



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 29

[Docket No. FWS-HQ-NWRS-2019-0017; FF09R50000-XXX-FVRS8451900000]

RIN 1018-BD78

Streamlining U.S. Fish and Wildlife Service Permitting of Rights-of-Way

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), propose to revise and streamline FWS regulations for permitting of rights-of-way by aligning FWS processes more closely with those of other Department of the Interior bureaus, consistent with applicable law and to the extent practicable. The proposed rule would require a pre-application meeting and use of a standard application, the SF-299, Application for Transportation and Utility Systems and Facilities on Federal Lands; allow electronic submission of applications; and provide FWS with additional flexibility, as appropriate, to determine the fair market value or fair market rental value of rights-of-way across FWS-managed lands. This proposed rule would reduce the time and cost necessary to determine a right-of-way's fair market value or fair market rental value, and also reduce an applicant's time and cost to obtain a right-of-way permit. The proposed rule would also simplify the procedures that applicants must follow to reimburse the United States for costs that FWS incurs while processing right-of-way applications and monitoring permitted rights-of-way.

DATES: We will accept comments on this proposed rule that are received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see

ADDRESSES, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments on this proposed rule by one of the following methods:

- (1) *Electronically*: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>.

In the Search box, enter FWS–HQ–NWRS–2019–0017, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

- (2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–NWRS–2019–0017, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Public Comments**, below, for more information).

FOR FURTHER INFORMATION CONTACT: Ken Fowler, U.S. Fish and Wildlife Service, MS: NWRS, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1876.

SUPPLEMENTARY INFORMATION:

Public Comments

We request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

All comments submitted electronically via <http://www.regulations.gov> will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on

<http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>.

Background

FWS is the principal land manager and permitting authority for more than 89 million terrestrial acres of public lands, including 76.8 million acres in Alaska, 12.2 million acres in the lower 48 States, and 50,000 acres in Hawaii. The vast majority of the 89 million acres are part of the National Wildlife Refuge System (Refuge System), whose mission is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (16 U.S.C. 668dd(a)(2)). These acres include more than 20 million acres of designated wilderness that the Service manages to preserve the wilderness character in accordance with the Wilderness Act of 1964 (16 U.S.C 1131 *et seq.*). Subject to existing private rights, and special provisions included in wilderness-designation statutes, the Wilderness Act prohibits commercial enterprises and permanent roads. The law also prohibits temporary roads; motor vehicles, motorized equipment, motorboats, landing of aircraft, and other forms of mechanical transport; structures; and installations, unless their use can be demonstrated to be necessary to meet minimum requirements for the administration of the area for Wilderness Act purposes.

Refuge System lands and waters are managed according to the authorities of the National Wildlife Refuge System Administration Act of 1966 (Administration Act; 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act; Pub. L. 105–57), which authorize FWS to permit a new use on a refuge when

FWS determines it is a compatible use. The term “compatible use” means a wildlife-dependent recreational use or any other use of a refuge that, in the sound professional judgment of the FWS Director, will not materially interfere with or detract from the fulfillment of the mission of the Refuge System or the purpose(s) of the refuge.

A “compatibility determination” is a written determination, signed and dated by the Refuge Manager, that an existing or new use of a refuge is compatible or not compatible with the Refuge System mission or the purpose(s) of the refuge. Currently there are over 560 national wildlife refuges, and each refuge has different establishing authorities, purposes, habitat types, wildlife species, and public uses, which can result in different compatibility determinations for the same use. The Improvement Act required FWS to issue regulations establishing a process for determining whether a proposed use is a compatible use; these regulations are set forth in title 50 of the Code of Federal Regulations at 50 CFR 26.41.

The Improvement Act authorizes FWS to grant a right-of-way when the right-of-way is a compatible use. The regulations at 50 CFR 26.41 state that, for existing rights-of-way, FWS will not make a compatibility determination and will deny any request for maintenance of an existing right-of-way that will affect a unit of the National Wildlife Refuge System, unless “the design adopts appropriate measures to avoid resource impacts and includes provisions to ensure no net loss of habitat quantity and quality; restored or replacement areas identified in the design are afforded permanent protection as part of the national wildlife refuge or wetland management district affected by the maintenance; and all restoration work is completed by the applicant prior to any title transfer or recording of the easement, if applicable.”

In instances where an existing use is authorized for more than 10 years (such as an electric utility right-of-way), the Improvement Act directs FWS to reevaluate the permitted use to determine compliance with the authorization terms and conditions. All right-of-way permits issued by FWS include language allowing FWS to terminate the right-of-way permit if the grantee’s use violates the permit terms and conditions.

The Improvement Act's compatibility requirements do not apply to FWS permitting of rights-of-way across National Fish Hatchery System lands, nor do they apply to permitting of rights-of-way on or across FWS facilities that are not located on Refuge System lands. FWS processes applications for these rights-of-way under the applicable authority cited at 43 CFR part 2800, in accordance with the application procedures at 50 CFR 29.21-2.

Title XI of the Alaska National Interest Lands Conservation Act (ANILCA; Pub. L. 96-487; 16 U.S.C. 3101 *et seq.*) requires the Secretary to provide adequate and feasible access to inholdings within Alaska refuges. The proposed access is subject to a prescribed evaluation process that ensures that the route or method of access avoids or minimizes threats to public health and safety while providing adequate and feasible access to the inholding (see 43 CFR 36.10).

The Administration Act authorizes the Secretary, acting through the FWS Director, to issue a right-of-way permit across Refuge System lands only after the applicant pays FWS the fair market value or fair market rental value of the right-of-way, unless the applicant is exempt from such payment by any other provision of Federal law. In addition, before issuing a right-of-way permit, FWS must assess the effects of the proposed use, as required by the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*); the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), as amended; the National Historic Preservation Act of 1966 (NHPA; 54 U.S.C. 300101 *et seq.*); and other applicable laws and Executive Orders.

This Proposed Rule

Consistent with Executive Order (E.O.) 13783, “Promoting Energy Independence and Economic Growth,” dated March 28, 2017, and E.O. 13821, “Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,” dated January 8, 2018, FWS is streamlining its right-of-way permitting process for proposed uses on FWS-managed lands by aligning FWS processes more closely with those of other DOI bureaus, to the extent practicable and in a manner that is consistent with applicable law. Below, we summarize the substantive

proposals included in this document.

The regulations at 50 CFR 29.21-2 currently state that applicants may submit applications for right-of-way permits in any format. However, E.O. 13821 directs Federal agencies to use the “GSA Common Form Application,” which refers to the Standard Form 299 (SF-299), Application for Transportation and Utility Systems and Facilities on Federal Lands. Therefore, we propose to revise 50 CFR 29.21-2 to require use of the SF-299 for all requests for right-of-way permits.

The regulations at 50 CFR 29.21-2 currently require applicants to submit applications to a FWS Regional office in hard copy, in triplicate. FWS proposes to require only one copy. Also, we propose to allow electronic application submissions, or E-Filing, as an alternative to hardcopy submissions. Improvements in technology enable FWS to process electronic application submissions more efficiently than hardcopy submissions, and accepting electronic submissions may reduce the amount of time FWS requires to issue a right-of-way permit.

Incomplete information is often the reason right-of-way application processing is delayed. The amount and type of documentation FWS requires to process an application varies depending on whether the request is for a renewal, limited additional use of an existing right-of-way with minimal or no new environmental impacts, or a new right-of-way where significant environmental disturbance may occur. We, therefore, propose to modify the right-of-way application procedures at 50 CFR 29.21-2 to require a standard, no-cost pre-application meeting (in-person or teleconference) for all new proposed rights-of-way and all modifications and renewals of existing rights-of-way, which will enable FWS to determine the documentation needed to process the application. We also propose to revise the application procedures at 50 CFR 29.21-2 to provide the FWS Regional Director more flexibility in determining the documentation required to process an application, and to reduce the documentation requirements for renewals. This change would reduce the regulatory burden on applicants by ensuring that FWS requests only the documentation that it requires to process each application.

We propose to eliminate the requirement at 50 CFR 29.21-7 for an appraisal to determine fair market value or fair market rental value, to reduce the amount of time FWS requires to issue right-of-way permits, by authorizing all Regional Directors to use any DOI-approved method to determine these values, including the use of fee schedules. This change would reduce the time and cost necessary to determine the fair market value or fair market rental value of many rights-of-way, and, therefore, reduce an applicant's time and cost to obtain a right-of-way permit.

FWS cannot issue a right-of-way permit unless it can accurately locate the requested right-of-way. Aside from the time required to obtain appraisals, a missing or inadequately prepared legal description or survey plat, which FWS uses to accurately locate the requested right-of-way, is the most common cause of FWS delays in issuing a right-of-way permit. Therefore, we propose to clarify the requirements for the legal description and survey plat that applicants must provide with or after application submission but before FWS will issue a right-of-way permit.

FWS last updated the schedule of application fees and monitoring fees at 50 CFR 29.21-2 in 1977. FWS's cost to process applications routinely exceeds the 1977 fee amounts by a factor of five times or more. Currently, 50 CFR 29.21-2 requires applicants to pay a right-of-way application fee and then make periodic additional payments—beyond the initial application fee—to FWS for all additional application processing costs in advance of FWS incurring those costs. We propose to eliminate our application fee and require applicants to reimburse FWS for the costs it incurs while evaluating and processing right-of-way applications and monitoring permitted rights-of-way, and to waive reimbursement of these costs for all applications for rights-of-way from (a) State or local governments or agencies or instrumentalities thereof and (b) Federal Government agencies, as well as for (c) private individuals or organizations when a Regional Director has certified that the right-of-way will contribute to accomplishing the mission of the Refuge System, refuge purposes of the refuge the right-of-way will cross, or fish hatchery purposes of the fish hatchery the right-of-way will cross.

In this proposed rule, provisions for cost recovery associated with our application processing, and with our monitoring, are set forth in a separate section of the regulations. In addition, we are proposing to increase the charge for processing the transfer of a permit from \$25 to \$100. Finally, we are proposing to increase the amount of no-fault liability for injury and damage to the land and property of the United States from \$1,000,000 to \$5,000,000 to account for inflation and increased liability measures.

For clarity, we propose to establish separate sections in the regulations to set forth the requirements for pre-application meetings and our compatibility determinations.

In addition, we propose to make editorial changes for clarity and consistency in the regulations, such as removing the word “easement” where we simply mean “permit,” removing out-of-date and gender-specific references, updating and adding definitions for terms used in the regulations, and updating the amount of the FWS permit transfer fee and the maximum amount of no-fault liability for certain permits to account for the inflation since 1977.

The proposed changes to the right-of-way regulations are at the end of this document. While the proposed revisions to some sections are mostly minor updates as just described, we have set forth the sections in their entirety for the ease and convenience of the reader.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has waived their review regarding their significance determination of this proposed rule.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 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 executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant,

feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Executive Order 13771

We do not believe this proposed rule is an E.O. 13771 (“Reducing Regulation and Controlling Regulatory Costs”) (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

FWS reviewed the Small Business Size standards for the affected industries. We determined that a large share of the entities in the affected industries are small businesses as defined by the Small Business Act. However, FWS believes that the impact on the small entities is not significant, as the proposed rule would impact a small number of small entities, and FWS does not believe that these effects would be economically significant.

The proposed rule would benefit small businesses by streamlining FWS regulations for permitting rights-of-way and thereby reduce the amount of time that FWS requires to issue many

right-of-way permits. The proposed rule would implement a pre-application meeting to provide small businesses with information upfront about the FWS's estimated time and cost to evaluate and process a right-of-way application, increasing regulatory certainty. Additionally, the proposed rule would eliminate the FWS application fee and provide FWS the flexibility to request only the documents that it requires to process a right-of-way application, thereby reducing the regulatory burden.

In summary, we have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities. We certify that, if made final, this proposed rule would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule would streamline and expedite FWS processing of industry requests for rights-of-way and modifications to rights-of-way that cross FWS-managed lands, but it would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

- a. This proposed rule would not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.
- b. This proposed rule would not produce a Federal requirement of \$100 million or greater in any year and is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings—Executive Order 12630

Under Executive Order 12630, this proposed rule would not have significant takings implications as it applies only to FWS permitting of rights-of-way across lands, and interests in land, owned by the United States. A takings implication assessment is not required.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects, as it waives right-of-way application processing costs and right-of-way monitoring costs for State or local governments when the right-of-way is for governmental purposes that benefit the general public, and all other application requirements are necessary for FWS to meet Improvement Act and NEPA requirements. A federalism summary impact statement is not required.

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). OMB has previously approved the information collection requirements associated with FWS use of Common Form SF-299 and assigned OMB Control Number 0596-0249 (expires 02/28/2023). You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive

Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

This proposed rule has no impact on Tribal lands, as it applies only to FWS permitting of rights-of-way across lands, and interests in land, owned by the United States.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 50 CFR Part 29

Public lands mineral resources, Public lands rights-of-way, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 29, subchapter C of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 29—LAND USE MANAGEMENT

1. The authority citation for part 29 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 685, 690d, 715i, 725, 3161; 30 U.S.C. 185; 31 U.S.C. 3711, 9701; 40 U.S.C. 319; 43 U.S.C. 315a; 113 Stat. 1501A-140.

2. Amend § 29.21 by revising the definition of “*National Wildlife Refuge System land*” and by adding a definition of “*Right-of-way*”, in alphabetical order, to read as follows:

§ 29.21 What do these terms mean?

* * * * *

National Wildlife Refuge System land means lands and waters, and interests therein, administered by the Secretary under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), as amended, including wildlife refuges, game ranges, wildlife management areas, conservation areas, waterfowl production areas, and other areas administered for the protection and conservation of fish, wildlife, and plant species.

* * * * *

Right-of-way means a use on, under, or over Federal lands that is authorized pursuant to a right-of-way permit issued by the U.S. Fish and Wildlife Service (Service), unless the use is included in a contract for services to a Service facility or if the use is requested by the Service to benefit the mission of the National Wildlife Refuge System or the National Fish Hatchery System.

3. Amend § 29.21-1 by revising paragraphs (a) through (c) to read as follows:

§ 29.21-1 Purpose and scope.

* * * * *

(a) *National Wildlife Refuge System lands.* Applications for all forms of rights-of-way on or over such lands shall be submitted under authority of Pub. L. 89-669, (80 Stat. 926; 16 U.S.C. 668dd) as amended, or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), following application procedures set out in § 29.21-4. The Service will not permit a right-of-way unless it meets the compatibility determination requirement described in § 29.21-3. See § 29.21-12 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.21-13 for additional requirements applicable to rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(b) *National Wildlife Refuge System lands—less than fee interest.* Applications for all forms of rights-of-way across lands in which the United States owns only a less than fee interest may be submitted to the Regional Director in letter form. No map exhibit is required; however, the affected land should be described in the letter or shown on a map sketch. If the requested right-of-way will not adversely affect the United States' interest, the Regional Director may issue a letter to the applicant stating that the proposed right-of-way would not affect the interest of the United States and the U.S. Fish and Wildlife Service has no objection to the fee owner granting the proposed right-of-way. If the interest of the United States will be affected, application for the right-of-way must be submitted in accordance with procedures set out in § 29.21-4.

(c) *Other lands outside the National Wildlife Refuge System.* Rights-of-way on or over other lands will be granted in accordance with controlling authorities cited in 43 CFR part 2800, or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*). See § 29.21-12 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.21-13 for additional requirements applicable to rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any other refined product produced therefrom. Applications must be submitted in accordance

with procedures set out in § 29.21-4.

4. Revise § 29.21-2 to read as follows:

§ 29.21-2 Pre-application meeting.

Before submitting an application for a new right-of-way or a modification of an existing right-of-way across U.S. Fish and Wildlife Service-managed lands, an applicant must contact the Regional Director or his or her designee to schedule a pre-application meeting. The required pre-application meeting (e.g., in-person, web-conference, teleconference, etc.) provides the applicant the opportunity to ask questions about the application process and obtain comments from the Regional Director or his or her designee about a proposed right-of-way and its location before submitting an application. The pre-application meeting helps the Regional Director or his or her designee to understand the scope of the request so that he or she may advise the applicant of the documentation the Service requires to process the application, and provide the applicant an estimated timeline and estimated cost for the Service to review and process the application. There is no fee for this required pre-application meeting. Contact information for scheduling pre-application meetings is set forth at § 29.21-4(c).

5. Redesignate §§ 29.21-3 through 29.21-9 as §§ 29.21-7 through 29.21-13, respectively, and add new §§ 29.21-3 through 29.21-6, to read as follows:

Sec.

* * * * *

§ 29.21-3 Compatibility determination requirement.

§ 29.21-4 Application procedures.

§ 29.21-5 Survey plat and legal description.

§ 29.21-6 Reimbursement of costs.

* * * * *

§ 29.21-3 Compatibility determination requirement.

Consistent with the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd–668ee), and the procedures set forth in § 26.41, the U.S. Fish and Wildlife Service will not permit or renew a right-of-way if the Service determines that the use is not compatible with the Refuge System mission or the purpose(s) of the refuge, except for uses related to the access of privately owned minerals and as required by any other provision of law, such as section 1110(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) for inholdings within Alaska refuges. In the case of any right-of-way previously permitted for a period longer than 10 years (such as an electric utility right-of-way), the Service will, during the permit term, consider the permitted use to be compatible so long as the grantee is in compliance with all permit terms and conditions.

§ 29.21-4 Application procedures.

(a) *Application.* Applicants must use Standard Form 299 (SF-299), Application for Transportation and Utility Systems and Facilities on Federal Lands, to request new rights-of-way, modifications of existing rights-of-way, and renewals of existing rights-of-way. In addition to a completed and signed SF-299, each application must include the attachments described in paragraphs (a)(1) and (2) of this section. There is no application fee, but applicants must reimburse the Service for its costs to evaluate and process the application, as set forth at § 29.21-6(a). See paragraph (b) of this section for submission instructions.

(1) *Map.* The map must show a general view of the proposed right-of-way and a detailed view of the proposed project area in relationship to the Service boundary. If the proposed right-of-way is within a Public Land Survey System area, the map must show the section(s), township(s), and range(s) within which the proposed right-of-way would be located. See § 29.21-5 for requirements regarding a survey plat and legal description of the area.

(2) *Other attachments.* Following the pre-application meeting described in § 29.21-2, the Regional Director or his or her designee will determine any additional documentation the Service

requires to process the application, such as:

- (i) *Preliminary site and facility construction plans.* These plans must show all proposed construction work in detail. No site or facility construction plan is required for applications for renewals of existing rights-of-way that involve no changes to the permitted use.
- (ii) *Environmental analysis.* The environmental analysis supplements the basic environmental information on the SF-299. It must include information concerning the impact of the proposed right-of-way on the environment, including, but not limited to, the impact on air and water quality; scenic and aesthetic features; historic, architectural, archeological, and cultural features; and wildlife, fish, and marine life.
 - (A) The environmental analysis must include sufficient data to enable the Service to prepare a compatibility determination; prepare an environmental assessment or environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); and comply with the requirements of the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Wilderness Act of 1964 (16 U.S.C 1131 *et seq.*), the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*), and the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*). To comply with the National Environmental Policy Act, the Regional Director may, at his or her discretion, rely on an environmental assessment or environmental impact statement prepared by another Federal agency, the applicant, or their contractor; however, in all cases, this documentation must be prepared in consultation with the Regional Director or his or her designee.
 - (B) For applications for renewals of existing rights-of-way that involve no changes to the permitted use, the environmental analysis need address only the impacts of the ongoing operation and maintenance of the right-of-way, as well as any statutory requirements not in place and therefore not considered at the time of original permit issuance.
- (iii) *Vegetation management plan.* The vegetation management plan must describe how

the applicant would conduct the following activities:

- (A) Vegetation clearing that may occur as part of construction and maintenance;
- (B) Routine vegetation management, including all physical and mechanical methods;
- (C) Any pesticides, herbicides, or other chemicals proposed for use; and
- (D) Any revegetation and restoration activities.

(b) *Submission instructions.* Applicants may submit applications for rights-of-way through E-File or certified mail.

(1) *E-file.* Application submissions through E-file must include a digital copy of the SF-299, the map, and other attachments required by the Regional Director or his or her designee after the required pre-application meeting. Additional instructions will be provided at the pre-application meeting.

(2) *Certified mail.* Application submissions through certified mail must include one printed copy of the SF-299, the map, and other attachments required by the Regional Director or his or her designee after the required pre-application meeting. Applicants must send all documents by certified mail to the Regional Director for the region where the proposed right-of-way is located. Mailing envelopes should be clearly marked “Attn: NWRS Realty Right-of-Way Permit Processing.”

(c) *Pre-application meeting.* To request a pre-application meeting, contact the Division of Realty at Service headquarters at (703) 358–1713. That division will put you in touch with the appropriate Service office, as determined by the location of the proposed right-of-way.

§ 29.21-5 Survey plat and legal description.

(a) Before the Service will issue a right-of-way permit, the applicant must provide a final survey plat and legal description that shows and describes the proposed right-of-way in such detail that the Service can accurately locate the proposed right-of-way.

(b) Survey plats and legal descriptions of the right-of-way area must be stamped and signed by a land surveyor or other professional licensed or authorized by the State to carry out

land surveying activities.

(1) Survey plats must meet the following standards:

(i) Survey plats must be geodetically referenced to the current State or national datum. In some cases, new geodetic control points will need to be set within or near the right-of-way area.

(ii) Survey plats must show ties to the monuments marking the boundaries of the Service-owned land that is being impacted, or from which those boundaries are calculated. In cases such as road construction that involve granting full control of the right-of-way area, a boundary survey is required.

(iii) The points where the right-of-way enters and leaves Service project land must be annotated on the survey with distance ties to the nearest boundary monuments.

(iv) For a linear strip right-of-way, the courses and distances of the center line and the width of the right-of-way on each side of the center line must be annotated.

(v) If the right-of-way or site is located wholly within Service land, a minimum of two ties to boundary corners or geodetic control points that can be readily recovered must be shown.

(vi) Survey plats must show the existing or proposed facilities in sufficient detail that an average person can determine the nature and extent of the proposed use.

(vii) Survey plats must include all uses of Service-managed land required as part of the right-of-way, including access roads.

(viii) Survey plats must show the location of any other right-of-way areas in the vicinity.

(ix) Survey plats must show major natural or cultural features such as roads, rivers, fences, etc., required for orientation and intelligent interpretation.

(x) The acreage contained within the right-of-way area must be shown.

(xi) Letter-sized plats are preferred, but larger format plats, such as the Right-of-Way Plan sets prepared for highway and utility projects, are acceptable as long as they meet the other requirements.

(xii) A digital version of the plat in AutoCAD, ArcGIS, or similar format must be

submitted along with a signed paper or Adobe Acrobat document.

(2) The legal description must:

(i) Be in metes-and-bounds, aliquot parts, or linear strip format;

(ii) Conform to and reference the survey plat;

(iii) Be tied to the controlling monuments shown on the plat;

(iv) Reference the geodetic coordinates of the Point of Beginning or Point of

Commencement, and have a clearly documented basis of bearing; and

(v) For linear corridor projects, use a “strip description” format, based on a geometrically defined centerline. For example: “All that portion of [land unit description] lying within the following described strip of land.”

§ 29.21-6 Reimbursement of costs.

(a) *Application evaluation and processing activities.* (1) An applicant for a right-of-way permit must reimburse the United States for the costs the U.S. Fish and Wildlife Service incurs in evaluating and processing the application before the Service will issue a right-of-way permit. These costs may include, but are not limited to, the Service’s costs to review the application and related materials; conduct resource surveys of the proposed permit area; prepare a compatibility determination; prepare documentation to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); obtain an appraisal; draft correspondence; and draft the permit.

(2) If requested by the applicant during or after the required pre-application meeting, the Regional Director or his or her designee will, within ten business days of the pre-application meeting, provide the applicant a preliminary estimate of the Service’s application evaluation and processing costs using the information provided by the applicant during the pre-application meeting.

(3) After receiving an application, the Regional Director or his or her designee will estimate the Service’s application evaluation and processing costs using the information the applicant provided in the application and during the required pre-application meeting.

(4) The applicant must submit a payment to reimburse the Service for its estimated costs, before the Service will evaluate and process the right-of-way permit application.

(5) If the Service's cost to evaluate and process the right-of-way application exceeds the estimated amount, the Regional Director or his or her designee will promptly notify the applicant of the deficient amount, and the applicant must submit payment for the deficient amount before the Service will issue a right-of-way permit. Any overpayments may be refunded by the Regional Director as he or she deems appropriate.

(b) *Monitoring activities.* (1) By accepting a permit under this subpart, the holder agrees to reimburse the Service for the costs it incurs in monitoring the construction, operation, maintenance, and termination of facilities to ensure compliance with the terms, conditions, and stipulations of the right-of-way permit, referred to in this paragraph as "monitoring activities."

(2) The Regional Director or his or her designee will estimate the total costs the Service expects to incur for monitoring activities over the first 5 years of the permit term or the entire permit term, whichever is less. The applicant must pay the estimated amount before the Service will issue a right-of-way permit.

(3) The permit holder must make an additional payment every 5 years, or for the remainder of the permit term, whichever is less, to reimburse the Service for the costs the Service expects to incur for monitoring activities during that period.

(4) If the Service's cost of monitoring activities exceeds the Service's estimated amount, then the permit holder must submit payment to the United States for the deficient amount at the end of the 5 years or the remainder of the permit term, whichever is less. Any overpayments may be refunded by the Regional Director as he or she deems appropriate.

(c) *Waiver of reimbursement for Service costs.* (1) Except as provided under paragraph (c)(2) of this section, no reimbursement for Service costs for right-of-way application evaluation and processing activities and monitoring activities will be required of:

(i) State or local governments or agencies or instrumentalities thereof;

(ii) Federal Government agencies; or
(iii) Private individuals or organizations when a Regional Director has signed a statement certifying that the proposed right-of-way contributes to accomplishing refuge or fish hatchery purposes.

(2) Reimbursement of costs is required for any right-of-way permit issued under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

6. Amend newly redesignated § 29.21-7 by revising paragraph (a) to read as follows:

§ 29.21-7 Nature of interest granted.

(a) Where the land administered by the U.S. Fish and Wildlife Service is owned in fee by the United States and the right-of-way is compatible with the objectives of the area, a permit may be approved and granted by the Regional Director. Generally, a permit will be issued for a term of up to 50 years, or so long as it is used for the purpose granted, or for a lesser term when considered appropriate.

(1) For rights-of-way granted under authority of section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, the permit may be for a term not to exceed 30 years.

(2) For a right-of-way issued per paragraph (a)(1) of this section, the right-of-way may not exceed 50 feet in width, plus the area occupied by the pipeline and its related facilities, unless the Regional Director finds, and records the reasons for the finding, that, in his or her judgment, a wider right-of-way is necessary for operation and maintenance after construction or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, etc.

(3) A temporary permit supplementing a right-of-way may be granted for additional land needed during construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

* * * *

7. Revise newly redesignated § 29.21-8 to read as follows:

§ 29.21-8 Terms and conditions.

(a) Any right-of-way permit granted will be subject to rights reserved, if any, by a prior owner, and rights held, if any, by a third party.

(b) An applicant, by accepting a permit, agrees to such terms and conditions as may be prescribed by the Regional Director in the granting document, including special stipulations at his or her discretion. (See § 29.21-12 for special requirements for electric powerlines and § 29.21-13 for special requirements for oil and gas pipelines.) The applicant shall agree to the following terms and conditions, unless waived in all or part by the Regional Director:

(1) To comply with State and Federal laws applicable to the project within which the permit is granted, and to the lands that are included in the right-of-way, and lawful existing regulations thereunder.

(2) To clear and keep clear the lands within the permit area to the extent and in the manner directed by the project manager in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such a manner as to decrease the fire hazard and also in accordance with such instructions as the project manager may specify.

(3) To prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the applicant has requested and received from the Regional Director approval of measures the applicant will take to perpetuate the location of aforesaid monument.

(4) To take such soil and resource conservation and protection measures, including weed control, on the land covered by the permit as the project manager in charge may request.

(5) To do everything reasonably within his or her power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near lands to be occupied under the permit area, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(6) To rebuild and repair such roads, fences, structures, and trails as may be destroyed or injured by construction work and, upon request by the Regional Director, to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(7) To pay the United States the full value for all damages to the lands or other property of the United States caused by him or her or by his or her employees, contractors, or agents of the contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the permit.

(i) Where the permit is granted hereunder to a State or other governmental agency that has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(ii) Where the permit involves lands that are under the exclusive jurisdiction of the United States, the holder or his or her employees, contractors, or agents of the contractors, shall be liable to third parties for injuries incurred in connection with the permit area.

(iii) Grants of permits involving special hazards will impose liability without fault for injury and damage to the land and property of the United States up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than \$5,000,000.

(8) To notify promptly the project manager in charge of the amount of merchantable timber, if any, that will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States in advance of construction such sum of money as the project manager may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(9) That all or any part of the permit granted may be terminated by the Regional Director, for failure to comply with any or all of the terms or conditions of the permit, or for abandonment.

(i) A rebuttable presumption of abandonment is raised by deliberate failure of the holder to use, for any continuous 2-year period, the permit for the purpose for which it was granted or renewed. In the event of noncompliance or abandonment, the Regional Director will notify in writing the holder of the permit of his or her intention to suspend or terminate such permit 60 days from the date of the notice, stating the reasons therefor, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may grant an extension of time within which to complete corrective actions when, in his or her judgment, extenuating circumstances not within the holder's control, such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons, warrant.

(ii) Should the holder of a right-of-way issued under authority of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*), fail to take corrective action within the 60-day period, the Regional Director will provide for an administrative proceeding pursuant to 5 U.S.C. 554, prior to a final Departmental decision to suspend or terminate the permit. In the case of all other right-of-way holders, failure to take corrective action within the 60-day period will result in a determination by the Regional Director to suspend or terminate the permit.

(iii) No administrative proceeding shall be required where the permit terminates under its terms.

(10) To restore the land to the condition it was in prior to issuance of the permit, so far as it is reasonably possible to do so upon revocation and/or termination of the permit, unless this requirement is waived in writing by the Regional Director.

(11) To keep the project manager informed at all times of his or her address, and, in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(12) That in the construction, operation, and maintenance of the project, he or she must not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin and must require an identical provision to be included in all subcontracts.

(13) That the grant of the permit shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby. The applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the permit area not actually occupied for the purpose of the granted rights to the extent that such use does not interfere with the full and safe utilization thereof by the holder. The holder of a permit also agrees that authorized representatives of the United States shall have the right of access to the permit area for the purpose of making inspections and monitoring the construction, operation, and maintenance of facilities.

(14) That the permit herein granted shall be subject to the express covenant that any facility constructed thereon will be modified or adapted, if such is found by the Regional Director to be necessary, without liability or expense to the United States, so that such facility will not conflict with the use and occupancy of the land for any authorized works that may hereafter be constructed thereon under the authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon continuity of energy and delivery requirements.

(15) That the permit herein granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the permit area unless approved in writing by the Regional Director.

(16) The Regional Director may require permit modifications at any future date to ensure that the permitted use is compatible with the Refuge System mission and the purposes of the refuge. Required permit modifications may include changes to permit conditions and/or additional stipulations that a Regional Director deems necessary based on new information.

(17) The permittee will comply with the Archaeological Resources Protection Act (16 U.S.C. 470aa). The disturbance of archaeological or historical sites and the removal of artifacts from Federal land are prohibited. If such sites or artifacts are encountered, the permittee will immediately cease all work upon Federal land and notify the project manager.

(18) The permittee will comply with the applicable requirements of the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–712), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*), the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*), and the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*).

§ 29.21-9 [Amended]

8. Amend newly redesignated § 29.21-9 by, in paragraph (a), adding the words “or her” after the word “his”.

9. Amend newly redesignated § 29.21-10 by:

- a. Revising paragraph (b) to read as set forth below; and
- b. In paragraph (c), adding the words “or her” after the word “him”.

§ 29.21-10 Disposal, transfer or termination of interest.

* * * * *

(b) *Transfer of permit.* Any proposed transfer, by assignment, lease, operating agreement or otherwise, of a permit must be filed with the Regional Director and must be supported by a stipulation that the transferee agrees to comply with and be bound by the terms and conditions of the original grant. A \$100 nonrefundable service fee must accompany the proposal. No transfer will be recognized unless and until approved in writing by the Regional Director.

* * * * *

10. Revise newly redesignated § 29.21-11 to read as follows:

§ 29.21-11 Required Payment for use and occupancy of national wildlife refuge lands

(a) Payment for use and occupancy of lands under the regulations of this subpart is required for the fair market value or fair market rental value as determined by the Regional Director using any Department of the Interior-approved method to determine those values.

(1) At the discretion of the Regional Director, the payment may be a fair market rental payment, paid annually, or a lump sum payment, made in advance of permit issuance.

(2) If any Federal, State, or local agency is exempt from such payment under any other provision of Federal law, such agency shall inform the U.S. Fish and Wildlife Service of the applicable Federal law during the required pre-application meeting, and shall otherwise compensate the Service by any other means acceptable to the Regional Director, including, but not limited to, making other land available or loaning of equipment or personnel, except that any such compensation shall relate to, and be consistent with, the mission of the National Wildlife Refuge System. For these agencies exempted from payment by law, the Regional Director may waive such requirement for other compensation if he or she finds such requirement impracticable or unnecessary.

(b) When annual rental payments are used, such rates will be reviewed by the Regional Director not more than every 5 years after the issuance of the permit or the last revision of the permit, whichever is later. The Regional Director will furnish a notice in writing to the holder of

a permit of intent to impose new charges to reflect fair market value commencing with the ensuing charge year. The revised charges will be effective unless the holder files an appeal in accordance with § 29.22.

§ 29.21-12 [Amended]

11. Amend newly redesignated § 29.21-12 by:

- a. In the introductory text, by removing the citation “§ 29.21-4(b)” and adding in its place the citation “§ 29.21-8(b)”;
- b. In paragraph (a), by adding the words “or her” after the word “his” both times that it appears; and
- c. In paragraph (b), by adding the words “or her” after the word “him” both times that it appears.

12. Revise newly redesignated § 29.21-13 to read as follows:

§ 29.21-13 Rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(a) *Application procedure.* (1) Applications for pipelines and related facilities under this section are to be filed in accordance with § 29.21-4 with the following exception: When the right-of-way or proposed facility will occupy Federal land under the control of more than one Federal agency and/or more than one bureau or office of the Department of the Interior, a single application shall be filed with the appropriate State Director of the Bureau of Land Management in accordance with regulations in 43 CFR part 2800.

(2) Any portion of the facility occupying land of the National Wildlife Refuge System will be subject to the provisions of the regulations in this part.

(b) *Right-of-way permits.* Right-of-way permits issued under this section will be subject to the special requirements of section 28 of the Mineral Leasing Act of 1920, as amended (30

U.S.C. 181 *et seq.*). Gathering lines and associated structures used solely in the production of oil and gas under valid leases on the lands administered by the U.S. Fish and Wildlife Service are excepted from the provisions of this section.

(1) *Pipeline safety.* Rights-of-way permits issued under this section will include requirements that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline. An applicant must agree to design, construct, and operate all proposed facilities in accordance with the provisions of 49 CFR parts 192 or 195 and in accordance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), including any amendments thereto.

(2) *Environmental protection.* An application for a right-of-way must contain environmental information required by § 29.21-4(a)(2). If the Regional Director determines that a proposed project will have a significant effect on the environment, there must also be furnished a plan of construction, operation, and rehabilitation of the proposed facilities. In addition to terms and conditions imposed under § 29.21-8, the Regional Director will impose such stipulations as may be required to ensure:

- (i) Restoration, revegetation, and curtailment of erosion of the surface;
- (ii) That activities in connection with the right-of-way or permit will not violate applicable air and water quality standards in related facilities siting standards established by law;
- (iii) Control or prevention of damage to the environment including damage to fish and wildlife habitat, public or private property, and public health and safety; and
- (iv) Protection of the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(c) *Disclosure.* Applicants that are a partnership, corporation, association, or other business entity must disclose the identity of the participants in the entity. Such disclosure shall include where applicable:

- (1) The name and address of each partner;

(2) The name and address of each shareholder owning 3 percentum or more of the shares, together with the number and percentage of any class of voting shares of the entity that such shareholder is authorized to vote; and

(3) The name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(d) *Technical and financial capability.* The Regional Director may grant or renew a right-of-way permit under this section only when he or she is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the facility. At the discretion of the Regional Director, a financial statement may be required.

(e) *Reimbursement of costs.* In accordance with § 29.21-6, the holder of a right-of-way permit must reimburse the Service for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities as determined by the Regional Director.

(f) *Public hearing.* The Regional Director shall give notice to Federal, State, and local government agencies, and the public, and afford them the opportunity to comment on right-of-way applications under this section. A notice will be published in the *Federal Register*, and a public hearing may be held where appropriate.

(g) *Bonding.* Where appropriate, the Regional Director may require the holder of a right-of-way permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the terms and conditions of the right-of-way permit or by any rule or regulation, not to exceed the period of construction plus 1 year or a longer period if necessary for the pipeline to stabilize.

(h) *Suspension of right-of-way.* If the project manager determines that an immediate temporary suspension of activities within a right-of-way permit area is necessary to protect public health and safety or the environment, he or she may issue an emergency suspension order to abate such activities prior to an administrative proceeding. The Regional Director must make a determination and notify the holder in writing within 15 days from the date of suspension as to whether the suspension should continue and list actions needed to terminate the suspension. Such suspension shall remain in effect for only so long as an emergency condition continues.

(i) *Joint use of rights-of-way.* Each right-of-way permit shall reserve to the Regional Director the right to grant additional rights-of-way permits for compatible uses on or adjacent to rights-of-way permit areas granted under this section after giving notice to the holder and an opportunity to comment.

(j) *Common carriers.* Pipelines and related facilities used for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom shall be constructed, operated, and maintained as common carriers.

(1) The owners or operators of pipelines subject to this subpart shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(2) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipelines, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(3) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(4) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(k) *Required information.* The Regional Director shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material that the Regional Director deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions that should be included in the right-of-way. Such information may include, but is not limited to:

(1) Conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

(l) *State standards.* The Regional Director shall take into consideration, and to the extent practical comply with, applicable State standards for right-of-way construction, operation, and maintenance.

(m) *Congressional notification.* The Secretary shall promptly notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate upon receipt of an application for a right-of-way for pipeline 24 inches or more in diameter, and no right-of-way for such a pipeline shall be granted until 60 days (not including days on which the House or Senate has adjourned for more than 3 days) after a notice of intention to grant the right-of-way, together with the Secretary's detailed findings as to the terms and conditions he or she proposes to impose, has been submitted to such committees.

Signed: _____

George Wallace,
Assistant Secretary for Fish and Wildlife and Parks.

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