

Agriculture Act (Farm Bill) of 2014

Amendments to the Healthy Forest Restoration Act (HFRA) of 2003

2014 Farm Bill, Section 8204 , Insect and Disease Infestation

Amends Title VI of the Healthy Forest Restoration Act (HFRA) of 2003 (16 U.S.C. 6591 et seq.) by adding section 602 (Designation of Treatment Areas) and section 603 (Administrative Review) to address qualifying insect and disease infestations on National Forest System lands.

HFRA, Section 602, Designation of Treatment Areas

- Not later than 60 days after enactment, if requested by a Governor of a State, the Secretary of the U.S. Department of Agriculture was required to designate as part of an insect and disease treatment program at least one landscape area (such as a sub-watershed - 6th level Hydrologic Unit Code) in at least one national forest in each State that is experiencing an insect and disease epidemic. (The Secretary may designate additional areas to address insect and disease threats after the initial 60 day period.)
 - Areas were designated on May 20, 2014. Information on areas designated by state can be found at <http://www.fs.fed.us/farmbill/areadesignations.shtml>.
 - An area may be designated as part of an insect and disease treatment program if it meets at least one of the following criteria. The area is:
 - Experiencing forest health decline based on annual forest health surveys;
 - At risk of experiencing substantially increased tree mortality based on the most recent Forest Health Protection Insect and Disease Risk Map; or
 - Contains hazard trees that pose an imminent risk to public infrastructure, health, or safety.
- Under section 602(d), priority projects that reduce the risk or extent of, or increase the resilience to, insect or disease infestation may be carried out in designated areas in accordance with sections 102(b)(c)(d), 104, 105 and 106 of the Healthy Forest Restoration Act, which provides for expedited NEPA reviews, pre-decisional objection review, and guidance on judicial review. This authority is available for projects for which scoping has been initiated by September 30, 2018.
- Authorizes, **but does not appropriate**, up to \$200 million annually through 2024 to carry out projects under section 602.

Insect & Disease Area Designations in Idaho & Montana

- **IDAHO:** Over 1.7 million acres designated on National Forests in Idaho: Idaho Panhandle and Nez Perce-Clearwater National Forests in the Northern Region (Region 1); Boise, Caribou-Targhee, Payette, Salmon-Challis and Sawtooth National Forests in the Intermountain Region (Region 4)
- **MONTANA:** Nearly 5 million acres designated on the Beaverhead-Deerlodge, Bitterroot, Custer-Gallatin, Flathead, Helena, Lewis and Clark, Kootenai and Lolo National Forests (all Northern Region [Region 1])

HFRA, Section 603, Administrative Review

- Under section 603, an insect and disease project may be categorically excluded from documentation in an environmental assessment or an environmental impact statement and exempt from pre-decisional objections. *You may hear this CE referred to as the “Farm Bill CE” or “Insect & Disease CE”.*
- Section 603 imposes limitations on the use of the section 603 CE. A project that uses this categorical exclusion:
 - May not exceed 3,000 **treated** acres;
 - Shall be located in the Wildland Urban Interface (WUI), or if outside the WUI in an area in condition classes 2 or 3 in Fire Regime Groups I, II, or III; and
 - May not include the establishment of permanent roads, but may allow for necessary maintenance and repairs on existing permanent roads and may allow for the construction of temporary roads (where not otherwise prohibited) for the purposes of carrying out this section. Temporary roads would have to be decommissioned no later than three years after the date of project completion.
- In order to use this Categorical Exclusion (CE), projects must:
 - Maximize old growth and large trees to the extent the trees promote stands that are resilient to insect and disease threats;
 - Consider the best available scientific information; and
 - Be developed and implemented through a collaborative **process** that:
 - includes **multiple interested persons representing diverse interests** and is **transparent** and **non-exclusive**;
 - **or** meets the requirements of a resource advisory committee under subsections (c) through (f) of section 205 of the Secure Rural Schools and Community Self-Determination Act.
 - *Projects that carry out part of a proposal that complies with the eligibility requirements of a Collaborative Forest Landscape Restoration Program have already been determined to meet the above requirements.*
- The section 603 CE may not be used in areas that are:
 - Congressionally designated Wilderness and Wilderness Study Areas;
 - Areas where the removal of vegetation is restricted or prohibited by statute or by Presidential proclamation; and
 - Areas where the activities described above would be inconsistent with the applicable Land and Resource Management Plan.

What is a Categorical Exclusion?

The Council of Environmental Quality (CEQ) regulations provide for categorical exclusions (CEs) to implement the National Environmental Policy Act (NEPA) for the purpose of reducing delay and paperwork. CEQ regulations allow Federal agencies to exclude from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) categories of actions that do not individually or cumulatively have a significant effect on the human environment. Based on the Agency’s experience and knowledge, the responsible official can conclude that if the action fits within an identified category and analysis shows there are no extraordinary circumstances, then the action would not have significant effects.

Collaboration Requirements & Considerations for HFRA Projects

Requirements

HFRA EA/EIS: Title 1, Section 104(f) – “PUBLIC COLLABORATION - In order to encourage meaningful public participation during preparation of authorized hazardous fuel reduction projects, the Secretary shall **facilitate collaboration among State and local governments and Indian tribes, and participation of interested persons**, during the preparation of each authorized fuel reduction project in a manner consistent with the Implementation Plan.”

Farm Bill/Insect & Disease CE: Title VI, Section 603(b)(1)(C) – “Developed and implemented through a collaborative process that (i) includes **multiple interested persons representing diverse interests**; and (ii) is **transparent and non-exclusive**.

Considerations

These are considerations only. The Responsible Official has the liberty to craft a collaborative process appropriate for the complexity and scale of his/her project, as long as he/she can demonstrate that process meets the applicable requirements for the HFRA project.

- Use of the Farm Bill/Insect & Disease CE requires use of a **transparent** and **nonexclusive** collaborative **process**. A project using a HFRA EA/EIS requires the Forest Service to **facilitate collaboration among State and local governments and Indian tribes, and participation of interested persons**.
 - Work with a formal collaborative group is **not necessary** to meet these requirements. That does not mean collaborative groups are excluded from participating. A collaborative group could help facilitate the process but should **allow for inclusion of others** interested in participating in the process. (Collaborative groups participating in the collaborative process can continue to apply their bylaws/operating procedures to the formal group, but these would not apply to others choosing to participate in the process.)
 - Recognize from the beginning that because this is a collaborative process (not a formal collaborative group), the responsible official is **not looking for consensus**. The responsible official will equitably value insights from each participating individual and organization and **will not rely solely on any single individual or group perspective** when making decisions for the project.
- There is no “one size fits all” approach to collaboration
 - Project-level collaborative processes do not need to mirror more complex collaborative processes that may be appropriate at the programmatic/planning-level
 - Each project will have its own unique issues and participants so the process may vary from project to project
- Incorporate opportunities for dialogue to allow participants to learn from each other, but **expedite the learning process where possible**
 - Provide enough information that participants can provide informed, insightful feedback – but don’t try to make everyone experts in Forest Service programs/processes and applicable law/regulation/policy
 - Consider a phased but accelerated learning process that allows for fairly quick understanding of the project development process and potential treatment area/project area
- Many of those participating in the process are doing so on their own personal time – **be respectful of time!**
 - Hold meetings only when necessary and have clear objectives
 - Show up organized and prepared so you can stay on schedule; have a skilled facilitator!
 - To increase transparency, use other tools to keep communication networks open in between meetings
 - Frequent mail/email updates, post information to a designated webpage (could be the Forest Service project webpage or webpage managed by external participant in the collaborative process)

Environmental Analysis Requirements for HFRA EA/EIS

All projects must be in compliance with the National Environmental Policy Act (NEPA) and other applicable laws.

Consideration of Alternatives

- **Projects in Wildland Urban Interface (WUI):** Only required to study, develop and describe the **proposed agency action and one action alternative**. *Advise working closely with those in the public collaboration process to identify the action alternative and meticulously documenting process and rationale for developing the alternative.*
- **Projects in WUI and no further than 1.5 miles from boundary of an at-risk community:** Study, develop or describe the **proposed agency action only**. Not required to study, develop or describe any alternative to the proposed agency action **unless** the at-risk community has adopted a community wildfire protection plan and the proposed agency action doesn't implement the recommendations in the plan. If this is the case, the recommendations in the plan shall be evaluated as an alternative to the proposed agency action. *Must demonstrate the project is addressing hazardous fuels concerns and identify the "boundary" of the at-risk community.*
- **All Other Hazardous Fuel Reduction Projects:** Study, develop and describe the **proposed agency action and no action alternative**. An **additional alternative** should be studied, developed and described **IF** it is **proposed during scoping or the collaborative process AND** it **meets the purpose and need of the project**. If more than one alternative is proposed during scoping/collaborative process, **only one alternative will be selected for consideration** and reasons for selection must be documented.

Public Notice & Meeting

Required to hold a public meeting during the project preparation stage at an appropriate location proximate to the administrative unit of the Federal land on which the project will be conducted. You must provide advance notice of the location, date and time of the meeting.

Public Collaboration

Required to **facilitate collaboration among State and local governments and Indian tribes, and participation of interested persons**, during the preparation of each project in a manner consistent with the Implementation Plan.

Public Comment

An opportunity for public comment shall be provided during the preparation of any HFRA EA or EIS.

Administrative Review

The administrative review process (pre-decisional objection process) under 36 CFR 218 Subpart C would apply to any HFRA EA/EIS.