Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563). Consistent with Executive Order (EO) 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether proposed, interim, and final directives that impose, eliminate, or modify requirements on non-Forest Service parties are significant and will review any proposed, interim, or final directives that OIRA has designated as significant. OIRA has determined that these final directives are not significant. EO 13563 reaffirms the principles of EO 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Forest Service has developed the final directives consistent with EO 13563.

Congressional Review Act. Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 et seq.), OIRA has designated these final directives as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act. The final directives establish direction on designation of NFS roads, NFS trails, and areas on NFS lands for e-bike use. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment (EA) or environmental impact statement (EIS) “rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.” The Forest Service has concluded that these final directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or EIS.

Regulatory Flexibility Act Analysis. The Forest Service has considered the final directives under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 et seq.). These final directives will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final directives will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Forest Service has determined that these final directives will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism. The Forest Service has considered the final directives under the requirements of EO 13132, Federalism. The Forest Service has determined that the final directives conform with the federalism principles set out in this EO; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, on the relationship between the Federal
government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Forest Service has concluded that the final directives do not have Federalism implications.

Consultation with Tribal Governments. The Forest Service has reviewed these final directives in accordance with the requirements of EO 13175, Consultation and Coordination with Indian Tribal Governments. The Forest Service has determined that national Tribal consultation is not necessary for the final directives. The final directives, which provide direction on designation of NFS roads, NFS trails, and areas on NFS lands for e-bike use, are programmatic and will not have any direct effects on Tribes.

Environmental Justice. The Forest Service has considered the final directives under the requirements of EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. The Forest Service has determined that the final directives are consistent with EO 12898.

No Takings Implications. The Forest Service has analyzed the final directives in accordance with the principles and criteria in EO 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The Forest Service has determined that the final directives will not pose the risk of a taking of private property.

Energy Effects. The Forest Service has reviewed the final directives under EO 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Forest Service has determined that the final directives will not constitute a significant energy action as defined in EO 13211, and OIRA has not otherwise designated the final directives as a significant energy action.

Civil Justice Reform. The Forest Service has analyzed the final directives in accordance with the principles and criteria in EO 12988, Civil Justice Reform. Upon issuance of the final directives, (1) all state and local laws and regulations that conflict with the final directives or that impede their full implementation will be preempted; (2) no retroactive effect will be given to these final directives; and (3) they will not require administrative proceedings before parties may file suit in court challenging their provisions.

Unfunded Mandates. Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), signed into law on March 22, 1995, the Forest Service has assessed the effects of the final directives on state, local, and Tribal governments and the private sector. The final directives will not compel the expenditure of $100 million or more by any state, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public. The final directives do not contain information collection requirements as defined in 5 CFR Part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and its implementing regulations at 5 CFR Part 1320 do not apply.