Overview

On December 10, 2020, the United States Department of Agriculture, United States Forest Service (the Agency), published a notice of a proposed directive in the Federal Register with a 30-day comment period ending January 11, 2021. The proposed directive would implement section 512 to the Federal Land Policy and Management and Policy Act (FLPMA), as added by section 211 of division O, Consolidated Appropriations Act, 2018, codified at 43 U.S.C. 1772, and the Forest Service’s implementing regulations at 36 CFR 251.56(h). Section 512 of FLPMA and its implementing regulations govern the development, review, and approval of proposed operating plans and agreements for vegetation management, inspection, and operation and maintenance of electric transmission and distribution line facilities (powerline facilities) on National Forest System (NFS) lands. Section 512 operating plans and agreements apply inside the linear right-of-way for powerline facilities and on NFS lands adjacent to either side of the linear right-of-way as provided for in the directive.

Several electric utility companies requested that the Agency extend the comment period for the proposed directive beyond 30 days; the Agency did not grant the request.

The Agency received timely comments on the proposed directive from 15 commenters, including electric utility companies and two members of the public. All commenters supported the proposed directive. The individual responses from the public were generally supportive of the Agency’s efforts to support better management of powerline facilities on NFS lands. The remaining comments are addressed below, organized by topic.

Consideration of More Limited Resources of Smaller Utilities

Comment: Multiple commenters requested that the proposed directive provide for greater consideration of the ability of smaller utilities with more limited resources to satisfy the minimum requirements for approval of a proposed operating plan or agreement and to distinguish between development of a proposed operating plan from development of a proposed operating agreement, which should be less time-consuming and costly.

Response: The primary difference between operating plans and operating agreements under section 512 of FLPMA and the Agency’s implementing regulations is that operating agreements are subject to a lower strict liability limit. To be eligible for an operating agreement, a utility must either not be subject to NERC standards and/or have sold less than or equal to one million megawatt hours of electricity for purposes other than resale during each of the 3 calendar years immediately preceding the date of enactment of section 512 of FLPMA. The Agency does not have the legal authority to exempt smaller utilities from legal requirements that necessitate
environmental analysis and consultation for listed threatened or endangered species and cultural and historic resources.

Section 512 of FLPMA and the Agency’s implementing regulations require the Agency to ensure that the minimum requirements of an operating agreement reflect the financial resources of the owner or operator compared to other owners or operators. The Agency has made several changes in the final directive to provide for greater consideration of the ability of smaller utilities with more limited resources to satisfy the minimum requirements for approval of a proposed operating plan or agreement. First, the final directive includes the option for the requisite environmental analysis and consultation for some or all types of activities under an approved operating plan or agreement to be completed case by case after, rather than before, a proposed operating plan or agreement is approved but before the activities are conducted. Second, the final directive shifts the due date for submitting a proposed operating plan or agreement that complies with applicable legal requirements from August 10, 2023, to 18 months from the date the authorized officer notifies the owner or operator of the requirement to submit a compliant proposed operating plan or agreement, which can occur as late as September 30, 2026. With respect to smaller utilities, the final directive provides that in determining the sequence of notification, the authorized officer may consider delaying notice to owners and operators that are eligible for an operating agreement. Third, also specific to smaller utilities, the final directive expressly provides for ensuring that the minimum requirements of an operating agreement reflect the financial resources of the owner or operator compared to other owners or operators of a powerline facility by considering whether the owner’s or operator’s financial resources merit a full or partial waiver of cost recovery fees for review and approval of the proposed operating agreement; review and approval of proposed modifications to the approved operating agreement; and approval of specific activities under the approved operating agreement. Fourth, the final directive encourages the authorized officer to inform the owner or operator of the Rural Utilities Service’s grid security and fire prevention loan program.

Training and Staffing for Developing and Approving Proposed Operating Plans and Agreements

Comment: Multiple commenters recommended that the Agency provide appropriate staffing for working with owners and operators in developing proposed operating plans and agreements and that personnel, including authorized officers, be provided training on new requirements for operating plans and agreements under section 512 of FLPMA, the Agency’s implementing regulations, and the directive.

Response: The Agency agrees and has started development of a training course on powerline facility operating plans and agreements in collaboration with electric utility representatives. The course will be offered virtually to Agency personnel after the final directive is issued. The Agency continues to evaluate and adjust budget requests and hiring to address needs for effectively accomplishing mission requirements, including development and approval of proposed operating plans and agreements for powerline facilities.
Authorized Officer Discretion

Comment: Multiple commenters expressed concern that the proposed directive is not consistent with the term “guidance” in section 512 of FLPMA and differs from other Agency directives by unusually and unnecessarily limiting the authorized officer’s discretion in working with owners and operators on proposed operating plan and agreement review and approval.

Response: The directive must be consistent with governing statutory and regulatory requirements and must provide for a degree of consistency among the hundreds of proposed operating plans and agreements that will be reviewed and approved in the coming years for powerline facilities on NFS lands. Review and approval of those proposed operating plans and agreements will involve hundreds of Agency personnel working with various owners and operators to ensure electrical system reliability, reduce wildfire threats, and minimize impacts on wildlife and natural resources. Achieving statutory, regulatory, and directive compliance in some instances requires direction that limits authorized officer discretion. The Agency agrees, however, that some discretion is appropriate and legally permissible for authorized officers in connection with achieving compliance with environmental and consultation requirements for activities to be conducted under approved operating plans and agreements. The final directive reflects that discretion by providing the option for the requisite environmental analysis and consultation for some or all types of activities to be conducted under an approved operating plan or agreement to be completed case by case after, rather than before, a proposed operating plan or agreement is approved but before the activities are conducted. Consistent with section 512 of FLPMA and the Agency’s implementing regulations, the directive does not provide discretion to determine the minimum requirements of an operating plan or agreement. Those elements are necessary for the Agency to evaluate planned activities to be conducted by owners and operators. The directive elaborates on, rather than augments, the minimum requirements for an operating plan or agreement under section 512 of FLPMA and the Agency’s implementing regulations.

Coordination with the United States Department of the Interior (DOI), Bureau of Land Management (BLM)

Comment: Multiple commenters recommended that the directive be revised to provide for coordination with the BLM on approval of proposed operating plans and agreements for powerline facilities that cross federal lands managed by the Forest Service and federal lands managed by the BLM.

Response: The Agency has added text to the final directive addressing coordination with the BLM on the content of a proposed operating plan or agreement for a powerline facility that traverses federal lands managed by the Forest Service and federal lands managed by the BLM. The final directive also includes text that reinforces requirements that the authorized officer must consider other applicable federal law in developing, reviewing, and approving proposed operating plans and agreements. As required by section 512 of FLPMA and the Agency’s implementing regulations, the Forest Service and the BLM jointly developed and updated in the final directive a review and approval process for proposed operating plans and agreements, which the BLM will include in its policy implementing section 512 of FLPMA.
Minimum Content Requirements

Comment: Multiple commenters believed that several requirements in the proposed directive for the minimum content of proposed operating plans and agreements, including an inventory of access roads and the vegetation management, operation and maintenance, and inspection methods that may be used to comply with all applicable law, such as standards issued by the North American Electric Reliability Corporation (NERC), were duplicative and costly and requested that these requirements be removed.

Response: Documentation of access roads and trails and NFS roads and NFS trails which owners and operators will use in connection with vegetation management, operation and maintenance, and inspection is necessary to inform the authorized officer’s decision regarding when and how those activities may be conducted and to mitigate potential adverse impacts on NFS lands and resources. In addition, documentation of those roads and trails is needed to enforce any restrictions on their use, requirements for a road use permit, and requirements for road and trail construction, reconstruction, and maintenance. For greater flexibility, the final directive provides for this documentation to be submitted in the form of a map or an inventory.

Section 512 of FLPMA and the Agency’s implementing regulations require proposed operating plans and agreements to include a description of the vegetation management, operation and maintenance, and inspection methods that may be used to comply with all applicable law, including section 7 of the Endangered Species Act (ESA) and section 106 of the National Historic Preservation Act (NHPA), fire safety requirements, and reliability standards established by the Electric Reliability Organization. The Agency agrees that some reduction of duplication and clarification may be achieved in the final directive. The Agency has added text that provides for cross-referencing information in the corresponding powerline authorization if it meets a minimum content requirement for proposed operating plans and agreements. The Agency has also added text clarifying that legal requirements must be applicable to constitute minimum requirements for a proposed operating plan or agreement.

Cost Recovery

Comment: One commenter stated that owners and operators should not be required to enter into category 5 or 6 cost recovery agreements and that lower cost recovery fees should be charged for rural electric cooperatives.

Response: The Agency agrees that not all development, review, and approval of proposed operating plans and agreements, not all review and approval of proposed modifications to approved operating plans and agreements, and not all approval of activities under approved operating plans and agreements will require a category 5 or 6 cost recovery agreement. The final directive directs the authorized officer to ensure that appropriate cost recovery fees are charged and collected for these activities in accordance with applicable Agency regulations and directives. In addition, the final directive provides for ensuring that the minimum requirements of an operating agreement reflect the financial resources of the owner or operator compared to other owners or operators of a powerline facility by considering whether the owner’s or operator’s financial resources merit a full or partial waiver of cost recovery fees for review and
approval of the proposed operating agreement; review and approval of proposed modifications to
the approved operating agreement; and approval of specific activities under the approved
operating agreement.

**Integrated Vegetation Management**

**Comment:** Multiple commenters stated that the Agency should recognize herbicides as a widely
accepted and effective part of integrated vegetation management (IVM) and that references to
IVM should not emphasize pollinator habit protection over other benefits.

**Response:** The Agency agrees and has added a definition for IVM in the final directive with no
references to pollinators. In the final directive, the minimum requirement for proposed operating
plans and agreements has been revised to clarify that use of pesticides (including herbicides)
must be subject to a project-specific pesticide use and safety plan. The final directive has also
been revised to state that in developing, reviewing, and approving proposed operating plans and
agreements, the authorized officer should consider the use of IVM, including the use of
pesticides (including herbicides) authorized by the Agency in the affected administrative unit.

**Annual Reporting on Routine Vegetation Management Requests**

**Comment:** Multiple commenters stated that the proposed directive should clarify that
authorized officers may not require owners and operators to compile and provide information for
Agency annual reporting on routine vegetation management requests under approved operating
plans and agreements.

**Response:** The proposed and final directives require authorized officers to document requests
for approval of routine vegetation management and responses or lack of responses to those
requests under approved operating plans and agreements for purposes of annual reporting.
Owners and operators are responsible only for providing the requisite prior notice of routine
vegetation management.

**Approval Requirements**

**Comment:** Multiple commenters stated that the proposed directive should provide a streamlined
process for review and approval of proposed operating plans and agreements and approval of
activities under approved operating plans and agreements that protects powerline facilities from
risks posed by vegetation and other vectors and that provides for only those approvals necessary
for statutory compliance.

**Response:** As required by section 512 of FLPMA and the Agency’s implementing regulations,
the proposed and final directives contain procedures developed jointly by the Forest Service and
the BLM for review and approval of proposed operating plans and agreements and proposed
modifications to approved operating plans and agreements. Also as required by the statute and
regulations, the joint procedures are consistent with applicable law; provide that a proposed
operating plan or agreement or proposed modification to an approved operating plan or
agreement be approved, to the maximum extent practicable, within 120 days from the date
the proposed operating plan or agreement or proposed modification was received by the authorized officer; and specify a timeframe for submitting Agency comments on a proposed operating plan or agreement. The aim of approval requirements under the proposed and final directives is to ensure that the authorized officer consider all statutory and regulatory requirements to prevent loss or harm to people, natural resources, wildlife, and NFS lands, as well as powerline facilities and other authorized uses of NFS lands.

To achieve that objective as efficiently as possible, the final directive provides that in developing, reviewing, and approving proposed operating plans and agreements, the authorized officer should ensure compliance with the statutory and regulatory requirements governing use and occupancy of NFS lands; address compliance with other applicable federal and state laws; and, to the greatest extent practicable and to the extent allowed by law, conduct only the environmental analysis and consultation necessary to authorize routine vegetation management and routine powerline facility maintenance and inspection for the term of the powerline facility authorization, without requiring but not precluding case-by-case environmental analysis and approval. In addition, the final directive gives authorized officers the discretion to complete all the requisite environmental analysis and consultation for all types of activities to be conducted under an operating plan or agreement before it is approved, or to complete the requisite environmental analysis and consultation for some or all types of activities case by case after a proposed operating plan or agreement is approved but before the activities are conducted. The limit and conditions on strict liability in section 512 of FLPMA, the Agency’s implementing regulations, and the final directive do not apply to types of activities that are not covered by approval of a proposed operating plan or agreement and will not apply to those types of activities until they are approved case by case after the requisite environmental analysis and consultation have been completed. The final directive also provides, to the extent possible, for use of previous site-specific and programmatic environmental analysis and consultation, reviews and surveys, and categorical exclusions from documentation in an environmental impact statement or environmental assessment (CEs) to reduce or eliminate additional environmental analysis and consultation.

**Scope of Operating Plans and Agreements Under Section 512 of FLPMA**

**Comment:** One commenter stated that the proposed directive should distinguish between a traditional operating plan for a powerline facility required by the Agency’s special use regulations from a fire control plan or vegetation management plan contemplated by section 512 of FLPMA.

**Response:** Section 512 of FLPMA and the Agency’s implementing regulations require the Agency to issue and periodically update a directive that includes provisions for vegetation management, inspection, and operation and maintenance of powerline facilities that enhance the reliability of the electrical grid and reduce the threat of wildfire damage to and wildfire caused by vegetation-related conditions inside linear rights-of-way for powerline facilities and on NFS lands adjacent to either side of the linear rights-of-way, including hazard trees. Thus, section 512 of FLPMA and the Agency’s implementing regulations require the Agency’s directive and operating plans and agreements developed and approved under that directive to address all aspects of powerline facility operations, not just fire control and vegetation management.
Liability for Federal Owners and Operators

Comment: Multiple commenters recommended that the directive be revised to address the unique status of federal owners and operators, also known as power marketing administrations or PMAs. One commenter stated the PMAs (Bonneville Power Administration, Western Area Power Administration, Southwestern Power Administration, and Southeastern Power Administration) are agencies of the federal government and that their operations and liability are governed by other federal laws that cannot be overridden by Forest Service regulations.

Response: Section 512 of FLPMA and the Agency’s implementing regulations do not differentiate between operating plans and agreements for federal owners and operators and operating plans and agreements for non-federal owners and operators. Section 512 of FLPMA and the Agency’s implementing regulations impose specific requirements for operating plans and agreements for all powerline facilities on NFS lands. These statutory and regulatory requirements must be applied by the Agency to all operating plans and agreements for powerline facilities on NFS lands, including operating plans for federal owners’ and operators’ powerline facilities. Accordingly, the directive applies to all operating plans and agreements for powerline facilities on NFS lands.

The final directive recognizes that federal owners and operators may have executed a memorandum of understanding (MOU) with the Agency regarding their powerline facilities on NFS lands. The final directive provides for authorized officers to consider any such existing MOU to the extent it complies with section 512 of FLPMA, the Forest Service’s implementing regulations, and the final directive. Since MOUs do not have the force of law, the final directive provides that any such existing MOU with a federal owner or operator must be revised to be consistent with section 512 of FLPMA, the Forest Service’s implementing regulations, and the final directive by September 30, 2026, and that any such future MOU with a federal owner or operator must be consistent with those authorities. The final directive also recognizes that the liability provisions in section 512 of FLPMA do not apply to federal owners and operators. The final directive provides that tort liability for federal owners and operators will be determined in accordance with the terms of their powerline facility authorization.

Review of Approved Operating Plans and Agreements

Comment: Multiple commenters stated that requiring review of approved operating plans and agreements every five years would be an unnecessary administrative burden and recommended requiring review no sooner than 25 years after approval. These commenters also stated that revisions to approved operating plans and agreements could be discussed and made at an annual meeting between the authorized officer and owner or operator, which would render periodic review unnecessary.

Response: The proposed directive required review of approved operating plans and agreements every five years to allow owners and operators and authorized officers to discuss any changed conditions that might affect their provisions and necessitate modifications. The Agency agrees that requiring review every five years may be excessive and has revised the final directive to
require review of approved operating plans and agreements every 10 years from the date of approval and to provide that non-significant updates may be made during the 10-year intervals with the written agreement of the authorized officer and the owner or operator, without formal review and approval.

**Requirement for an Operating Plan or Agreement**

**Comment:** Multiple commenters stated that the requirement in the proposed directive for owners and operators to have an operating plan or agreement is inconsistent with Congress’s intent for an operating plan or agreement to be optional, and that the eligibility criteria for an operating agreement should reflect that an owner or operator can meet either criterion or both criteria—inapplicability of NERC reliability standards and/or selling an amount of electricity under the specified threshold in the specified timeframe—to qualify for an operating agreement.

**Response:** Section 503(c) of FLPMA provides that right-of-way authorizations must be issued or reissued pursuant to Title V of FLPMA and its implementing regulations and must also be subject to such terms and conditions as the Forest Service may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination. Section 505(a) of FLPMA gives the Forest Service broad discretion to establish terms in right-of-way authorizations, including terms that will effectuate the purposes of FLPMA and its implementing regulations and minimize damage to scenic and aesthetic values and fish and wildlife habitat and otherwise protect the environment. In addition, section 505(b) of FLPMA requires the Forest Service to include terms in right-of-way authorizations that the Agency deems necessary to protect federal property and economic interests; efficiently manage the lands which are subject or adjacent to the right-of-way; protect lives and property; protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and otherwise protect the public interest in the lands traversed by or adjacent to the right-of-way.

These provisions of FLPMA give the Agency the authority to require owners and operators to have an operating plan or agreement for their powerline facilities. Pursuant to this preexisting authority in FLPMA and the Agency’s implementing regulations, the Forest Service issues powerline facility authorizations that require the owner or operator to prepare and submit an operating plan for approval by the authorized officer. Consistent with this preexisting authority and section 512 of FLPMA, the Agency’s implementing regulations and proposed and final directives require owners and operators to have an operating plan or agreement but give owners and operators the option to develop it on their own or in consultation with the authorized officer. The numerous requirements in section 512 for operating plans and agreements reinforce the Agency’s position that owners and operators must have an operating plan or agreement consistent with section 512. In addition, section 512(k) of FLPMA provides that an owner or operator that has an approved operating plan that is consistent with section 512 does not have to submit a proposed operating plan or agreement for review and approval. This provision would be unnecessary if owners and operators did not have to have an operating plan or agreement consistent with section 512 of FLPMA.
Consistent with section 512 of FLPMA, the proposed directive expressly provides that an owner or operator that meets either of the two specified criteria—inapplicability of NERC reliability standards or selling an amount of electricity under the specified threshold in the specified timeframe—is eligible for an operating agreement. An owner or operator that meets both criteria is also eligible. To clarify that point, the final directive provides that an owner or operator that meets the first and/or the second criterion is eligible. In addition, the final directive clarifies that powerline facilities that carry 200 or more kilovolts, not 69 or more kilovolts, as stated in the proposed directive, generally do not meet either of the criteria for an operating agreement and must have an operating plan.

**Hazard Trees**

**Comment:** Multiple commenters stated that the definition for “hazard tree” in the proposed directive was too restrictive in terms of the types of personnel who may identify hazard trees. These commenters also stated that the definition for “hazard tree” in section 512 of FLPMA does not preclude felling and pruning hazard trees adjacent to either side of the linear right-of-way for a powerline facility under a pilot project conducted under Title VIII, Subtitle F, section 8630, of the Agriculture Improvement Act of 2018 (the Farm Bill).

**Response:** The definition for “hazard tree” in section 512 of FLPMA provides for hazard trees to be identified by a certified or licensed arborist or forester under the supervision of the Forest Service or the owner or operator. Electric utilities typically do not employ a certified or licensed arborist, and the owner or operator, not the Forest Service, is responsible for inspecting, identifying, and felling hazard trees. Therefore, the definition for “hazard tree” in the final directive has been revised to add the phrase, “qualified vegetation management specialist,” and to remove the reference to the Forest Service in connection with who may identify hazard trees. Non-emergency felling or pruning of hazard trees is subject to approval by the authorized officer as provided in the final directive.

Section 512 of FLPMA governs operating plans and agreements for powerline facilities on NFS lands, including vegetation management inside the linear right-of-way for a powerline facility and outside the linear right-of-way to fell or prune hazard trees. The Farm Bill defines the term “right-of-way” as a “special use authorization issued by the Forest Service allowing the placement of utility infrastructure.” The Farm Bill expressly limits pilot projects to “NFS land adjacent to those rights-of-way” and expressly states that the “pilot program shall not apply in a right-of-way.” Thus, the Farm Bill limits pilot projects to NFS lands that are not covered by a special use authorization for a powerline facility, including the operating plan or agreement for that authorization. Consistent with section 512 of FLPMA and the Agency’s implementing regulations, the proposed and final directives provide for operating plans and agreements for powerline facilities to cover felling and pruning of hazard trees outside the linear right-of-way for a powerline facility. Therefore, felling and pruning of hazard trees cannot be conducted under a pilot project conducted under the Farm Bill.
Timeframe for Review and Approval of Proposed Operating Plans and Agreements

**Comment:** Multiple commenters requested revisions to the review and approval timeline for proposed operating plans and agreements in the proposed directive. These commenters believed that the proposed review and approval process would be inefficient and would not meet the 120-day timeframe required by section 512 of FLPMA.

**Response:** Section 512 of FLPMA and the Agency’s implementing regulations require the Agency and the BLM jointly to develop a review and approval process for proposed operating plans and agreements that provides that they will be approved, to the maximum extent practicable, within 120 days of receipt. The Agency’s implementing regulations provide that factors such as the number of proposed operating plans and agreements under review by the authorized officer and the number of powerline facilities covered under a single operating plan or agreement may affect the practicability of approving a proposed operating plan or agreement within 120 days from the date of receipt. The final directive includes compliance with applicable laws as another factor potentially affecting the practicability of meeting the 120-day timeframe. The review and approval process in section 86 of the proposed and final directives references the 120-day goal stipulated in section 512 of FLPMA and the Agency’s implementing regulations. Exhibit 01 in Section 86 is intended to be a guide for development, review, and approval of proposed operating plans and agreements, including key actions and recommended timelines. The final directive facilitates review and approval of a proposed operating plan or agreement within 120 days of receipt by creating a two-track process that provides the option for the requisite environmental analysis and consultation for some or all types of activities to be conducted under an approved operating plan or agreement to be completed case by case after, rather than before, a proposed operating plan or agreement is approved but before the activities are conducted. The owner or operator and the authorized officer may agree to meet and may identify more milestones in the review and approval process than outlined in the final directive.

Environmental Analysis and Consultation

**Comment:** Multiple commenters suggested changing how the proposed directive addresses environmental analysis and consultation requirements for species and cultural resource protection, including allowing for deferral of archaeological surveys and reviews until they are needed, relying on CEs, and adhering to Executive Order 13855, *Promoting Active Management of America’s Forests, Rangelands, and Other Federal Lands To Improve Conditions and Reduce Wildfire Risk.*

**Response:** The Agency is required to comply with laws providing for environmental, species, and cultural and historic resource protection when approving activities on NFS lands, including vegetation management, inspection, and operation and maintenance of powerline facilities. The Agency sought to reduce case-by-case approval of activities conducted under an approved operating plan or agreement by requiring that all the requisite environmental analysis and consultation be completed during the operating plan or agreement review and approval process. The final directive accommodates utilities that want or need the flexibility to have the requisite environmental analysis and consultation for activities completed case by case after, rather than before, a proposed operating plan or agreement is approved but before the activities are...
conducted, while still supporting comprehensive environmental analysis and consultation for activities during operating plan or agreement review and approval. In addition, the final directive directs Agency personnel to use, to the extent possible, previous site-specific and programmatic environmental analysis and consultation, archaeological reviews and surveys, and CEs to reduce or eliminate additional environmental analysis and cultural and endangered species consultation.

Executive Order 13855 does not authorize or apply to operating plans and agreements for powerline facilities. Rather, Executive Order 13855 primarily directs the Agency to develop goals and implementation plans for wildfire prevention activities and programs; coordinate with other federal agencies to prioritize and promptly implement post-wildfire rehabilitation, salvage, and forest restoration; streamline administrative and regulatory processes and policies relating to fuel reduction and forest restoration on NFS lands when appropriate; and develop a joint strategy with DOI for reducing fire risk on federal lands. The proposed and final directives do not prevent the authorized officer from collaborating on compliance with environmental analysis and consultation requirements with other federal agencies involved with the authorization or approval of powerline facility activities. To the contrary, the final directive provides that the authorized officer should consider coordinating with the BLM on the content of a proposed operating plan or agreement for a powerline facility that traverses federal lands managed by the Forest Service and federal lands managed by the BLM.

Consideration of Other Standards, Agreements, and Best Management Practices

Comment: Multiple commenters expressed concern about the requirement in the proposed directive to rely on other standards, agreements, and best management practices, which they stated do not apply to all utilities, and the failure of the proposed directive to provide for consideration of other relevant direction related to electric system reliability and fire safety.

Response: Section 512 of FLPMA and the Agency’s implementing regulations require proposed operating plans and agreements to describe the vegetation management, inspection, and operation and maintenance methods that may be used to comply with all applicable law, including fire safety requirements and reliability standards established by the Electric Reliability Organization. Accordingly, the proposed and final directives provide that in developing, reviewing, and approving proposed operating plans and agreements, the authorized officer should consider:

- Owner or operator or electric utility industry and Forest Service best management practices for powerline facility safety, including the use of new technologies;
- The use of integrated vegetation management, including the use of pesticides (including herbicides) authorized by the Forest Service in affected administrative units;
- All applicable fire safety and electrical system reliability standards and requirements, including but not limited to NERC FAC-003, the National Electric Safety Code, the Institute of Electrical and Electronic Engineers Standards, and American National Standards Institute (ANSI) A300; and
- For investor-owned companies, the 2016 Memorandum of Understanding on Vegetation Management for Powerline Rights-of-Way Among the Edison Electric Institute, Utility
Arborist Association, the National Park Service, the Bureau of Land Management, the Forest Service, and the U.S. Environmental Protection Agency, or its successor MOU.

The authorized officer is encouraged, rather than required, to consider these factors to the extent they apply.

Existing Operating Plans

Comment: Multiple commenters expressed concern about how the Agency would determine which existing operating plans required modification due to the vagueness of the term “consistent with” as used in connection with applicable requirements. These commenters recommended that the directive give owners and operators 120 days to submit a proposed operating plan or agreement and require the authorized officer to review and approve the proposed operating plan or agreement within 30 days from the date of receipt.

Response: Like section 512 of FLPMA, the proposed directive requires that existing operating plans be “consistent with” section 512 of FLPMA and that the process for reviewing existing operating plans be “consistent with” the process for reviewing and approving proposed operating plans or agreements. Like section 512 of FLPMA, the proposed directive requires existing operating plans to be “consistent with” the minimum content requirements for proposed operating plans and agreements. For clarity, in the final directive, the Agency has changed “consistent with” to “complies with” or “in compliance with.”

For powerline facilities without an operating plan, the final directive extends the deadline for submitting a proposed operating plan or agreement from August 31, 2023, to 18 months from the date the authorized officer notifies the owner or operator that a proposed operating plan or agreement must be submitted, which must occur no later than September 30, 2026. The final directive provides that owners and operators may continue operating and maintaining their powerline facilities under a noncompliant operating plan that was previously approved by the authorized officer or without an operating plan, subject to the owner’s or operator’s existing powerline facility authorization, section 512 of FLPMA, and the Forest Service’s regulations, until a proposed modification to the operating plan or a proposed operating plan or agreement is approved.

Activities conducted under powerline facility authorizations with a noncompliant operating plan or without an operating plan, including vegetation management outside the linear right-of-way to fell or prune hazard trees, are subject to strict liability under Title V of FLPMA, not the Farm Bill. The limit and conditions on imposition of strict liability in section 512 of FLPMA, the Agency’s implementing regulations, and the final directive do not apply to activities conducted under a noncompliant operating plan or without an operating plan.

Template for Operating Plans and Agreements

Comment: Multiple commenters requested various changes to the template for operating plans and agreements to make it align better with their powerline facility.
**Response:** The sample operating plan included as an exhibit in the proposed directive was intended to provide a framework the authorized officer could offer to owners and operators or use to help them develop a proposed operating plan or agreement that complies with section 512 of FLPMA, the Agency’s implementing regulations, and the directive. To make the template easier to revise, as needed, the Agency has removed it from the final directive and will post it for reference on the Agency’s website at https://www.fs.usda.gov/managing-land/lands-realty-management/powerline-management, along with annual reporting on routine vegetation management requests.

**Definitions**

**Comment:** Multiple commenters requested changes to several definitions in the proposed directive and elimination or clarification of the undefined term “major hazard tree removal.”

**Response:** The following responds to comments on the definitions in the proposed directive.

**In General**

Some terms of art in the Agency’s implementing regulations and the final directive may be named similarly and defined dissimilarly by other entities or in other documents. The terms of art in the Agency’s implementing regulations and the final directive may not be entirely consistent with industry terminology because they were developed to be consistent with section 512 of FLPMA and to promote clarity in their application to management of activities on NFS lands.

**Suggested Changes That Were Not Made**

- The term “adjacent (abutting) land” was not defined, as that term is not used in section 512 of FLPMA or the Agency’s implementing regulations and final directive. Section 512 of FLPMA uses the term “on abutting Federal land,” and the Agency’s implementing regulations use the term “on abutting lands.” The final directive uses the phrase “on NFS lands adjacent to either side of the linear right-of-way,” as “on NFS lands adjacent to either side” is more commonly understood and does not require a definition. The term “linear right-of-way” is defined in the Agency’s implementing regulations and final directive.
- The definition for “bulk power system” was not changed, as it is consistent with the definition of that term in the Energy Policy Act of 2005.
- The phrase, “changed conditions,” which may prompt proposed modifications to an approved operating plan or agreement by the authorized officer, was not defined, as it is commonly understood and is not defined or in any way circumscribed in section 512 of FLPMA or the Agency’s implementing regulations.
- A definition for the term “electrical impairment” was not included, as that term is not used in the final directive.
- The term “major hazard tree removal” was not included in the final directive.
- “Powerline facility” is a term of art in the Agency’s implementing regulations and the final directive that refers to all the structures authorized inside a linear right-of-way for
electric transmission and distribution. The definition for that term makes clear that a powerline facility includes more than the conductor and poles.

- The definition for “reliability standard” was not changed, as it is consistent with the definition for that term in the Energy Policy Act of 2005.
- The definitions for “routine maintenance” and “non-routine maintenance” were not changed. The Agency does not believe that it is necessary for clarity to add the word “vandalism,” references to electrical impairments and refurbishments, or a statement that the lists of examples are not exhaustive.

Changes That Were Made

- The phrase, “and is often referred to as a ‘transmission line,’” was removed from the definition for “conductor.”
- The definition for “Electric Reliability Organization” was revised to be more consistent with the Energy Policy Act of 2005 by replacing the phrase, “on all users, owners, and operators of the nation’s electric transmission system” with the phrase, “bulk power system.”
- A definition for “FERC license” was added to the final directive.
- The Agency added a definition for “flashover,” which is a term of art used in the definition for “minimum vegetation clearance distance.”
- The definition for “hazard tree” was revised to add “qualified vegetation management specialist” and to remove the reference to the Forest Service in connection with who may identify hazard trees. The definition includes a 10-foot distance as a minimum distance for proximity between powerline facilities and trees that might warrant pruning or felling and the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards, rather than specifying FERC or NERC standards, because those standards do not apply to all owners or operators.
- A definition for “integrative vegetation management” was added for clarity.
- The words “powerline facility” and “(wire)” were removed from the definition of maximum operating sag since they were redundant.
- The definition for “minimum vegetation clearance distance (MVCD)” was revised to be consistent with the definition of that term in NERC reliability standards.
- “Operating plan or agreement,” not “operations and maintenance plan” or “O&M plan,” is the term of art in the Agency’s implementing regulations and the final directive that refers to the document governing vegetation management, inspection, and operation and maintenance of powerline facilities on NFS lands. In the definition for “operating plan or agreement,” the word “remove” was changed to “fell.” In addition, a reference to construction, reconstruction, and maintenance of access roads and trails was added since those activities are covered by an operating plan or agreement.
- A definition for “tort” was added since that term of art is used in the liability section of the final directive.
- The definition for “emergency vegetation management” was not revised, other than to add “linear” before “right-of-way” for consistency with the defined term and to change “remove” to “fell” and “removal” to “felling” for consistency with terminology used for other special uses. The term “emergency vegetation management” as defined in the
proposed directive sufficiently covers conditions that the Agency deems hazardous enough to merit pruning or felling of trees without prior notice to the authorized officer.

- The definition for “non-emergency (routine) vegetation management” was not revised, other than to change “remove” to “fell” and to add the phrase “or prune.”

Classes of Activities

Comment: Multiple commenters requested that the activity classes be eliminated or revised to provide greater flexibility to owners and operators and authorized officers.

Response: Section 512 of FLPMA and the Agency’s implementing regulations require operating plans and agreements to include schedules for the owner or operator to notify the authorized officer of routine, nonroutine, and emergency maintenance and routine and emergency vegetation management for a powerline facility; for the owner or operator to request approval from the authorized officer of non-routine maintenance and routine vegetation management; and for the authorized officer to respond to a request for approval.

To meet these statutory and regulatory requirements, the implementing directive must provide for activities to be conducted under approved operating plans and agreements to be categorized in terms of whether they require notice to and approval from the authorized officer. Further, authorized officers must be aware of the timing and location of activities that are occurring on NFS lands under the authorized officers’ jurisdiction.

Section 87 of the final directive establishes a framework for classifying activities to be conducted under approved operating plans and agreements based on whether they require notice to and acknowledgment or approval from the authorized officer and how any required notice and acknowledgment or approval may be provided. The framework lists examples, rather than limiting the types of activities, in each class and establishes protocols for notice and acknowledgment or approval of activities conducted under an approved operating plan or agreement that are consistent with section 512, the Forest Service’s implementing regulations, and 36 CFR 251.61.

In contrast to the framework in the proposed directive, the framework in the final directive is suggested, rather than mandatory. In addition, the classifications have been changed from numbers to letters to reduce confusion with the classification of NFS roads.

Operating plans and agreements approved under Track 1 will include, and some operating plans and agreements approved under Track 2 may include, activities that are not covered by approval of the proposed operating plan or agreement and that will require subsequent case-by-case environmental analysis and consultation before those activities may be conducted. For either Track 1 or Track 2, the final directive requires authorized officers to ensure that a proposed operating plan or agreement specify the types of activities that will not be covered by approval of the proposed operating plan or agreement and that will require subsequent case-by-case environmental analysis and consultation, and the types of activities that will be covered by approval of the proposed operating plan or agreement and that will not require subsequent case-by-case environmental analysis and consultation. The final directive also requires authorized
officers to ensure that proposed operating plans and agreements approved under Track 2 include a schedule and requirements for notification and acknowledgment or approval of the types of activities that will be covered by approval of the proposed operating plan or agreement. The final directive requires authorized officers to ensure that any subsequent case-by-case approval of any types of activities conducted under an approved operating plan or agreement be documented and that a schedule and requirements for notification and acknowledgment or approval for those types of activities are included in the approved operating plan or agreement.

Class A activities (Class I activities in the proposed directive) will continue to require prior notice to the authorized officer in the form of a telephone call or email. In contrast to the proposed directive, the final directive includes the proviso that acknowledgment of Class A activities from the authorized officer by telephone or email is not required if the owner or operator has not received the acknowledgment within 24 hours. The final directive clarifies that not all mapping and inspection of structures, but rather mapping and inspection of structures involving use of heavy equipment, helicopters, or drones, are examples of Class A activities. Some inspection-related activities in Class A involving heavy equipment, helicopters, or drones may not be appropriate during certain times of the year or under certain circumstances may have to be delayed due to naturally occurring or human activity in the area. Accordingly, the final directive provides that Class A activities may be restricted during certain times or under certain conditions to prevent adverse impacts on the environment, threatened or endangered species, and cultural and historic resources.

“Special use authorization” is a term of art defined by the Agency to refer to a written authorization for use and occupancy of NFS lands, which for a powerline facility may be a permit or an easement. No additional special use authorization is required for any activities, regardless of their classification, conducted under an approved operating plan or agreement. However, additional environmental analysis and consultation and/or approval may be required for certain types of activities conducted under an approved operating plan or agreement.

Specifically, some types of activities may not be covered by approval of a proposed operating plan or agreement and may require subsequent case-by-case environmental analysis and consultation. Moreover, certain Class B activities (Class II activities under the proposed directive) that are covered by the environmental analysis and consultation for an approved operating plan or agreement, such as routine maintenance of NFS roads that must be authorized by a road use permit and routine vegetation management, require or may require prior written approval from the authorized officer by email or letter. In addition, Class C activities (Class III activities under the proposed directive) conducted under an approved operating plan or agreement, such as new construction, rerouting of powerline facilities, and refurbishment or replacement of powerline facility components; non-routine powerline facility maintenance; hazard tree felling or pruning that extends beyond the linear right-of-way for a powerline facility; road and trail construction and reconstruction; non-routine road and trail use and maintenance; and installation of fiber optic cable on powerline facilities, will require additional environmental analysis and prior written approval from the authorized officer as new, changed, or additional uses or areas under the Agency’s regulations at 36 CFR 251.61.
The final directive reduces the information the owner or operator must report to the authorized officer within 24 hours of an emergency response under Class D (Class IV under the proposed directive) and provides for submission of more detailed information within 30 days of completion of the emergency activity. The description of emergency activities in the final directive has been clarified to provide that the owner or operator may be required to conduct consultation under the ESA and NHPA following emergency activities to determine impacts on cultural and historic resources and protected species and their habitat and to provide that the Agency may charge cost recovery fees for any costs incurred by the Agency in connection with consultation required after Class D activities.