



## 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 Across National Wildlife Refuges and Other U.S. Fish and Wildlife Service-Administered Lands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; revisions and reopening of the comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are revising our proposed rule that would streamline our process for permitting of rights-of-way across National Wildlife Refuge System lands and other Service-administered lands. By aligning Service processes more closely with those of other Department of the Interior (DOI) bureaus, to the extent practicable and consistent with applicable law, we will reduce the amount of time the Service requires to process applications for rights-of-way across Service-managed lands. We originally proposed revisions that included requiring a preapplication meeting and use of a standard application, allowing electronic submission of applications, and providing the Service with additional flexibility, as appropriate, to determine the fair market value or fair market rental value of rights-of-way across Service-managed lands. We now further propose new permit terms and conditions and other regulatory changes. The Service seeks comments on this revised proposed rule.

**DATES:** The public comment period on the proposed rule that published on January 19, 2021, at 86 FR 5120, is reopened. We will accept comments until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** This revised proposed rule, the original proposed rule (86 FR 5120, January 19, 2021), supporting documents, and the comments we received on the proposed rule are available

at <https://www.regulations.gov> at Docket No. FWS-HQ-NWRS-2019-0017.

*Information collection requirements:* Written comments and suggestions on the information collection requirements may be submitted at any time to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov) (email). Please reference “OMB Control Number 0596-0249” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Ken Fowler, U.S. Fish and Wildlife Service, MS: NWRS, 5275 Leesburg Pike, Falls Church, VA 22041; (703) 358–1876. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Service’s mission is working with others to conserve, protect, and enhance, fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The Service has some amount of management responsibility for more than 96 million terrestrial acres as well as an additional 760 million acres of submerged lands in marine national monuments. The 96 million acres of terrestrial land includes approximately 89 million acres where the Service is the principal land manager and permitting authority; nearly 4.9 million acres of conservation easements on private lands, where landowners are the principal land managers, but the Service has a permitting role when a proposed use will affect the United States’ real property interest; more than 1.7 million acres of public land where another Federal agency is the principal land manager and permitting authority, but where the Service has some management responsibility through an agreement with another agency; and approximately 775,000 acres under a temporary lease or agreement where another entity is the permitting authority.

Of the 89 million acres of terrestrial land principally managed by the Service, 76.8 million acres are in Alaska, 12.2 million acres are in the lower 48 States, and 50,000 acres are in Hawaii. The vast majority of these acres are part of the National Wildlife Refuge System (Refuge System), the mission of which 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)). The total also includes approximately 21,000 acres of public land in the National Fish Hatchery System, which the Service manages for the propagation and distribution of fish and other aquatic animal life.

The 89 million acres of terrestrial land includes more than 20 million acres of designated wilderness that the Service manages for “the preservation of their 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 specific wilderness-designation statutes and the Alaska National Interest Lands Conservation Act (ANILCA; Pub. L. 96–487; 16 U.S.C. 3101 et seq.), 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.

#### *Statutory Authority*

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), and ANILCA. For lands in Alaska, the Improvement Act specifies that ANILCA provisions prevail in any situation in which there is a conflict between any provision in the Improvement Act and any provision of ANILCA. If a right-of-way across

Refuge System lands is specifically authorized by ANILCA, then the Service must follow the procedures in 43 CFR part 36 when permitting the right-of-way and follow other applicable Refuge System laws and regulations where they do not conflict with ANILCA.

The Administration Act authorizes the Service to permit a new use, or expand, renew, or extend an existing use, of a refuge only when the Service 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 Service 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.

#### *Compatible Use Determinations*

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 with the Refuge System mission and the purpose(s) of the refuge. Currently, there are more than 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 the Service 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 in part 26. The Improvement Act authorizes the Service to permit a right-of-way across Refuge System land only when the right-of-way is a compatible use.

The Improvement Act’s compatibility requirements apply only to Service permitting of rights-of-way across Refuge System lands and do not apply to other Service lands, except in the case of National Fish Hatchery System lands, where, by regulation at 50 CFR 70.6, the Refuge compatibility requirements in 50 CFR part 26 are equally applicable to fish hatcheries, and at 50 CFR 70.7, where the right-of-way regulations are equally applicable to fish hatcheries. The Service processes applications for other rights-of-way across lands outside the Refuge System

and National Fish Hatchery System under the applicable authority cited at 43 CFR part 2800, and these lands are not subject to the Improvement Act's compatibility requirement.

The Administration Act authorizes the Secretary of the Interior, acting through the Service Director, to issue a right-of-way permit across Refuge System lands only after the applicant pays the Service 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, including ANILCA title XI. In addition, before issuing a right-of-way permit, the Service 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.

#### *Existing Rights-of-Way*

The regulations at 50 CFR 26.41 state that, for existing rights-of-way, the Service 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 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 accordance with the Improvement Act, in instances where an existing use is authorized for more than 10 years (such as an electric utility right-of-way), the Service will not reevaluate whether the use is a compatible use during the permit term so long as the right-of-way holder is in compliance with all the terms and conditions of the permit. In a permit's terms and conditions,

the Service may require permit modifications at a future date to ensure that the use remains a compatible use. All right-of-way permits issued by the Service include language allowing the Service to terminate the right-of-way permit if the permittee's use violates the permit terms and conditions.

Additionally, this proposed rule and the Improvement Act's compatibility requirement do not apply to permanent rights-of-way in existence prior to land acquisitions by the United States, including prior existing highway rights-of-way held by State and local units of government, except in situations where there is a proposed expansion, rerouting, or additional use of a right-of-way that will encumber Refuge System lands. The Improvement Act requires that all uses of Refuge System lands be compatible with the purpose(s) for which those areas were established and the mission of the Refuge System, and activities not authorized by a preexisting right-of-way are subject to 50 CFR 26.41 and the procedures in this proposed rule.

The Service may not authorize an expansion, rerouting, or additional use of a right-of-way that will encumber Refuge System lands unless the use is compatible with the purpose(s) for which those areas were established and the Refuge System mission.

### **Original Proposed Amendments to the Right-of-Way Regulations**

On January 19, 2021, we published in the *Federal Register* (86 FR 5120) a proposed rule to revise and streamline Service regulations for permitting of rights-of-way by aligning Service processes more closely with those of other DOI bureaus, to the extent practicable and consistent with applicable law. The original proposed rule proposed to revise the Service's regulations in 50 CFR part 29, subpart B, for permitting of rights-of-way across Service lands. The proposed changes would streamline the right-of-way permitting process for proposed uses on Service-managed lands and reorganize the right-of-way regulations. For a description of the substantive changes originally proposed to the regulations in 50 CFR part 29, subpart B, see the January 19, 2021, proposed rule (86 FR 5120).

*Summary of Comments and Responses*

We accepted public comments on the proposed rule for 60 days, ending March 22, 2021. By that date, we received 15 comments on the proposed rule. Three comments suggested that the Service make no changes to its regulations to streamline right-of-way permitting. Overall, nine comments suggested no additional changes to those we had proposed. We discuss the remaining comments by topic, below.

*Comment (1):* The State of Alaska and Doyan, an Alaska Native corporation, commented that ANILCA authorizes certain types of rights-of-way in Alaska, and that these rights-of-way have their own set of regulations in 43 CFR part 36.

*Our Response:* In this document, we updated the proposed rule to clarify that rights-of-way authorized by ANILCA must follow the procedures in 43 CFR part 36.

*Comment (2):* The State of Utah and the Incorporated Research Institutions for Seismology suggested that, in remote areas, requiring an applicant to provide a survey plat prepared by a licensed professional land surveyor or another professional licensed by the State will create an unnecessary burden. These commenters suggested that, in remote areas located far from any road system, the Service should waive the requirement for an applicant to provide a survey plat before the Service will issue a right-of-way permit.

*Our Response:* The regulations as previously written required applicants to provide documentation that “show the right-of-way in such detail that the right-of-way can be accurately located on the ground.” As part of the development of the proposed rule, the Service reviewed different types of location information, including GIS coordinates, provided by some applicants in lieu of a survey plat, and found that the information was generally insufficient for the Service to accurately locate these sites on the ground.

The purpose of the revised land-survey portion of the proposed regulations is to standardize applicant documentation that supports the geographic location, linear length and direction, and overall land area for those uses that will alter the landscape or otherwise provide for long-term exclusive use of Federal land within national wildlife refuges. The proposed rule

requires an applicant to provide a survey plat prepared by a licensed professional land surveyor or another professional licensed by the State before the Service will issue a right-of-way permit. However, the proposed rule does not require applicants to submit a survey plat with their initial application, and, in most cases, the Service is able to determine whether a proposed use is a compatible use before the applicant must provide a survey plat. The Service recognizes the challenges in surveying rights-of-way in remote areas. However, the Service requires that a tenable right-of-way boundary is in place and locatable on the ground. We did not make any changes to the proposed rule as a result of these comments.

*Comment (3):* The Incorporated Research Institutions for Seismology singled out the EarthScope: Transportable Array project, which installs seismic monitoring stations in remote locations throughout Alaska, as a scientific project that will be burdened if the Service requires applicants to provide a survey plat before the agency permits a right-of-way.

*Our Response:* The Service issues right-of-way permits to authorize longer term uses, typically uses lasting 10 years or more. The Service issues special use permits to authorize short-term uses of Refuge System lands, and special use permits do not require a survey plat. To authorize nonpermanent placement of equipment on Refuge System lands for short-term scientific research purposes, the Service may issue a special use permit if the Service determines the use is a compatible use. We did not make any changes to the proposed rule as a result of these comments.

*Comment (4):* ExteNet Systems suggested that the Service exempt “small wireless facilities” (as that term is defined at 47 CFR 1.6002(1)) from the requirement to pay the fair market value or fair market rental value for use and occupancy of Service land, and, in its place, implement a fixed use and occupancy fee of \$270 per year for each small wireless facility.

*Our Response:* The Administration Act requires the Service to obtain payment of fair market value or fair market rental value for use and occupancy of Refuge System land before permitting a right-of-way. If the Department of the Interior approves a fee schedule for small

wireless facilities that assesses the fair market value or fair market rental value for use and occupancy of Federal land for small wireless facilities, then this rule would allow the Service to use that fee schedule. We did not make any changes to the proposed rule as a result of these comments.

*Comment (5):* The State of Alaska and the State of Utah stated that the Service has no authority to regulate lands within existing State road and highway systems, and they requested that the Service clarify that these proposed regulations do not apply to existing State road and highway systems.

*Our Response:* This proposed rule has no impact on prior existing highway rights-of-way held by State and local units of government on FWS-administered land, except that, consistent with 23 CFR 645.205, activities not authorized by a prior existing highway right-of-way, as well as activities that fall outside the footprint of an existing right-of-way, are subject to 50 CFR 26.41 and the procedures in this revised proposed rule. Under 50 CFR 26.41, which implements the Improvement Act's compatible-use requirement, the Service may not authorize an expansion, rerouting, or additional use of a right-of-way that will encumber Refuge System lands unless the use is compatible with the purpose(s) for which those areas were established. We did not make any changes to the proposed rule as a result of these comments.

*Comment (6):* The National Rural Electric Cooperative Association suggested that the Service clarify that the compatible-use requirement for rights-of-way across Refuge System land does not apply to Service lands outside the Refuge System.

*Our Response:* We clarified that Refuge compatibility requirements do not apply to lands outside the Refuge System and National Fish Hatchery System. By regulation at 50 CFR 70.6, the Refuge compatibility requirements in 50 CFR part 26 are applicable to fish hatcheries.

*Comment (7):* A commenter suggested we eliminate gender-specific references.

*Our Response:* We agree and made appropriate changes to the proposed regulatory text in this revised proposed rule.

## Changes from the Proposed Rule

As discussed above, under *Summary of Comments and Responses*, we made changes to the proposed rule based on comments we received. We clarified that permitting for rights-of-way authorized by ANILCA must follow the procedures in 43 CFR part 36. We clarified that the compatible-use requirement for rights-of-way applies to rights-of-way on Refuge System land and does not apply to rights-of-way on other Service lands, except in the case of National Fish Hatchery System lands, where, by regulation at 50 CFR 70.6, the Refuge compatibility requirements in 50 CFR part 26 are equally applicable to fish hatcheries. We also eliminated gender-specific references in the proposed rule.

In addition to these changes, we determined that additional regulatory revisions are also necessary for clarity and to align Service requirements more closely with those of other DOI bureaus. Under § 29.21-3, we clarified that our evaluation of rights-of-way previously permitted for more than 10 years will examine compliance with the terms and conditions of the authorization and not reexamine the original authorization, consistent with 16 U.S.C. 668dd(d)(3)(B)(vii). Under § 29.21-7, we clarified that a permit will be issued for a term of up to 50 years when the Service Regional Director deems it appropriate, or for a lesser term, as the existing regulatory language authorizing a permit term (i.e., generally up to 50 years, or so long as the permit is used for the purpose for which it was issued, or for a lesser term when considered appropriate) is interpreted inconsistently by different Service Regional offices.

Under § 29.21-4(b)(2), we clarified that an applicant must provide an environmental analysis for a proposed new right-of-way, but that an environmental analysis for renewals of existing rights-of-way that involve no changes to the permitted use need address only the impacts of ongoing operation and maintenance and any new statutory requirements since the original permit issuance. We also clarified that, before the Service will issue a right-of-way permit, an applicant must provide a preliminary site and facility construction plan for a proposed right-of-way that requires construction, and provide a vegetation management plan when vegetation will

be disturbed by construction, operation, or maintenance of the right-of-way; however, this proposed rule would provide the Service Regional Director discretion with respect to timing, i.e., when the Service requires this information. The original proposed rule left it to a Regional Director to determine, in all cases, whether the Service requires an environmental analysis, preliminary construction plan, and vegetation management plan.

Consistent with our goal of aligning Service processes more closely with those of other DOI bureaus, we propose to update § 29.21-6 to clarify our cost-recovery procedures for application processing and monitoring of rights-of-way. Under proposed § 29.21-6(c)(2), the Regional Director has the discretion to waive reimbursement for Service costs for right-of-way application evaluation and processing activities and monitoring activities so long as there are appropriated funds for these activities. Under § 29.21-6(d), we clarified that payments received by the Service to reimburse the United States for the costs incurred in evaluating and processing applications, and for monitoring, will be deposited into the United States Treasury until such time that any provision of law allows these payments to supplement the Service's appropriation.

Under § 29.21-8, we updated our proposed permit terms and conditions to make them more consistent with those of other DOI bureaus. We also clarified that certain permit terms and conditions are always required and cannot be waived, and that other terms and conditions are required but may be waived if the Regional Director determines they are not relevant to the requested use. Under § 29.21-8(e), we added the option for the Service to require a bond for a right-of-way when the Regional Director determines that the Service is likely to incur reclamation costs due to the construction or operation of the right-of-way, or if the right-of-way is abandoned or terminated; similar to the Bureau of Land Management, we propose to exempt Federal, State, and local governments from these bonding requirements. Under § 29.21-8(f), we added terms and conditions for rights-of-way for communications facilities to implement the Mobile Now Act (47 U.S.C. 1455(d)(1)).

Under § 29.21-11(b), we clarified that the terms of the right-of-way permit will specify

the amount of the lump sum paid by the applicant for use and occupancy during the current permit term, or, if applicable, the initial annual rental payment amount for use and occupancy of the permitted area. Under § 29.21-11(d), we clarified that, consistent with 16 U.S.C. 668dd(d)(2), payments received by the Service for use and occupancy of rights-of-way on Refuge lands and interests in land will be deposited into the Migratory Bird Conservation Fund to carry out the provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.). We also clarified that, consistent with 16 U.S.C. 715s(a), payments received for use and occupancy of rights-of-way on other Service-managed lands and interests in land will be deposited into the National Wildlife Refuge Fund, to make payments annually to counties and other units of local government.

We propose to revise § 29.21-13(m) to be consistent with Pub. L. 101-475, enacted October 3, 1990, which amended the Mineral Leasing Act to eliminate the 60-day waiting period after the Secretary of the Interior notifies Congress of DOI's intention to permit a right-of-way for a pipeline 24 inches or more in diameter that will be used for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced from these substances.

Finally, we updated the structure of the regulatory language to improve readability.

### **Required Determinations**

As stated above, before issuing a right-of-way permit, the Service must assess the effects of the proposed use, as required by NEPA, the ESA, and the NHPA as well as other applicable laws and Executive orders. In regard to NEPA, we believe that this proposed rulemaking action qualifies for a categorical exclusion as described in 43 CFR 46.210(i) for rulemaking actions that are primarily procedural in nature. As set forth in that regulation, under this proposed rule, we will conduct NEPA analysis for individual permit applications.

For descriptions of our actions to ensure compliance with the following statutes and Executive orders, see our January 19, 2021, proposed rule (86 FR 5120):

- Regulatory Flexibility Act;

- Paperwork Reduction Act of 1995;
- Unfunded Mandates Reform Act;
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

### **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 hereby propose to further amend part 29, subchapter C of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended January 19, 2021, at 86 FR 5120, 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:

- a. Revising the section heading;
- b. Adding introductory text;
- c. Adding the definitions for “ANILCA” and “National Fish Hatchery System land” in alphabetical order;
- d. Revising the definitions for “National Wildlife Refuge System land” and “Other lands”; and
- e. Adding the definitions for “Regional Director” and “Right-of-way” in alphabetical order.

The revisions and additions read as follows:

#### **§ 29.21 Definitions.**

In this subpart, the following terms will have the meanings set forth in this section:

*ANILCA* means the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et

seq.).

\* \* \* \* \*

*National Fish Hatchery System land* means lands and waters, and interests therein, administered by the Secretary to propagate and distribute fish and other aquatic animal life and managed for the protection of all species of wildlife.

*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.

*Other lands* mean all other lands, or interests therein, and waters administered by the Secretary through the U.S. Fish and Wildlife Service that are not included in the National Wildlife Refuge System or the National Fish Hatchery System, e.g., administrative sites.

\* \* \* \* \*

*Regional Director* means the official in charge of a region of the U.S. Fish and Wildlife Service or an authorized representative of the Regional Director. When the regulations in this part require the Regional Director’s signature or written approval, only the Regional Director or the person acting in the Regional Director’s official capacity may sign.

*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, 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. Revise § 29.21-1 to read as follows:

**§ 29.21-1 Purpose and scope.**

The regulations in this subpart prescribe the procedures for filing applications and the terms and conditions under which rights-of-way over and across the lands administered by the

U.S. Fish and Wildlife Service may be permitted.

(a) *National Wildlife Refuge System lands except lands in Alaska.* Applications for all forms of rights-of-way on or over such lands must be submitted under authority of Pub. L. 89-669, as amended (80 Stat. 926; 16 U.S.C. 668dd), 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 the 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 from these substances.

(b) *National Wildlife Refuge System lands in Alaska.* Applications for rights-of-way authorized under title XI of ANILCA must be submitted under authority of 16 U.S.C. 3101 et seq. and follow the procedures and requirements set forth in 43 CFR part 36 and other applicable Refuge laws and regulations where they do not conflict with ANILCA. Applications for all other rights-of-way on or over lands in Alaska must be submitted under authority of 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 the application procedures set out in § 29.21-4.

(c) *National Fish Hatchery System lands.* Applications for rights-of-way across National Fish Hatchery System lands follow the same procedures as applications for rights-of-way across National Wildlife Refuge System lands.

(d) *National Wildlife Refuge System lands—less than fee interest.* The Service requires permits for rights-of-way that may affect a property interest acquired by the United States. If the requested right-of-way or regular maintenance of the requested right-of-way may affect the United States' interest, then an application for a right-of-way permit must be submitted in accordance with procedures set forth in § 29.21-4, except those applications for rights-of-way

authorized under title XI of ANILCA will follow the procedures set forth in 43 CFR part 36. If the Regional Director determines that the requested right-of-way and regular maintenance of the requested right-of-way will not adversely affect the United States' interest, then the Regional Director will sign a letter to the applicant stating that the proposed right-of-way will not affect the interest of the United States and the Service has no objection to the fee owner allowing the right-of-way.

(e) *Other lands outside the National Wildlife Refuge System and National Fish Hatchery System.* Rights-of-way on or over other lands will be permitted 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 from those substances. Applications must be submitted in accordance with procedures set out in § 29.21-4, except that the compatibility-determination requirement in § 29.21-3 does not apply to lands outside the National Wildlife Refuge System and National Fish Hatchery System.

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

**§ 29.21-2 Preapplication meeting.**

Before submitting an application for a permit for a new right-of-way or a modification of an existing right-of-way across lands managed by the Service, an applicant must contact the appropriate Regional Director to schedule a preapplication meeting with the Service. Contact information for the Service Regional Offices is available at <https://www.regulations.gov> in Docket No. FWS-HQ-NWRS-2019-0017. There is no fee for the preapplication meeting. During the meeting, the applicant may ask questions about the application process, provide information about the scope of the requested right-of-way and its location, and receive feedback. The Service will advise the applicant of the documentation required for the Service to review and process the

application, provide an estimated timeline for the Service to review and process the application, and ask the applicant to provide information necessary for the Service to estimate application processing costs (See § 29.21-6(a)(2)).

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:

**§ 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 of this chapter, the Service will not permit or renew a right-of-way across National Wildlife Refuge System land unless the Service determines that the use is compatible with the mission of the Refuge System and the purpose(s) of the refuge. This requirement does not apply to the access of privately owned minerals, or when access is required by any other prevailing provision of law. 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 not reevaluate whether the permitted use is a compatible use during the permit term so long as the right-of-way permit holder is in compliance with all the terms and conditions of the permit. The requirements and procedures of § 26.41(c) of this chapter apply to any requested maintenance of or modifications to an existing right-of-way. No compatibility determination is necessary to permit or renew a right-of-way across lands outside of the National Wildlife Refuge System and the National Fish Hatchery System.

**§ 29.21-4 Application procedures.**

(a) *Preapplication meeting.* To request the preapplication meeting required by § 29.21-2, contact the appropriate Service Regional Office, the geographic jurisdictions of which are listed at 50 CFR 2.2. Contact information for the Service Regional Offices is available at <https://www.regulations.gov> in Docket No. FWS-HQ-NWRS-2019-0017.

(b) *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 (b)(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 (d) 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) *Environmental analysis*. The environmental analysis supplements the basic environmental information on the SF-299 and 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, including habitat connectivity and migratory routes.

(i) 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, an environmental assessment or environmental impact statement prepared by another Federal agency, the applicant, or the applicant's contractor may be sufficient; however, in all cases, this documentation must be prepared in consultation with the Regional Director.

(ii) For renewals of existing rights-of-way that involve no changes to the permitted use, the environmental analysis need address only the impacts, including the cumulative effects, 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.

(c) *Other required documents.* Unless otherwise stated in this section, the Service requires the following additional documents before issuing a right-of-way permit. During the preapplication meeting or in a subsequent communication, the applicant will be informed when the Service requires this information and other information, which the applicant must provide after the initial application submission but before a right-of-way permit may be issued.

(1) *Survey plat and legal description.* See § 29.21-5 for requirements.

(2) *Preliminary site and facility construction plans.* These plans are required for applications for rights-of-way or renewals of rights-of-way where construction is required. They must show all proposed construction work and include a list of equipment to be used in construction and a proposed construction timeline.

(3) *Vegetation management plan.* A vegetation management plan is required for applications for rights-of-way or renewals of rights-of-way where there will be disturbance of vegetation resulting from the construction, operation, or maintenance of the right-of-way. The vegetation management plan must be prepared in consultation with the Regional Director and must describe:

(i) Vegetation clearing that may occur as part of structural construction, maintenance, and removal.

(ii) Routine vegetation management that may occur, including a description of all physical and mechanical methods that will be used, how equipment will be cleaned before and after entry to the right-of-way, and how the spread of nonnative species by equipment and activities will be minimized.

(iii) Any pesticides, herbicides, or other chemicals proposed for use, as well as the

actions the applicant will take to minimize the adverse impacts of pesticides, herbicides, and other chemicals on native species including pollinators present in or adjacent to the right-of-way.

(iv) Any revegetation and restoration activities, including how the applicant will incorporate regionally appropriate native seeds and plants, particularly those that provide breeding, feeding, and sheltering habitat for native species present in the area, including but not limited to native pollinators.

(d) *Submission instructions.* Applicants may submit applications for rights-of-way through electronic filing or certified mail.

(1) *Electronic filing.* Applications submitted through electronic filing (E-file) must include a digital copy of the SF-299, the map, and the environmental analysis, as well as any other attachments that the Regional Director requires for application processing. The Service may provide additional instructions at the preapplication meeting.

(2) *Certified mail.* Application submissions through certified mail must include one printed copy of the SF-299, the map, and the environmental analysis, as well as any other attachments that the Regional Director requires for application processing. Applicants must send all documents by certified mail to the Regional Director for the region where the proposed right-of-way is located. Addresses for the Service Regional Offices are provided at 50 CFR 2.2. Mailing envelopes should be clearly marked “Attn: NWRS Realty Right-of-Way Permit Processing.”

#### **§ 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 on the ground.

(b) Survey plats and legal descriptions of the right-of-way area must be stamped and signed by a licensed professional 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 the right-of-way would affect, or from which those boundaries are calculated. In cases such as road construction that involve allowing 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 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 if 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 document prepared in Adobe Acrobat or similar process.

(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) Unless reimbursement is waived as provided under paragraph (c) of this section, the applicant for a right-of-way permit must reimburse the United States for the costs the Service incurs in evaluating and processing the application, even if the result of this evaluation is a denial of the application. 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.) and other applicable laws, obtain an appraisal, draft correspondence, and draft the permit.

(2) If requested by the applicant during or after the required preapplication meeting, the Regional Director will provide the applicant a preliminary estimate of the Service’s application evaluation and processing costs using the information provided by the applicant during or after the preapplication meeting.

(3) After receiving a complete application, the Regional Director will estimate the Service’s application evaluation and processing costs using the information the applicant provided in the application and during or after the preapplication meeting.

(4) Unless reimbursement is waived as provided under paragraph (c) of this section, 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 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. The Regional Director will refund any overpayments at the request of the applicant.

(b) *Monitoring activities.* (1) By accepting a permit under this subpart, the permit holder agrees to reimburse the Service for the costs incurred for all monitoring activities, which include monitoring the construction, operation, maintenance, and termination of facilities, to ensure compliance with the terms, conditions, and stipulations of the right-of-way permit.

(2) The Regional Director will estimate the total costs the Service expects to incur for monitoring activities over the permit term using the information the applicant provided in the application and during or after the preapplication meeting.

(3) At the discretion of the Regional Director, the Service may require reimbursement for its estimated monitoring costs in a lump-sum payment before the Service issues a right-of-way permit, or at periodic intervals, not to exceed 5 years, specified in the permit.

(4) When reimbursement for costs for monitoring activities is required at periodic intervals specified in the permit, the Regional Director will review the amount of reimbursement not more than every 5 years after the issuance of the permit. The Regional Director will provide the permit holder with written notice of intent to impose new charges to reflect current monitoring costs commencing with the ensuing charge year. The revised charges will be effective unless the permit holder files an appeal in accordance with § 29.22.

(c) *Waiver of reimbursement for Service costs.* (1) 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 related instrumentalities;

(ii) Federal Government agencies; or

(iii) Private individuals or organizations when the proposed right-of-way contributes to the Service's operation or maintenance of the refuge or fish hatchery as certified in writing by the Regional Director.

(2) Additionally, the Regional Director has the discretion to waive reimbursement for Service costs for right-of-way application evaluation and processing activities and monitoring activities so long as there are appropriated funds for these activities.

(3) When reimbursement for Service costs for monitoring activities is waived during the permit term, the permit will contain a statement to that effect.

(4) Reimbursement of costs is required and cannot be waived 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.).

(d) *Service use of payments received for reimbursement of costs.* Payments received by the Service to reimburse the United States for the costs incurred in evaluating and processing applications, and for monitoring, will be deposited into the United States Treasury until such time that any provision of law allows these payments to supplement the Service's appropriation.

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

**§ 29.21-7 Nature of interest granted.**

(a) Where the land administered by the Service is owned in fee by the United States and the right-of-way is compatible with the objectives of the area, the Service may issue a permit after it is approved in writing by the Regional Director.

(b) For rights-of-way permitted 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 from these substances:

(1) The permit term may not exceed 30 years.

(2) 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 based on the analysis in a compatibility determination, that a wider right-of-way is necessary for operation and maintenance after construction and 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, and terminals.

(c) For rights-of-way other than those referred to in paragraph (b) of this section, the permit term may be up to 50 years when the Regional Director deems it appropriate, or a lesser term.

(d) The Service may issue a temporary permit supplementing a right-of-way for additional land needed during construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(e) Unless otherwise provided, no interest granted shall give the grantee any right whatever to remove any material, earth, or stone for construction or other purpose, except that stone or earth necessarily removed from the right-of-way in the construction of a project may be used elsewhere along the same right-of-way in the construction of the same project.

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

**§ 29.21-8 Terms and conditions.**

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

(b) *Agreement of terms and conditions.* An applicant, by accepting a permit, agrees to such terms and conditions as may be prescribed by the Regional Director, including special stipulations required to ensure the permitted use is compatible with the mission of the Refuge System and the purpose(s) of the refuge. (See § 29.21-12 for specific requirements for electric powerlines and § 29.21-13 for specific requirements for oil and gas pipelines.)

(c) *Terms and conditions required for all permit holders.* In addition to any terms and conditions prescribed by the Regional Director, the permit holder must agree to all of the following terms and conditions:

(1) The permit is for the specific use described and may not be construed to authorize any other use within the permit area unless approved in writing by the Regional Director upon determination by the Service project manager that the additional use is a compatible use.

(2) The permit may be amended only by a written instrument signed and executed by the Regional Director and the permit holder.

(3) The permit holder may not transfer or assign this permit to another party without obtaining the Regional Director's prior written approval.

(4) The permit holder may not allow another party to collocate equipment or activities on their infrastructure or right-of-way. Any entity that wants to collocate equipment or activities must apply for its own Service right-of-way permit in accordance with the regulations in 50 CFR 29.21.

(5) The permit holder is responsible for ensuring that its officers, employees, representatives, agents, contractors, and subcontractors are familiar with the permit and comply with its terms and conditions.

(6) The permit holder must provide the Service project manager with current contact information (company address, points of contact, telephone numbers, email addresses, etc.) for both routine and emergency communications, and, in the case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(7) Authorized representatives of the United States have the right to enter and inspect the permitted area at any time without providing prior notice to the permit holder.

(8) The Regional Director may suspend or terminate all or any part of the issued permit for failure of the permit holder 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 permit holder to use the permit, for any continuous 2-year period, for the purpose for which the permit was issued or renewed. In the event of noncompliance or abandonment, the Regional Director will notify the permit holder in writing of any intention to suspend or terminate the permit 60 days from the date of the notice and state the reasons, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may allow an extension of time within which to complete corrective actions if the Regional Director believes that extenuating circumstances, not within the permit holder's control, such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons, warrant an extension.

(ii) Should the holder of a right-of-way permit 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 permit 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 is required in cases in which the permit terminates under its terms.

(9) The permit holder must prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the permit holder has requested and received from the Regional Director written approval of measures that the permit holder will take to perpetuate the location of the monument.

(10) The permit holder must conduct operations, including by setting their time and location, in a manner that avoids or minimizes impacts to fish and wildlife or their habitats, including, but not limited to, impacts caused by exposure to physical and chemical hazards,

disruption of hydrologic processes, lighting and visual disturbance, and duration and frequency of noise.

(11) The permit holder must comply with State and Federal laws and regulations that are applicable to the project within which the permit is issued and to the lands that are included in the right-of-way.

(i) The permit holder must comply with the Archaeological Resources Protection Act (16 U.S.C. 470aa et seq.). The disturbance of archaeological or historical sites and the removal of artifacts from Federal land are prohibited.

(ii) The permit holder must 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.).

(iii) The permit holder must immediately suspend all activities and notify the Service project manager upon the discovery of any threatened or endangered species or archeological, paleontological, or historical resources within or near the permitted area. All natural and cultural resources discovered in the permitted area are the property of the United States.

(12) The permit holder must clear and keep clear the lands within the permit area to the extent and in the manner directed by the Service 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 so as to decrease the fire hazard and also in accordance with any instructions that the Service project manager specifies.

(13) The permit holder must do everything reasonably within the permit holder's power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near the permitted area, including making available such

construction and maintenance resources that are reasonably obtainable for the suppression of such fires.

(14) After the expiration or termination of this permit, the permit holder must remove all facilities and equipment from the permitted area and restore the permitted area to its pre-permit condition as directed and approved by the Service project manager. Any facilities or equipment not removed within 6 months, unless more time is deemed necessary for conservation purposes by the Regional Director, will be deemed abandoned and will be disposed of in accordance with applicable Federal law. In that event, the permit holder will be liable to the Service for all of its costs in disposing of the facilities or equipment and restoring the permitted area.

(15) In accordance with applicable Federal law, in the construction, operation, and maintenance of the project, the permit holder will 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.

(16) The permit holder must pay the United States the full value for all damages to the lands or other property of the United States caused by the permit holder or that person's employees, contractors, or agents of the contractors.

(i) In cases in which the permit is issued to a State or other governmental agency that has no legal power to assume such a liability with respect to damages caused to lands or property, that agency will repair all such damages.

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

(17) The permit holder will indemnify and hold harmless the United States and its officers, employees, agents, and representatives from and against all liability of any sort whatsoever arising out of the permit holder's activities under this permit. This agreement to indemnify and hold harmless from and against all liability includes liability under Federal or

State environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation, and Restoration Act, as amended (42 U.S.C. chapter 103); the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.); and what is commonly known as the Clean Water Act, as amended (33 U.S.C 1251–1387). This agreement to indemnify and hold harmless will survive the permit’s termination or expiration.

(18) 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 purpose(s) of the refuge. Required permit modifications could include but are not limited to changes to permit conditions and/or additional stipulations that a Regional Director deems necessary based on new information.

(d) *Terms and conditions required of most permit holders.* The permit holder must also agree to the following terms and conditions, which are required unless the Regional Director determines they are not relevant to the requested use:

(1) The permit holder must notify the Service project manager in writing at least 5 business days before conducting any maintenance or nonemergency repair work within the permitted area. The written notice must describe the location of the proposed work, the equipment to be used, and the size of work crews anticipated to be working on Service land. The Service project manager may require an onsite meeting before any maintenance or nonemergency repair work commences and may assign a site monitor to be present during such work. Except in emergencies, all work in the permitted area must be conducted during normal business hours. To respond to an emergency, the permit holder may enter the permitted area at other times to conduct repair work after calling the Service project manager.

(2) The permit holder must erect and maintain appropriate warning signs, barricades, or other warning devices during all periods when the permit holder is using the permitted area, including periods of maintenance or repair.

(3) The permit holder must rebuild and repair such roads, fences, structures, and trails as may be destroyed or injured by construction work.

(4) Notwithstanding the issuance of this permit, the Service may establish trails, roads, or other improvements across, over, on, or through the permitted area for use by the Service, by visitors, or by others.

(5) Upon request by the Regional Director, the permit holder must 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.

(6) The permit holder must take any soil and resource conservation and protection measures, including weed control, on the land covered by the permit that the Service project manager in charge requests.

(7) The permit holder must provide for habitat connectivity on the land covered by the permit to the maximum extent possible, for example through use of wildlife-friendly fencing, perches or perch deterrents for birds, fish-passable culverts, vegetative screening or hiding cover, that the Service project manager in charge requests.

(8) The permit holder must promptly notify the Service 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 that the project manager determines to be the full stumpage value of the timber to be cut, removed, or destroyed.

(9) Issuance of the permit is subject to the express condition that the exercise of the permit will not unduly interfere with the management, administration, or disposal by the United States of the land to be affected. The permit holder agrees and consents to the occupancy and use by the United States, or its grantees, permittees, or lessees, of any part of the permit area not actually occupied for the purpose of the permitted rights to the extent that the use does not unreasonably interfere with the permittee's use of the permitted area.

(10) Any facility constructed on the permit area will be modified or adapted, if modification is found by the Regional Director to be necessary, without liability or expense to the United States, so that the facility will not conflict with the use and occupancy of the land for any authorized works that may be constructed on the land under the authority of the United States. The 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 for Service facilities.

(e) *General liability insurance.* The Service may require the permit holder to procure and maintain in force and effect during the term of this permit commercial general liability insurance to protect against claims arising out of the acts or omissions of the permit holder or its officers, employees, agents, or representatives while conducting the activities authorized by this permit. The insurance policy must provide coverage for discharges or escapes of pollutants or contaminants into the environment, including sudden or accidental discharges or escapes. The Regional Director will determine the minimum amount of coverage per occurrence and in the aggregate. The policy must be issued by a company duly licensed to do business in the State where the project is located and must name the United States of America as an additional insured. Before the Regional Director executes this permit, the permittee must provide the Service with a copy of its certificate of insurance showing the required coverage.

(f) *Bonds.* The Service may require a bond for a permit when the Regional Director determines that the Service is likely to incur reclamation costs during or after the term of the right-of-way due to the construction, operation, or maintenance of the right-of-way. The Service also may require a bond for a permit when the Service is likely to incur reclamation costs if the right-of-way is abandoned or terminated.

(1) No bond will be required of a Federal, State, or local government or its agent or instrumentality, except those that are:

(i) Using the facility, system, space, or any part of the right-of-way area for commercial purposes; or

(ii) A municipal utility or cooperative whose principal source of revenue is customer charges.

(2) When the Service requires a bond, the permit holder must agree to the following terms and conditions: Before the permit's effective date, the permit holder must file with the Service a performance bond payable to the Service, issued by a surety satisfactory to the Service, to guarantee its compliance with all terms and conditions of the permit and with all applicable laws and regulations. The Regional Director will determine the amount of the bond and with whom it must be filed.

(g) *Communications facilities.* If this permit is for a communications facility as defined by the Mobile Now Act (47 U.S.C. 1455(d)(1)), then the permit holder must also agree to the following terms and conditions:

(1) The permit holder agrees that use of wireless communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or National Telecommunications and Information Administration (NTIA) authorization/license (if required), and the operation of the equipment is in strict compliance with applicable requirements of FCC or NTIA. A copy of each applicable license or authorization must be maintained at all times by the permit holder for each transmitter being operated. The permit holder must provide the Service project manager, when requested, with current copies of all licenses for equipment in or on facilities covered by this permit.

(2) The permit holder must, at the permit holder's sole cost and expense, take all necessary actions to comply with all applicable FCC radio frequency (RF) exposure regulations and requirements, and take reasonable precautions so that neither workers nor the public are subject to RF exposures above the FCC specific levels.

(3) The permit holder agrees that the provisions of 18 U.S.C. 431 (contracts by Member of Congress) and 41 U.S.C. 6306 (prohibition on Members of Congress making contracts with the Federal Government) apply to the permit, as if set forth in full.

**§ 29.21-9 [Amended]**

8. Amend newly redesignated § 29.21-9, in paragraph (a), by removing the words “at his discretion”.

9. Amend newly redesignated § 29.21-10 by revising the section heading and paragraphs (b) and (c) to read as follows:

**§ 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 permit. A \$100 nonrefundable service fee must accompany the proposal. No transfer will occur unless and until approved in writing by the Regional Director.

(c) *Disposal of property on termination of right-of-way.* In the absence of any agreement to the contrary:

(1) The holder of the right-of-way must, within 6 months after termination of the right-of-way, remove all property or improvements placed there by the holder, other than a road and usable improvements to a road.

(2) After 6 months, all property and improvements in the right-of-way area become the property of the United States.

(3) The Regional Director may use discretion to extend this timeframe.

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

**§ 29.21-11 Required payment for use and occupancy of National Wildlife Refuge System land.**

(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 method approved by the Department of the Interior 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 before permit issuance.

(2) If any Federal, State, or local agency is exempt from payment under any other provision of Federal law, the agency must inform the Service of the applicable Federal law during the preapplication meeting required by § 29.21-2. The agency must also 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 must relate to, and be consistent with, the mission of the National Wildlife Refuge System. For agencies exempted from payment by law, the Regional Director may waive the requirement for other compensation upon finding this requirement to be impracticable or unnecessary.

(b) The terms of the permit will specify the amount of the lump sum paid by the applicant for use and occupancy during the current permit term, or, if applicable, the initial annual rental payment amount for use and occupancy of the permitted area.

(c) When annual rental payments are used, the Regional Director will periodically review and adjust the charges to reflect fair market value. The Regional Director will provide the permit holder with written notice 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 permit holder files an appeal in accordance with § 29.22.

(d) Payments received by the Service for use and occupancy of rights-of-way on Refuge lands and interests in land will be deposited into the Migratory Bird Conservation Fund to carry out the land-acquisition provisions of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.). Payments received for use and occupancy of rights-of-way on other Service-managed lands and interests in land will be deposited into the National Wildlife Refuge Fund, to make payments annually to counties and other units of local government in accordance with regulations in 50 CFR part 34.

**§ 29.21-12 [Amended]**

11. Amend newly redesignated § 29.21-12:

a. In the introductory text, by removing the citation “§ 29.21-4(b)” and adding in its place the citation “§ 29.21-8”;

b. In paragraph (a), by removing the word “his” both times that it appears and adding in its place the word “the”; and

c. In paragraph (b), by removing the word “him” both times that it appears and adding in its place the words “the applicant”.

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 from these substances.**

(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 or more than one bureau or office of the Department of the Interior, a single application must 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 is subject to the provisions of the regulations in this part.

(b) *Right-of-way permits.* Right-of-way permits issued under this section are 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 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 part 192 or part 195 and in accordance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and any future amendments to that act.

(2) *Environmental protection.* An application for a right-of-way must contain environmental information required by § 29.21-4(b)(2). The applicant must also provide 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 any stipulations 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 all participants. Such disclosure will include where applicable:

- (1) The name and address of each partner;
- (2) The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares that the shareholder is authorized for voting purposes; 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 that controls the entity, the number of shares and the percentage of any class of voting stock of the entity owned, directly or indirectly, by the affiliate.

(d) *Technical and financial capability.* The Regional Director may require a financial statement and will issue or renew a right-of-way permit under this section only when satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the facility.

(e) *Reimbursement of costs.* (1) 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.

(2) Payments received by the Service to reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities will be deposited into the United States Treasury until such time that any provision of law allows these payments to supplement the Service's appropriation.

(f) *Public hearing.* The Regional Director will give notice to Federal, State, and local government agencies and the public of 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 will require the holder of a right-of-way permit to furnish a bond or other satisfactory financial assurance 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 or for any reclamation or restoration requirements to be met.

(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, the project manager 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 permit 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. The suspension will remain in effect for only so long as an emergency condition continues.

(i) *Joint use of rights-of-way.* Each right-of-way permit will reserve to the Regional Director the right to issue additional rights-of-way permits for compatible uses on or adjacent to permitted rights-of-way areas after giving notice to the permit 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 made from these substances will be constructed, operated, and maintained as common carriers.

(1) The owners or operators of pipelines subject to this subpart will 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 following due notice 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 will not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. ch. 15B sec. 717 et seq.) 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) The owners or operators of pipelines will purchase, without discrimination, any natural gas produced in the vicinity of the pipeline that is offered for sale unless that natural gas is subject to State regulatory or conservation laws governing its purchase by owners or operators of pipelines.

(k) *Required information.* The Regional Director will require, prior to issuing or renewing a right-of-way permit, that the applicant submit and disclose all plans, contracts, agreements, or other information or material that the Regional Director deems necessary to determine whether to issue or renew the right-of-way permit or the terms and conditions that should be included in the permit. That 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 will take into consideration, and to the extent practical comply with, applicable State standards for right-of-way construction, operation, and maintenance, taking into account any additional standards necessary to protect refuge resources.

(m) *Congressional notification.* The Secretary will 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 permit for such a pipeline will be issued until a notice of intention to permit the right-of-way, together with the Secretary's detailed findings as to the terms and conditions the Secretary proposes to impose, has been submitted to those committees.

**Shannon Estenoz,**

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[FR Doc. 2023-15453 Filed: 7/21/2023 8:45 am; Publication Date: 7/24/2023]