

FAQs: Bipartisan Infrastructure Law Sec. 40806 (Fuel Breaks CE)

Note: This is a joint FAQ between WO Ecosystem Management Coordination (EMC) and WO Fire & Aviation Management (FAM). In this FAQ, EMC addresses environmental compliance, while FAM addresses implementation guidance.

Summary: Section 40806 establishes a new categorical exclusion for forest management activities with a primary purpose of establishing and maintaining linear fuel breaks up to 1,000 feet wide and on treatment areas up to 3,000 acres. Section 40806 includes numerous requirements and limitations that must be satisfied to use the categorical exclusion. The extraordinary circumstances test (36 CFR 220.6) and decision memo requirement applies when considering use of this CE. This CE authority is independent of the Healthy Forests Restoration Act (HFRA) and does not amend that Act. The Bipartisan Infrastructure Law is not codified in USC yet. If the CE needs citation in the meantime, units can use "Public Law No. 117-58, section 40806".

1. What is the intent and scope of the CE?

This CE applies to the establishment and maintenance of linear fuel breaks which are:

- Up to 1,000 feet in width contiguous with or incorporating existing linear features, such as roads, water infrastructure, transmission and distribution lines, egress corridor, maintenance of existing fuel breaks and/or pipelines of any length on Federal land
- The fuel break must be located adjacent to or incorporating an existing linear feature, it cannot be established or unattached to a linear feature
- Intended to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community

There are several types of areas the fuel break shall be located primarily in:

- The wildland-urban interface (WUI) or a public drinking water source area. NOTE: consider any landmanagement plan restrictions within the WUI,
- 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
- an insect or disease area designated by the Secretary as of November 15, 2021.
Located primarily in means for the most part or mainly; it does not mean exclusively located in.

2. How is a fuel break defined?

A fuel break is defined as a natural or man-made change in fuel characteristics that affects fire behavior such that a fire can be more readily controlled. This is different than the definition of fire break which is a natural or constructed barrier used to stop or check a fire or to provide a control line from which to work to stop or check a fire. [HFRA §6511 Definitions](#).

3. How are at-risk communities defined?

An at-risk community is a community identified in the Federal Register notice of January 4, 2001 (66 FR 753) or its successor notice (66 FR 43383), or it is a group of homes and other structures with basic infrastructure and services in or adjacent to Federal land that has conditions conducive to a wildland fire and that faces a significant threat to human life or property as a result of a wildland fire (USDA, USDI (2004) The Healthy Forests Initiative and Healthy Forests Restoration Act: interim field guide. USDA Forest Service, Report FS-799. (Washington, DC)).

4. How is adjacent defined?

If the fuel break is intended to reduce the risk of catastrophic wildfire to an adjacent at-risk community, the fuel break must be near proximity to the at-risk community, if not, the fuel break must be intended to reduce the risk of uncharacteristic wildfire on federal land.

5. How are the 1,000-foot width and the 3,000-acre treatment area limit calculated?

The 1,000-foot width is a total maximum width independent of the width of the linear feature it is tied to. If the fuel break is adjacent to a linear feature the maximum total width can be up to 1,000 feet on one side. If the fuel break location incorporates the linear feature, the maximum total width can be up to 1,000 feet combining both sides. For example, 500-feet on both sides or 600-feet on one side and 400-feet on the other. The width of the linear feature is not considered when determining the width of the fuel break. Measuring the starting point of the fuel break width from the linear feature begins at the edge of the treatment area.

The 3,000-acre limit is specific to the treatment area used to establish or maintain the fuel break. For example, a fuel break with a 3,000-acre treatment area can be 1,000 feet wide and approximately 24.7 miles long.

6. What is the definition of linear feature?

The CE calls out constructed features on the landscape which exclude natural linear features such as rock outcrops, ridgelines or natural waterways. Examples of constructed linear features include roads, trails, transmission and distribution lines, constructed fire breaks, railroads, pipelines and water infrastructure (including but not limited to dams, reservoirs, storage tanks, drinking-water facilities, canals and aqueducts).



7. Are there any requirements for collaboration with use of this CE?

Projects using this CE must be prepared collaboratively among State and local governments and Indian Tribes and with participation of interested persons. However, establishment of a formal collaborative is not required.

8. Will fuel break funding be tied to the use of this CE?

No. Funding for fuel breaks will not be tied to the use of the fuel break CE.

9. What forest management activities may be carried out pursuant to the CE?

The below list is exclusive, the management activities covered under this CE are limited to:

- mowing or masticating
- thinning by manual and mechanical cutting, this includes commercial or non-commercial thinning, there are no diameter limits within the CE itself
- piling, yarding, and removal of slash or hazardous fuels
- selling of vegetation products, including timber, firewood, biomass, slash, and fence posts
- targeted grazing
- application of pesticide, biopesticide or herbicide
- seeding of native species
- controlled burns and broadcast burning
- burning of piles, including jackpot piles

There may be requirements for silvicultural prescriptions before initiating some of these actions, but those requirements are separate from the provisions within this CE.

Associated activities that are necessary to establish/maintain a fuel break can generally be approved via the CE, such as placement of temporary fencing to conduct targeted grazing.

10. Are there any limits on areas where this CE can be applied or other restrictions?

There are several types of areas in which this CE cannot be applied, including:

- Land which is a component of the National Wilderness Preservation System or in a wilderness study area. There are no exceptions to this restriction.
- On Federal land on which the removal of vegetation is prohibited or restricted by Act of Congress, Presidential proclamation, or regulation. However, if the statute or regulation restricts removal of vegetation under some circumstances, but the proposed use of the CE would comply with the restrictions, then the CE may still be used. For example, timber cutting is prohibited in Inventoried Roadless Areas (2001 Rule) unless it falls within one of four exceptions within §294.13. If an exception is granted, this fuel break CE may be used within the bounds of the excepted activity.
- In an area in which carrying out the activity would be inconsistent with the applicable land

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management plan. However, if the land management plan is amended to allow for consistent use, this fuel break CE can be used. This CE cannot be used to approve a project specific land management plan amendment.

There are implementation restrictions and other requirements of projects under this authority which include:

- may not contain treatment units more than 3,000 acres
- shall consider the best available scientific information
- shall not include the establishment of permanent roads
- may carry out necessary maintenance and repairs on existing permanent roads within or providing access to the fuel break
- 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

11. How is the wildland-urban interface (WUI) defined, where do I obtain that information?

This CE does not require the use of a specific WUI definition. Generally, the WUI is defined as the zone of transition between unoccupied land and human development. It is the line, area or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels.

WUI may be delineated in a Forest Plan, in a Community Wildfire Protection Plan, or by delineating an area where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels. The project analysis or decision should demonstrate how the Forest determined the area of the WUI and how it was determined that the project is within the WUI. A delineation of WUI for a project under this authority must be supported by sound science. Use fire modeling, fuel inventories, and other relevant tools. Also consider fire behavior potential, values at risk, and infrastructure. Units are encouraged to either use an existing WUI delineation or delineate the WUI for a fuel breaks CE project that is both flexible and consistent with communities and agency partners.

12. How is public drinking water source area defined, where do I obtain that information?

The Infrastructure Investment and Jobs Act does not specifically define the term public drinking water source area. The Forest Service interprets public drinking water source area to include several related land classifications, including:

- The Environmental Protection Agency's Source Water and Wellhead Protection Areas;
- State-designated drinking water protection areas;
- Municipal Watersheds (designated by the President, Congress or through an MOU or Land Management Plan); or

The Forest Service is developing an inventory of Forest Service source watersheds based upon the following definition: a 6th-level (HUC12) subwatershed containing at least 5 percent National Forest System (NFS) lands that overlaps with any of the municipal/source water land classifications referenced above. Once completed, units may use this inventory to identify watersheds on NFS lands where the wildfire Fuel Breaks CE may be available. Supporting information will be available in an R&D publication

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and associated website/story map on water supply from NFS and other forested lands that is in press and expected to be published late in 2022 (see citation below).

Liu, Ning; Dobbs, G. Rebecca; Caldwell, Peter V.; Miniati, Chelcy F.; Sun, Ge; Duan, Kai; Nelson, Stacy A.C.; Bolstad, Paul V.; Carlson, Christopher P. 2022. Quantifying the role of National Forest System and other forested lands in providing surface drinking water supply for the conterminous United States. Gen. Tech. Rep. WO-100. Washington, DC: U.S. Department of Agriculture, Forest Service, Washington Office. 38 p. <https://doi.org/10.2737/GTR-WO-100>.

13. If I have a fuel break already established that requires maintenance, can this CE be used?

Yes, as long as the existing fuel break falls within the limits of where this CE can be applied and subject to all implementation restrictions. This includes the maximum treatment area of 3,000 acres.

14. What are the insect and disease areas designated by the Secretary, where do I find that information?

These are on NFS lands within an area designated by the Secretary under the authority of the Healthy Forest Restoration Act section 602(b), both initial designations in May 2014 and any later designations until November 15, 2021. This CE does not contain any authority to add designated areas. Work with your GIS support staff for locating these areas and map layers.

15. How does one determine and document the fire regime group or condition class?

This CE focuses on Condition Class of 2 and 3 and Fire Regime Groups I, II, III and the very high wildfire hazard potential. Throughout the Infrastructure Investment and Jobs Act the term Fire Regime Condition Class (FRCC) is used. In the description of the Fuel Breaks CE uses the term Condition Class. The FRCC is an older term and delineates departure into three categories. In 2012, the three categories were changed to six categories and is now referred to as Vegetation Condition Class (VCC). Given that FRCC is imbedded in the new VCC delineations, it is at the discretion of the specialists to use the system that is appropriate for their situation. The determination of the Condition Class can be obtained from landfire.gov or the forest may have this layer as part of their corporate data. Fire Regime Groups are based on fire frequency and fire severity. The wildfire hazard potential map and information can be found at firelab.org/project/wildfire-hazard-potential.

The follow definitions are from the National Wildfire Coordinating Group (NWCG) glossary.

- Fire Regime I – low severity, frequent fire return interval (0-35 years)
- Fire Regime II – stand replacement severity, frequent fire return interval (0-35 years) Fire Regime III – mixed severity, fire return interval (35-100 years)

16. What is the difference between the Wildfire Resilience CE (HFRA 605) and this CE? How is this different from what we already have?

There are many similarities between the two CEs, the difference lies in the purpose.

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- The Wildfire Resilience CE is focused on methods that 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.
- The Fuel Breaks CE is focused on at-risk community protection through establishment of linear fuel breaks. Since the Fuel Breaks CE is used in conjunction with an existing linear feature, it approaches reducing fire risk from a slightly different emphasis than the Wildfire Resilience CE.

Examples of the types of activities that may be conducted under the wildfire resilience CE include hazardous fuels reduction projects as defined in HFRA Title I, including prescribed fire, wildland fire use, mechanical methods, hand piling, thinning and pruning, fuel break and fire break projects.

Examples of the types of activities that may be conducted under the fuel break CE include mowing, thinning, removal of hazardous fuels, targeted grazing, application of pesticides and controlled burning. See comparison tables at the end this FAQ.

17. When will this CE become available in PALS?

The CE is currently available within PALS.

18. What if the fuel break and treatment area includes more than one District, Forest or Region?

There is nothing that prohibits this from occurring, the fuel break length and treatment area can cross Districts, Forests or Regions. Coordination is encouraged across units to establish the most effective fuel break.

19. Can more than one project categorically excluded under this section occur in the same landscape-scale area?

Congress established specific limitations addressing the size and location of projects when it established the statutory Fuel Breaks CE, but it did not specify any restrictions prohibiting multiple projects occurring within in a given landscape area or watershed. Projects should be developed using the most efficient and effective NEPA tool; but all Fuel Breaks CE projects remain subject to scoping and consideration of extraordinary circumstances. Where multiple projects are being considered in areas where overlapping environmental effects are reasonably foreseeable, units should evaluate effects carefully; including considering the projects' effects in conjunction with other past, present, and reasonably foreseeable actions.

20. Can this CE be used for salvage operations?

This statutory CE was established to support forest management activities with a primary purpose of establishing and maintaining linear fuel breaks to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community. Establishing a fuel break through salvage operations is permissible where factually appropriate. Salvage operations must meet the requirements and limitations within this CE.

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21. How should this fuel break CE be communicated with partners and communities?

Units should encourage meaningful public participation during the preparation of a project through collaboration among Federal, State and local governments and Indian Tribes, and with the public. Additionally, units may want to communicate talking points such as the following: Fuel breaks are a part of a larger strategy to break up the continuity of the forest canopy and reduce surface and ladder fuels along specified linear features. Fuel breaks are not a sole guarantee of reduced risk of fire transmission. Rather, they are one tool in the toolbox. Including the public in discussions about other efforts to reduce catastrophic wildfire in their community can be a part of this collaboration effort.

Statutory CE Crosswalk
Section 603, Section 605 and Fuel Breaks Categorical Exclusions

	Section 603 Insect and Disease CE	Section 605 Wildfire Resiliency CE	Fuel Breaks CE
Legislative Origin	2014 Farm Bill	2018 Omnibus Bill	2021 Bipartisan Infrastructure Law
Statutory Authority	Amendment to 2003 HFRA ; HFRA Section 603 2018 Farm Bill expanded this CE to include hazardous fuels reduction projects.	Amendment to 2003 HFRA ; HFRA Section 605	BIL Section 40806
Common Name	Section 603 CE	Section 605 CE	BIL Fuel Breaks CE
Permitted Project Types	Projects that reduce the risk or extent of, and increase the resilience to, insect or disease infestation, or that reduce hazardous fuels.	Hazardous fuels reduction projects as defined in HFRA Title I, including prescribed fire, wildland fire use, mechanical methods, hand piling, thinning and pruning; also includes fuel break and fire break projects.	Forest management activities with a primary purpose of establishing and maintaining linear fuel breaks up to 1,000 feet wide and on treatment areas up to 3,000 acres.
Project Purpose	Purpose of projects are to reduce the risk or extent of, or increase the resilience to, insect or disease infestation and/or to reduce hazardous fuels.	Purpose of projects are for hazardous fuels reduction.	Primary purpose of projects are to establish and maintain linear fuel breaks that are intended to reduce the risk of uncharacteristic wildfire on Federal land or catastrophic wildfire for an adjacent at-risk community.

	Section 603 Insect and Disease CE	Section 605 Wildfire Resiliency CE	Fuel Breaks CE
<p>Examples of Activities</p>	<p>Forest restoration and/or hazardous fuels reduction treatments that meet the requirements of HFRA Section 603. Herbicides, insecticides and pheromones may be used, but their use must be consistent with the applicable Land and Resource Management Plans (LRMPs). Pesticides, prescribed fire, and timber harvesting, including salvage, are all examples of acceptable treatment options.</p>	<p>Hazardous fuels reduction projects that meet the requirements of HFRA Section 605. Authorized hazardous fuels reduction projects are projects that use various methods to reduce hazardous fuels, including prescribed fire; various mechanical methods such as crushing, tractor and hand piling, thinning (to produce commercial or precommercial products), and pruning; brush removal, salvage for wildfire prevention, and installation of fuel breaks and firebreaks. Pesticides, herbicides, and fungicides may be used, but their use must be consistent with applicable LRMPs and the purpose of the project must be hazardous fuels reduction.</p>	<p>Forest management activities that may be carried out include: (A) moving 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.</p>
<p>Permitted Project Locations</p>	<p>Projects must be located in areas that are designated under HFRA Section 602(b); in addition, projects must be located in the wildland-urban interface (WUI), or if the project area is outside the WUI, projects must be located in areas within condition classes 2 or 3 in fire regime groups I, II, or III.</p>	<p>Projects must be located in areas that were designated under HFRA Section 602(b) before March 23, 2018; in addition, projects must be prioritized in the wildland-urban interface (WUI). If the project area is outside the WUI, projects must be located in areas within condition classes 2 or 3 in fire regime groups I, II, or III that contain very high wildfire hazard potential.</p>	<p>Projects must be located primarily in the wildland-urban interface or a public drinking water source area; 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 an insect or disease area designated by the Secretary concerned as of November 15, 2021.</p>
<p>Permitted Project Acreage</p>	<p>Projects may only include up to 3,000 treatment acres.¹</p>		

¹ Section 603 and 605 project are counted towards the Healthy Forest Restoration Act 20 million acre cap.

	Section 603 Insect and Disease CE	Section 605 Wildfire Resiliency CE	Fuel Breaks CE
Collaboration Requirements	Require projects to be developed and implemented through a collaborative process.	Require projects to be developed and implemented through a collaborative process.	Require projects to be developed using a collaborative process.
Old Growth and Large Tree Retention Requirements	Projects maximize 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.	Projects maximize 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	CE does not include any old growth or large tree retention requirements.
Roads	These categorical exclusions are not available for projects that include permanent road construction. Projects completed under either provision may authorize necessary repair and maintenance on existing roads and temporary roads must be decommissioned no later than 3 years after project completion. Neither provision contains a limitation on the miles of temporary road that can be constructed. Limitations should be based on land management plan direction.		
Exclusions	These categorical exclusions are not available for projects: within the National Wilderness Preservation System; Federal lands where the removal of vegetation is restricted or prohibited by Congress or the President; congressionally designated wilderness study areas; or areas where project activities would be inconsistent with the applicable Forest Plan.		
Extraordinary Circumstances	Evaluation and documentation of extraordinary circumstances is not required.	Documentation of extraordinary circumstances is required.	Documentation of extraordinary circumstances is required.
Decision Memo and PALS Entry	A decision memo and PALS entry are required ² . While Section 603 projects are exempt from NEPA, the Forest Service is requiring 603 projects to be documented in a decision memo. See Forest Service Handbook 1909.15, Chapter 30.	A decision memo and PALS entry are required.	A decision memo and PALS entry are required.

² It is recommended that the final acres approved in the decision memo be entered into PALS when the project is marked complete and the decision memo is added to help with tracking and annual reporting requirements.

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	Section 603 Insect and Disease CE	Section 605 Wildfire Resiliency CE	Fuel Breaks CE
Scoping	Public notice and scoping shall be conducted for any project carried out under Section 603, as required by HFRA, Section 603(f).	Public notice and scoping shall be conducted for any project carried out under Section 605, as required by HFRA, Section 605(f).	Scoping is required for all Forest Service categorical exclusions, see Forest Service Handbook 1909.15, Chapter 30 for more details.
Administrative Review	Project decisions that utilize these categorical exclusions are exempt from the administrative review process.		

NOTE: These three statutory CEs are not the only agency CEs available for wildfire hazard reduction or fuels treatment. Please see the complete list of agency CEs [here](#) to explore all compliance options.