permit.

- a. Use Form FS-2700-4, Special Use Permit, to authorize pilot projects.

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- b. Include the following as the authority for a pilot project permit: section 8630 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-343, 43 U.S.C. 1772 note.
 - c. Do not include a term that extends beyond October 1, 2023, when section 8630 of the Farm Bill expires.
 - d. Delete the first sentence of clause III.F of form FS-2700-4, which provides that it does not authorize vegetation management.
 - e. Replace existing clauses IV.F, Damage to United States Property; IV.I, Indemnification of the United States; and IV.K, Strict Liability, in form FS-2700-4 with clause B-39, Vegetation Management Pilot Projects, in FSH 2709.11, Chapter 50, section 52.2, as new clause IV.F.
 - f. Before issuing a pilot project permit, reach agreement with the pilot project proponent on the maximum dollar amount for the holder to reimburse the Forest Service for fire suppression costs per clause IV.F.7(c) of clause B-39.
2. Cost Recovery. Collect required monitoring fees for pilot project permits.
 3. Authorized Activities.
 - a. Ensure that pilot projects involve only limited vegetation management activities that create the least ground disturbance and least disturbance to wildlife reasonably necessary to protect powerline facility or natural gas pipeline infrastructure from a wildfire originating on NFS lands that are not covered by the special use authorization for the powerline facility or natural gas pipeline, based on applicable models, including Forest Service fuel models.
 - b. Ensure that pilot projects include only thinning and treatment of surface fuels, ladder fuels, and activity fuels to create or maintain shaded fuel breaks or other appropriate measures recommended by Forest Service fire scientists or fire managers.
 4. Permit Area.
 - a. Ensure that the permit area as reflected in the legal description for a pilot project permit does not include NFS lands covered by the special use authorization for the powerline facility or natural gas pipeline; and

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- b. Ensure that the permit area as reflected in the legal description for a pilot project permit is marked on the ground to separate the permit area from the NFS lands covered by the special use authorization for the powerline facility or natural gas pipeline.

2744 – LIABILITY PROVISIONS IN PILOT PROJECT PERMITS

1. Liability in General. Except as provided in paragraphs 2 through 4 of this section, ensure that the holder of a pilot project permit is liable for all costs, including but not limited to fire suppression costs and damage to Forest Service resources, as determined by the Forest Service, that are incurred by the Forest Service in connection with the holder's participation in the pilot project program.
2. Forest Service Contributions. The authorized officer may contribute funds for a pilot project if the authorized officer determines and documents that the contribution is in the public interest.
3. Liability for Wildfires. Except as provided in paragraphs 4 and 5 of this section, ensure that the holder of a pilot project permit reimburse the Forest Service for all fire suppression costs for a wildfire caused by the holder's operations under the permit, subject to the maximum dollar amount agreed upon by the authorized officer and the holder prior to commencement of the pilot project. In agreeing to the maximum dollar amount, the authorized officer and the holder shall take into account whichever is lower, the Forest Service's average per acre fire suppression costs as documented by the Forest Service based on Fire and Aviation Management data for the previous 3 years in the state where the pilot project is to occur, or the amount of strict liability provided for in 36 CFR 251.56(d)(2) or 36 CFR 251.56(h)(9)(ii), as applicable and as amended.
 - a. If a holder of a pilot project permit provides services, personnel, supplies, or equipment to suppress a wildfire caused by the holder's operations under the permit or at the request of the Forest Service, the authorized officer shall credit the cost of those services, personnel, supplies, or equipment toward the maximum dollar amount agreed to under paragraph 3 of this section.
 - b. If the actual cost of the services, personnel, supplies, or equipment exceeds the maximum dollar amount agreed to under paragraph 3 of this section, the authorized officer shall reimburse the holder for the excess.
4. Negligently Caused Wildfires.
 - a. Wildfires Caused by Negligence Other Than Failure to Meet Expressly Imposed Requirements. Except as provided in paragraph 4b of this section, costs borne by

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the holder of a pilot project permit for damages to Forest Service resources and fire suppression costs resulting from a wildfire caused by the negligence of the holder or the holder's agent, including a wildfire caused by smoking by persons engaged in operations under the permit, shall not exceed \$500,000.

- b. Wildfires Caused by Failure to Meet Expressly Imposed Requirements. The holder of a pilot project permit shall bear all the costs of damages to Forest Service resources and fire suppression costs, with no limitation, resulting from the start or spread of a wildfire caused by the failure of the holder or the holder's agent to comply with specific safety requirements expressly imposed by the Forest Service as a condition of conducting the pilot project or imposed by section 8630 of the 2018 Farm Bill.
5. Wildfires Caused by Hazard Trees that are Improperly Removed under a Pilot Project Permit. Removal and pruning of hazard trees are not authorized by a pilot project permit. Removal and pruning of hazard trees are authorized by the special use authorization for a powerline facility. Liability for wildfires caused by hazard trees that are improperly removed under a pilot project permit shall be subject to the liability provisions of the special use authorization for the powerline facility.

2745 – ENFORCEMENT OF PILOT PROJECT PERMITS

1. Ensure that holders of a pilot project permit adhere to Forest Service requirements:
 - a. Pertaining to spark arresters;
 - b. Limiting or prohibiting certain activities conducted by other parties in the permit area, based on weather conditions and fire danger; and
 - c. Applicable to other parties removing vegetation on NFS lands under a timber sale or stewardship contract, including requirements pertaining to:
 - (1) Protection of residual trees and timber damaged by contractors;
 - (2) Protective measures needed for plants, animals, cultural resources, and cave resources;
 - (3) Stream protection and erosion control;
 - (4) Fire plans, precautions, and precautionary periods;
 - (5) Fire suppression costs; and

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(6) Employment of eligible workers.

2. Ensure that holders of a pilot project permit adhere to state requirements pertaining to prevention of wildfires and contractors' removal of vegetation.
3. Ensure that holders of a pilot project permit treat any activity fuels in a manner that is satisfactory to the authorized officer; does not result in a fire hazard; and reduces the risk of an insect or disease outbreak.
4. A special use permit for a pilot project is legally entirely separate from the special use authorization for the powerline facility or natural gas pipeline. The liability provisions in a special use permit for a pilot project apply only to the pilot project covered by that permit. The pilot project conducted under that permit cannot be conducted on NFS lands covered by the special use authorization for the powerline facility or natural gas pipeline (i.e., cannot be conducted inside the linear right-of-way and, in the case of a powerline facility, cannot include removal or pruning of hazard trees). The liability provisions in a special use permit for a pilot project have no effect on the liability provisions in the special use authorization for the powerline facility or natural gas pipeline, including the liability provisions that apply to removal and pruning of hazard trees inside and outside the linear right-of-way.
5. The liability provisions in the special use authorization for the powerline facility or natural gas pipeline apply to vegetation management covered by that authorization, including, in the case of a powerline facility, vegetation management inside the linear right-of-way and removal and pruning of hazard trees outside the linear right-of-way.
6. Enforce the liability provisions in a section 8630 pilot project permit entirely separately from the liability provisions in the special use authorization for the powerline facility or natural gas pipeline.

2746 – RETENTION AND EXPENDITURE OF FUNDS FOR INJURY, LOSS, OR DAMAGE INCURRED IN CONNECTION WITH PILOT PROJECTS

The Forest Service may retain any funds provided by a holder of a pilot project permit for injury, loss, or damage, including but not limited to fire suppression costs, incurred by the Forest Service in connection with a pilot project and may spend those funds to conduct the pilot project program.

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No later than December 31, 2020, and 2 years thereafter, the Director of the Lands and Realty Management staff shall submit a report describing the status of the pilot project program and pilot projects to:

1. The Senate Committees on Agriculture, Nutrition, and Forestry and Energy and Natural Resources; and
2. The House of Representatives Committees on Agriculture and Natural Resources.