§ 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.

(b) * * *

(1) *Accumulation limit.* The quantity of acute hazardous waste accumulated on site never exceeds 1 kilogram (2.2 pounds) and the quantity of non-acute hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

* * * * *

■ 5. Section 262.17 is amended by revising (a)(8)(i) to read as follows:

§ 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.

(a) * * *

(8) * * *

(i) *Notification for closure of a waste accumulation unit.* A large quantity generator must perform one of the following when closing a waste accumulation unit, but not all waste accumulation units:

(A) Place a notice in the operating record within 30 days after closure identifying the location of the unit within the facility (if the waste accumulation unit is subsequently reopened, the generator may remove the notice from the operating record); or

(B) Meet the closure performance standards of paragraph (a)(8)(iii) of this section for container, tank, and containment building waste accumulation units or paragraph (a)(8)(iv) of this section for drip pads and notify EPA following the procedures in paragraph (a)(8)(ii)(B) of this section for the waste accumulation unit.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 6. The authority for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 7. Section 266.508 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 266.508 Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility or evaluated hazardous waste pharmaceuticals from a reverse distributor.

(a) * * *

(2) * * *

(ii) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals must write the word ''PHRM'' or ''PHARMS'' in Item 13 of EPA Form 8700–22. A healthcare facility may also include the applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes) in Item 13 of EPA Form 8700–22.

* * * * *

[FR Doc. 2024–28802 Filed 12–10–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2023–0021]

RIN 2127–AM37

Federal Motor Vehicle Safety Standards; Automatic Emergency Braking Systems for Light Vehicles; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration; correction.

SUMMARY: This document corrects a November 26, 2024 final rule partially granting petitions for reconsideration of a May 9, 2024, final rule that adopted Federal Motor Vehicle Safety Standard (FMVSS) No. 127, ''Automatic Emergency Braking for Light Vehicles,'' which requires automatic emergency braking (AEB), pedestrian automatic emergency braking (PAEB), and forward collision warning (FCW) systems on all new light vehicles. This document corrects a typographical error in the amendatory instructions.

DATES: Effective January 27, 2025.

ADDRESSES: Correspondence related to this rule should refer to the docket number set forth above (NHTSA–2023–0021) and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. Markus Price, Office of Crash Avoidance Standards, Telephone: (202) 366–1810, Facsimile: (202) 366–7002. For legal issues: Mr. Eli Wachtel, Office of the Chief Counsel, Telephone: (202) 366–2992, Facsimile: (202) 366–3820. The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In FR Doc. 2024–27349 appearing on page 93199 in the **Federal Register** of Tuesday, November 26, 2024, the following correction is made:

§ 571.127 [Corrected]

■ On page 93220, in the first column, in part 571, in amendment 2.b, the instruction ''Revising S5.1.1(a)(3) and (4), S5.1.1(b)(2), S5.1.3, and S8.3.3(g).'' is corrected to read ''Revising S5.1.1(a)(3) and (4), S5.1.1(b)(1), S5.1.3, and S8.3.3(g).''.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator, Rulemaking.

[FR Doc. 2024–28998 Filed 12–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 29

[Docket No. FWS–HQ–NWRS–2019–0017; FF09R50000–XXX–FVRS3451900000]

RIN 1018–BD78

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: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are revising 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 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 will require a preapplication meeting and use of a standard application, allow electronic submission of applications, and provide 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. Additionally, we are implementing new permit terms and conditions and other regulatory changes.

DATES: This rule is effective January 10, 2025.

ADDRESSES: This final rule, its supporting documents, and the comments we received on the proposed rule (86 FR 5120, January 19, 2021) and revised proposed rule (88 FR 47442, July 24, 2023) 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* (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 mission of the U.S. Fish and Wildlife Service (Service) 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, 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. The Alaska National Interest Lands Conservation Act (ANILCA; Pub. L. 96–487; 16 U.S.C. 3101 *et seq.*) includes provisions that allow for transportation and utility system uses within conservation system units, including designated wilderness.

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 authorized by ANILCA (see 16 U.S.C. 3162(B)), 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, as amended by the Improvement 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 Improvement Act defines a ''compatible use'' as 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, typically 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 570 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 (CFR) in parts 25 and 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 for a compatible use across Refuge System lands only if 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 certain provisions of ANILCA. 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, as amended (ESA; 16 U.S.C. 1531 *et seq.*); 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 and 50 CFR 25.21, in the case of any right-of-way permit issued on or before November 17, 2000, for a term of 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. Prior to extending or renewing such long-term uses at the expiration of the authorization, the Service will make a new compatibility determination, but such compatibility determinations will base their analysis on the existing conditions with the use in place, not from a pre-use perspective. All permits issued after November 17, 2000, must include terms and conditions that specifically allow for modifications to the terms and conditions, if necessary to ensure compatibility. For older permits that do not include this stipulation, the Service may request permit modifications to ensure that a 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 permit holder's use violates the permit terms and conditions.

Additionally, this final rule and the Improvement Act's compatibility requirement do not apply to permanent rights and rights-of-way in existence prior to land acquisition 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 regulations in this final 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.

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 the Service's process for permitting of rights-of-way across National Wildlife Refuge System lands and other Service-administered lands, to the extent practicable and consistent with applicable law. On July 24, 2023, we published in the **Federal Register** (88 FR 47442) a revised proposed rule based on feedback we received on the original proposed rule. For a description of the substantive changes proposed to the regulations in 50 CFR part 29, subpart B, see the January 19, 2021, proposed rule (86 FR 5120) and the July 24, 2023, revised proposed rule (88 FR 47442).

Summary of Comments and Responses

We accepted public comments on the January 19, 2021, proposed rule (86 FR 5120) for 60 days, ending March 22, 2021. By that date, we received 11 comments. 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 discussed the remaining comments in our July 24, 2023, revised proposed rule (88 FR 47442).

We accepted public comments on the revised proposed rule for 30 days, ending August 23, 2023. We received comments from 13 different individuals or organizations. Two individuals or organizations suggested the Service make no changes to its regulations to streamline right-of-way permitting. Two others suggested the Service streamline its permitting process only when doing so would benefit transmission of renewable energy. We discuss the remaining comments by topic, below.

Comment (1): The Center for Biological Diversity and another commenter expressed opposition to the changes in the proposed rule and urged the Service to withdraw the proposed rule, but, if the Service did not, these commenters suggested that the Service not finalize the rule until the Service completes a programmatic consultation under the ESA.

Our response: No regulatory revisions in this rule will change the types of uses that the Service authorizes across Service-managed lands. The rule provides more clarity to applicants about the right-of-way application process and streamlines inefficient processes for applicants and the Service. Given that this rule has no impact on authorized uses, a programmatic consultation to determine cumulative impacts is not appropriate. Where appropriate, the Service will conduct the appropriate ESA consultation when processing individual right-of-way permit applications. We did not make any changes to the proposed rule as a result of these comments.

Comment (2): The Edison Electric Institute (EEI) requested that the Service ensure that electric infrastructure rights-of-way remain a compatible use on Refuge System lands, and EEI requested guidance concerning the submittal of facility construction plans and vegetation management plans.

Our response: Consistent with the final compatibility regulations implementing the National Wildlife Refuge System Improvement Act, published at 65 FR 62458 (October 18, 2000), it is not the Service's intent to restrict or eliminate previously permitted rights-of-way for infrastructure. However, in accordance with 50 CFR 25.21, the Service may seek modifications to the terms and conditions of existing right-of-way permits if necessary to ensure that a permitted use remains a compatible use.

With respect to such preexisting uses, in this final rule, we added a new section, § 29.12, Preexisting uses, to clarify that these regulations have no

impact on activities explicitly authorized by a permanent right or right-of-way obtained prior to acquisition by the United States, such as existing rights-of-way for power lines and other electrical infrastructure. However, any proposed expansion, rerouting, or additional use of a right-of-way that will encumber Refuge System lands must be in accordance with the requirements and procedures of 50 CFR 25.21 and 26.41(c).

Before the Service will process a request for a right-of-way permit, the Service requires a preliminary site and facility construction plan for a proposed right-of-way that requires construction. A preliminary site and facility construction plan is an attachment required by the Standard Form 299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property (SF–299), which applicants must submit to request a right-of-way permit. Before the Service can issue a right-of-way permit or renewal, the Service also requires a vegetation management plan when vegetation will be disturbed by construction, operation, or maintenance of the right-of-way. The contents of facility construction plans and vegetation management plans will vary depending on the scope and location of the proposed right-of-way and the wildlife habitat and species impacted. During a preapplication consultation for a right-of-way, a modification of an existing right-of-way, or a renewal, the Service can provide guidance to an applicant about information that must be covered by these plans. We did not make any changes to the final rule as a result of EEI's comments pertaining to these plans.

Comment (3): The Energy and Wildlife Action Coalition (EWAC) suggested that the Service revise proposed § 29.21–3, Compatibility-determination requirement, by adding ''or to activities authorized by preexisting rights-of-way'' after ''privately owned minerals,'' to make the language of the regulation consistent with the preamble.

Our response: We concur with EWAC's suggestion to make the language of the regulation consistent with the preamble of the proposed rule about how the Service handles preexisting rights-of-way. Therefore, in addition to adding the new section, § 29.12, as discussed above, to clarify that these regulations have no impact on permanent rights and rights-of-way in existence prior to acquisition by the United States, we also revised proposed § 29.21–3 (now at § 29.13 in this final rule) to add the words ''or to activities explicitly authorized by a permanent right or right-of-way obtained prior to acquisition by the United States'' after ''privately owned minerals'' in this final rule.

Comment (4): EWAC suggested that, since a compatibility determination is a threshold requirement, the Service's implementing regulations should limit the information the agency initially requests to the information it requires to make a compatibility determination. Consistent with that idea, EWAC suggested that the Service be more flexible with respect to the amount of environmental information that must accompany a right-of-way application.

Our response: The Service typically requires an environmental analysis before we may make a final determination that a proposed use is compatible with the mission of the Refuge System and the purpose(s) of the refuge. However, the Service may require less information to ascertain whether or not a proposed use would conflict with the goals or objectives in an approved refuge management plan (*e.g.,* comprehensive conservation plan, comprehensive management plan, or step-down management plan), which describe how the Service will accomplish the purpose(s) of the refuge. Such a conflict would require changes to the proposed use before it could potentially be found compatible with the purpose(s) of the refuge.

We concur with EWAC that the Service's implementing regulations should limit the information the agency initially requests to the information it requires to make a compatibility determination, and that an applicant should not prepare an environmental analysis to satisfy NEPA requirements until after the applicant has discussed the proposed use with the Service and provided basic environmental information to inform discussions with the Service. Therefore, we revised proposed § 29.21–4 (now at § 29.16, Right-of-way permit application, in this final rule), to require supplemental environmental information in lieu of an environmental analysis with initial application submission. Consistent with this change, we added the new section, § 29.15, General application procedures, which summarizes the steps in the right-of-way application process and clarifies that the Service will deem an application to be complete, and notify the applicant of such, after the Service has determined that the provided information is sufficient for the agency to make a compatibility determination and comply with NEPA. This section also states that the Service will notify the applicant if additional information is required for a complete application.

Comment (5): EWAC suggested that, since NEPA documents are routinely developed by third-party contractors in consultation with the Service, required upfront payments for application processing should not include the estimated cost of preparing environmental review documents to satisfy NEPA requirements.

Our response: We concur, and we revised proposed § 29.21–6 (now at § 29.18 in this final rule) to clarify that the Service's required upfront payments for application processing will not include the cost of preparing environmental review documents to satisfy NEPA requirements when the applicant will assume responsibility for the costs of that work.

Comment (6): The State of Utah, Public Lands Policy Coordinating Office, suggested that the regulations include language similar to that included in the preamble of the proposed rule stating that there will be ''no impact on prior existing highway rights-of-way held by State and local units of government on Service-administered land.''

Our response: We concur with the State of Utah's suggestion to make the language of the regulations consistent with the preamble of the proposed rule. Therefore, as discussed earlier in this final rule, we have added a new section, § 29.12, Preexisting uses, to clarify that these regulations have no impact on permanent rights-of-way in existence prior to acquisition by the United States. Additionally, consistent with this change, we revised proposed § 29.21–3, Compatibility-determination requirement (now at § 29.13 in this final rule), to clarify that no compatibility determination is required for activities explicitly authorized by a permanent right or right-of-way obtained prior to acquisition by the United States.

Comment (7): The State of Utah, Public Lands Policy Coordinating Office, reiterated its concern 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. The State reiterated its recommendation that the Service waive the requirement for a survey plat when it would be a burden for a right-of-way requestor.

Our response: The Service recognizes the challenges in surveying rights-of-way in remote areas. In the final rule, to increase flexibility for unique circumstances, we added a provision to allow a licensed Service land surveyor to waive the requirement of a survey

plat for a proposed right-of-way in a remote location if they determine that the Global Positioning System (GPS) coordinates and supporting location information submitted by the applicant for inclusion in the right-of-way permit are adequate to locate the proposed right-of-way with minimal risk to the United States.

Comment (8): The Wireless Infrastructure Association (WIA) recommended that the Service clarify that, in situations where tower or support infrastructure for wireless communications is owned by a neutral host provider that is separate from the entity operating the wireless communications equipment, the operator of the wireless communications equipment and not the owner of the tower or support infrastructure is responsible for compliance with Federal rules and requirements related to wireless communication. WIA recommended that the Service clarify that proposed § 29.21–8(c)(4) (now at § 29.20(c)(4) in this final rule) does not apply to communications facilities.

Our response: The Service supports collocation of wireless communications sites where possible and when compatible with refuge purposes. The proposed § 29.21–8(c)(4) contained contradictory text, and in this final rule we clarify at § 29.20(c)(4) that collocation is allowed but we require that each collocating entity obtain a right-of-way permit.

Comment (9): The WIA recommended that the Service clarify that, where tower or support infrastructure is owned and maintained by an organization separate from the entity operating the wireless communications equipment, the operator of the wireless communications equipment is responsible for complying with the applicable Federal rules and procedures for telecommunications sites.

Our response: The Service concurs that the requirements for communications facilities in § 29.20(g) in this final rule (formerly at § 29.21–8(g) in the proposed rule) should not apply to neutral host providers, also sometimes referred to as tower companies, who own and maintain towers or support infrastructure on Service-managed land but do not operate or maintain wireless communications equipment. We revised § 29.20(g) to clarify that requirements for communications facilities, including complying with the applicable Federal rules and procedures for telecommunications sites, apply to entities that operate or maintain wireless communications equipment.

Comment (10): The Red Cliff Band of Lake Superior Chippewa Indians and the Madison Office of the Great Lakes Indian Fish & Wildlife Commission requested that the Service include in its regulations a permit condition that ensures that the right-of-way permits it issues do not impede access to ceded ancestral Tribal lands or the exercise of court-affirmed treaty rights.

Our response: We concur that the right-of-way permits issued by the Service should not impede public access or the ability of Tribes to exercise court-affirmed treaty rights. Therefore, we revised proposed § 29.21–8(d), Terms and conditions required of most permit holders (now at § 29.20(d) in this final rule), to clarify that right-of-way permits issued by the Service will include language ensuring that Service-managed lands remain accessible to the public when access does not pose a threat to public safety or the environment.

Comment (11): The State of Alaska suggested that lands located within Alaska national wildlife refuges conveyed under the authority of ANILCA sections 103(c) and 906(o) are exempted from Service regulations by the interim management regulations for Alaska national wildlife refuges that published at 46 FR 31818–31834, on June 17, 1981.

Our response: The interim regulations promulgated in 1981 were repealed and superseded by the final rule promulgated in 1986 (51 FR 44791, December 12, 1986) and thus currently have no legal effect. Pursuant to 50 CFR 36.1, which sets forth the regulations for Alaska national wildlife refuges, the general National Wildlife Refuge System regulations in title 50 CFR are automatically applicable in their entirety to the federally owned lands within the boundaries of Alaska national wildlife refuges unless stated otherwise in those regulations or amended by ANILCA. We did not make any changes to the final rule as a result of these comments.

Comment (12): The State of Alaska requested that the Service exempt Alaska from this rule, based on the unique circumstances of Alaska's transportation and utility systems, such as the relatively undeveloped road system at the time of ANILCA passage, the need to develop roads and utilities across Alaska refuge lands to serve lands transferred to Native Corporations under the Alaska Native Claims Settlement Act (ANCSA), and pipeline right-of-way authorizations other than common carrier lines.

Our response: Pursuant to 50 CFR 36.1, which sets forth the regulations for Alaska national wildlife refuges, the general National Wildlife Refuge System regulations in title 50 CFR are already applicable in their entirety to the federally owned lands within the boundaries of Alaska national wildlife refuges unless stated otherwise in those regulations or amended by ANILCA. As stated in § 29.21–1(b) in the proposed rules and § 29.11(b) in this final rule, requests for the transportation and utility system rights-of-way authorized under ANILCA must be submitted under the authority of 16 U.S.C. 3161 *et seq.* and follow the procedures set forth in 43 CFR part 36. The vast majority of rights-of-way requested from the Service in Alaska fall under ANILCA's definition of transportation and utility systems in 16 U.S.C. 3162(B) or are otherwise authorized under ANILCA; however, any rights-of-way not authorized under ANILCA are subject to the Administration Act and its implementing regulations in title 50 CFR. We did not make any changes to the final rule as a result of these comments.

Comment (13): The State of Alaska suggested that compatibility has a different standard under ANILCA, and, under that standard, set forth in 43 CFR 36.2(f), a title XI project is ''compatible with the purposes for which the unit was established'' if it ''will not *significantly* interfere with or detract from the purposes for which the area was established'' [emphasis added]. Therefore, the State suggests, the more restrictive compatibility determination and approval process described in 50 CFR 26.41(c) should not apply to these rights-of-way.

Our response: Consistent with 50 CFR 36.1, rights-of-way authorized under the Administration Act are subject to regulations in title 50 CFR including 50 CFR 25.21(b)(1) and 26.41. We did not make any changes to the final rule as a result of these comments.

Comment (14): The State of Alaska requested that the Service revise the regulation's definition of *National Wildlife Refuge System lands in Alaska* to include the list of the types of transportation and utility systems authorized in ANILCA section 1102(4)(B) and 43 CFR 36.2(p).

Our response: We revised the definition of *National Wildlife Refuge System lands in Alaska* in proposed § 29.21–1(b) (now at § 29.11 in this final rule) to reference the list of ANILCA-authorized transportation and utility systems in 16 U.S.C. 3162(B), which is the same list in ANILCA section 1102(4)(B) and 43 CFR 36.2(p).

Comment (15): The State of Alaska suggested that the Service revise

proposed § 29.21–2, Preapplication meeting, to impose an explicit timeframe for preapplication meetings.

Our response: The Service anticipates developing step-down policy for these regulations to provide guidance to Service employees on the appropriate timelines for preapplication meetings. Depending on the scope of the proposed use, multiple preapplication meetings may be appropriate. We did not make any changes to the rule as a result of this comment.

Comment (16): The State of Alaska requested that the Service expand the types of oil and gas pipelines that may be authorized by a Regional Director to include additional types of pipelines, such as contract carrier pipelines. The State also requested that the Service rephrase language in the preamble pertaining to ANILCA and the Wilderness Act, to avoid potential misunderstanding about where ANILCA allows commercial enterprises and permanent roads.

Our response: We incorporated the State's requested edits into the preamble description of the Wilderness Act and ANILCA, to clarify that ANILCA includes provisions that allow for transportation and utility systems within conservation system units, including designated wilderness. At this time, the Service is not prepared to expand the types of oil and gas pipelines that a Regional Director may authorize, so we did not make that suggested change.

Changes From the Proposed Rules

As discussed above under *Summary of Comments and Responses,* in this final rule we have made changes to the regulations in the proposed rules based on comments we received. Additionally, we made clarifying edits to several sections to eliminate potential sources of confusion.

In this final rule, in response to comments, we added to and updated several sections to make them consistent with the preamble of the proposed rule, which indicated that the regulations would have no impact on prior existing highway rights-of-way held by State and local units of government on Service-administered land. We added a new section, § 29.12, Preexisting uses, to clarify that these regulations have no impact on permanent rights-of-way in existence prior to acquisition by the United States, except that, consistent with Federal Highway Administration regulations in 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 final rule.

In response to public comments, and consistent with the preamble in the proposed rule, we revised and streamlined proposed § 29.21–3, Compatibility-determination requirement (now at § 29.13 in this final rule). Consistent with the Service's compatibility policy in the Service Manual at 603 FW 2, we clarified that the Service will not issue or renew a right-of-way permit across National Wildlife Refuge System land if the use would conflict with the goals or objectives in an approved refuge management plan (*e.g.,* a comprehensive conservation plan). For brevity, we deleted proposed § 29.21–3's statutory citations and pointed applicants toward the Service's existing compatibility regulations in 50 CFR 25.21, which address compatible use determinations and reevaluations for rights-of-way permitted before and after November 17, 2000. Finally, in response to comments, we revised proposed § 29.21–3 to clarify that no compatibility determination is required for activities explicitly authorized by a permanent right or right-of-way obtained prior to acquisition by the United States.

The addition of a new section, § 29.12, Preexisting uses, in this final rule required the redesignations of proposed § 29.21–4 and the subsequent sections of the proposed rule.

We revised proposed § 29.21–4, Application procedures (now § 29.16, Right-of-way permit application, in this final rule), to clarify that the Service will not begin processing a right-of-way permit application until the agency has determined that the applicant has complied with application requirements. This provision was previously implied but not explicitly stated. The remainder of the section pertaining to application procedures follows what was previously included in the proposed rule with several revisions.

The most significant revision to proposed § 29.21–4 (now § 29.16), which we made in response to a public comment, is the elimination of the requirement that applicants include an environmental analysis with every application submission. An environmental analysis can be a time-consuming and expensive undertaking, and the Service agrees with a commenter that it is premature for an applicant to provide an environmental analysis suitable to satisfy NEPA requirements at the application submittal stage, and that the Service should first review other application documentation before requesting a detailed environmental analysis.

We revised proposed § 29.21–4 (now § 29.16) to substitute supplemental environmental information for the environmental analysis in the list of documents that applicants must include with their application submission. This supplemental environmental information may include, but is not limited to, the anticipated impacts of the proposed use 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.

Related to these changes, we revised proposed § 29.21–4 (now § 29.16) to require that applications include a description of proposed access routes and means of access for right-of-way construction and maintenance, and that the application's included maps identify proposed access points and routes (including uses of existing roads). This is information that would have otherwise been described in an environmental analysis, which, as explained above, the Service is no longer requiring as part of every right-of-way application submission.

We revised proposed § 29.21–4 (now § 29.16) to clarify that the preliminary site and facility construction plans listed on the SF–299 are required with application submission. Proposed § 29.21–4 identified preliminary site and facility construction plans as a post-application submission requirement, even though preliminary site and facility construction plans are a requirement of the SF–299, which is required with right-of-way application submission.

Finally, we revised proposed § 29.21–4 (now § 29.16) to indicate that an applicant may be required to provide proof of general liability insurance before the Service will issue a right-of-way permit. In the proposed rule, § 29.21–8(e) (now § 29.20(e)) stated that the Service may require a permit holder to maintain general liability insurance during the term of the permit, and, for transparency purposes, we copied this requirement to § 29.16(d)(4).

In this final rule, we have added a new section, § 29.15, General application procedures, summarizing steps an applicant must follow to request a right-of-way permit. These steps are described in more detail in other sections of the proposed rule and this final rule. This new section clarifies that the Service will deem a right-of-way application to be complete, and notify the applicant of such, after the Service has determined that the

information provided with an application is sufficient for the agency to make a compatibility determination and comply with NEPA. The section also states that the Service will notify the applicant if additional information is required for a complete application. These clarifications on application completeness are necessary given that the Service requires an environmental analysis to process many applications but is eliminating the proposed § 29.21–4 requirement that an environmental analysis be included with every application submission, to avoid situations where an applicant incurs an unnecessary expense to provide information the Service does not require.

In response to public comments, we revised proposed § 29.21–5 (now § 29.17) to be more flexible about the type of right-of-way location information the Service requires from an applicant before the agency may issue a right-of-way permit. The new paragraph under § 29.17(c) authorizes a licensed Service land surveyor to waive the requirement of a survey plat for a proposed right-of-way in a remote location if they determine that the GPS coordinates and supporting location information submitted by the applicant for inclusion in the right-of-way permit are adequate to locate the proposed right-of-way with minimal risk to the United States.

We revised proposed § 29.21–6 (now § 29.18) to clarify that the Service's required upfront payments for application processing will not include the cost of preparing environmental review documents to satisfy NEPA requirements when the applicant will pay for that work.

We revised proposed § 29.21–8(c)(4), under *Terms and conditions required for all permit holders,* to clarify that collocation of wireless facilities is allowed but requires that each collocating entity obtain a right-of-way permit. This revision corrects the contradictory language in proposed § 29.21–8(c)(4) that some may have interpreted as prohibiting collocation of wireless communications equipment, which the Service supports where possible and compatible with refuge purposes. The revised language appears in § 29.20(c)(4) in this final rule.

Although already common practice within the Service, we revised proposed § 29.21–8(d)(1), under *Terms and conditions required of most permit holders* (now at § 29.20(d)(1) in this final rule), to explicitly require that right-of-way permits issued by the Service include language ensuring that Service-managed public lands remain accessible to the public when access does not pose a threat to public safety or the environment.

We revised proposed § 29.21–8(g) (now at § 29.20(g) in this final rule) to clarify that requirements for communications facilities, including complying with the applicable Federal rules and procedures for telecommunications sites, apply to entities that operate or maintain wireless communications equipment and are not applicable to owners of towers and support infrastructure who do not operate or maintain wireless communications equipment. This revision corrects the prior language at proposed § 29.21–8(g) that would have made owners of towers and support infrastructure responsible for ensuring collocated entities that operate or maintain wireless communications equipment meet regulatory requirements.

As indicated above, the Service requires that a company have a right-of-way permit to operate and maintain wireless telecommunications equipment on Service-managed land. In the situation where one company has a permitted tower or support infrastructure, and a second company will add their antennas and/or microwave dishes to the first company's tower or support infrastructure, and the second company will operate and maintain their equipment and be responsible for compliance with Federal rules and procedures, then the Service requires that the second company obtain a right-of-way permit and include with their right-of-way application proof of permission to collocate with the first company. Maps and the legal description for collocated use would match that of the permitted tower or infrastructure; however, the company seeking to install and operate the wireless communications equipment would identify their own operation and maintenance needs in their application. If collocating with another provider, the environmental analysis for the proposed additional use of an existing permitted tower or support infrastructure must address the cumulative impact of multiple collocated providers if that analysis was not performed as part of the permitting for the tower or support infrastructure.

In response to requests from the State of Alaska, we made minor clarifying edits to the preamble and the regulations in the sections referencing Alaska.

We revised a definition for a term we had proposed, *Regional Director,* and the proposed provisions for another term, *National Wildlife Refuge System lands—less than fee interest.* We also replaced the term *right-of-way* with *right-of-way permit* and revised its definition.

- We revised the definition of *Regional Director* in proposed § 29.21 (§ 29.10 in this final rule) to eliminate the additional requirement that, when these regulations require the Regional Director's signature or written approval for a right-of-way, only the Regional Director or the person acting in the Regional Director's official capacity may sign. This change makes the definition of the term consistent with definitions found elsewhere in title 50 CFR and provides flexibility to allow a delegated representative of the Regional Director to sign. The Service will address delegations and signature requirements through the Service Manual rather than through this rulemaking action.
- We revised the provisions for *National Wildlife Refuge System lands—less than fee interest* in proposed § 29.21–1(d) (now at § 29.11(d) in this final rule) to clarify that, when the Service determines that a right-of-way will not affect a legal interest of the United States, a 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. The language in the proposed rule improperly stated that the Regional Director would send such a letter to an applicant when the Service determines that a right-of-way will not *adversely* affect a legal interest of the United States. In a situation where a proposed long-term use will affect a legal interest of the United States, regardless of how it impacts Service-managed lands, a right-of-way permit is required.
- We replaced the term *right-of-way* in proposed § 29.21 (§ 29.10 in this final rule) with the term *right-of way-permit* to be clearer and more specific about what may be authorized and to more closely align our definition with that of the National Park Service. The term ''right-of way-permit'' means a discretionary and revocable permit, issued by the Service to authorize the use of lands or waters within Refuge System units for the construction, operation, and maintenance of infrastructure.

We added several new definitions to better align our terminology with terminology being adopted by the National Park Service in their regulations.

- We add the term *Applicant* to mean an entity that has submitted an application for a right-of-way permit.

• We add the term *Permit holder* to mean an entity that holds a current, fully executed right-of-way permit.

• We add the term *Permitted area* to mean the area of land or water mapped, described, and authorized for use, including construction, operation, maintenance, as well as routes and means of access, in a right-of-way permit issued by the U.S. Fish and Wildlife Service.

We revise § 29.22, now § 29.26, Hearing and appeals procedures, to clarify how the Service handles appeals for rejections of new rights-of-way, renewals of previously authorized rights-of-way, and terminations of authorized rights-of-way. The language in the current regulation states that an appeal may be taken from any final disposition of the Regional Director to the Director of the U.S. Fish and Wildlife Service, and, except in the case of a denial of a right-of-way application, from the latter's decision to the Secretary of the Interior. Because this language has caused confusion, we are revising the language in this section consistent with its meaning.

In this final rule, we clarify that denials of new requested rights-of-way, when the denial is based on a Service's determination that the proposed use is not compatible, may be appealed to the Regional Director and subsequently to the Director, but no further. In this respect, denials of requested rights-of-way are different than denials for all other proposed uses of Refuge System lands, which, in accordance with 50 CFR 25.45, cannot be appealed beyond the Regional Director. Service termination of an existing authorized right-of-way may be further appealed to the Secretary. We also clarify that a party with standing may appeal the Service's decision to issue a requested right-of-way to the Secretary. These revisions do not establish new policy or procedure but instead rephrase the existing language to make it more clear.

Finally, in this final rule, we add a section on severability in § 29.27. The Service intends the regulations in this rule to be severable. If any portion of this final rule were to be stayed or invalidated by a reviewing court, the remaining elements would continue to provide the Service with important and independently effective tools relating to the administration of its right-of-way permitting program. Hence, if a court prevents any provision of this rule from taking effect, that action should not affect the other regulations in the subpart. The remaining provisions would remain in force because they could still operate sensibly.

For convenience in comparing the organization of the regulations at 50 CFR part 29, subpart B, Rights-of-Way General Regulations, with the revised regulations in that subpart as of the effective date of this final rule, table 1 displays the previous and new section designations.

TABLE 1—PRIOR AND NEW SECTIONS IN 50 CFR PART 29, SUBPART B

Previous sections	New sections
§ 29.21 What do these terms mean?	§ 29.10 Definitions.
§ 29.21–1 Purpose and scope	§ 29.11 Purpose and scope.
§ 29.21–2 Application procedures	§ 29.12 Preexisting uses.
§ 29.21–3 Nature of interest granted	§ 29.13 Compatibility-determination requirement.
§ 29.21–4 Terms and conditions	§ 29.14 Preapplication meeting.
§ 29.21–5 Construction	§ 29.15 General application procedures.
§ 29.21–6 Disposal, transfer or termination of interest	§ 29.16 Right-of-way permit application.
§ 29.21–7 What payment do we require for use and occupancy of national wildlife refuge lands?	§ 29.17 Survey plat and legal description.
§ 29.21–8 Electric power transmission line rights-of-way	§ 29.18 Reimbursement of costs.
§ 29.21–9 Rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.	§ 29.19 Nature of interest granted.
	§ 29.20 Terms and conditions.
	§ 29.21 Construction.
	§ 29.22 Disposal, transfer, or termination of interest.
	§ 29.23 Required payment for use and occupancy of National Wildlife Refuge System land.
	§ 29.24 Electric power transmission line rights-of-way.
	§ 29.25 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.
§ 29.22 Hearing and appeals procedures	§ 29.26 Hearing and appeals procedures.
	§ 29.27 Severability.

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 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 rule, we will conduct NEPA analysis for individual permit applications.

Regulatory Planning and Review—Executive Orders 12866, 13563, and 14094

Executive Order (E.O.) 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. 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 developed this rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this final rule is not significant.

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 Federal regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The Service 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 (15 U.S.C. 631 *et seq.*). However, the Service believes that the impact on the small entities is not significant, as the rule would impact a small number of small entities, and the Service does not believe that these effects would be economically significant.

This final rule will benefit small businesses by streamlining Service regulations for permitting rights-of-way and thereby reduce the amount of time that the Service requires to issue many right-of-way permits. The rule implements a requirement for a preapplication meeting to provide small businesses with information upfront about the Service's estimated time and cost to evaluate and process a right-of-way application, increasing regulatory certainty. Additionally, the rule eliminates the Service application fee previously required at § 29.21–2(a)(2) and provides the Service 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 rule would result in a significant economic impact on a substantial number of small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, a 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 rule will streamline and expedite Service processing of industry requests for rights-of-way and modifications to rights-of-way that cross Service-managed lands, but it will not significantly affect energy supplies, distribution, or use. Moreover, this rule is not a significant regulatory action as determined by OIRA, and the OIRA administrator has not designated this rule as a significant energy action. 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.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not significantly or uniquely affect small governments, and a small government agency plan is not required. Moreover, this rule will 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 rule will not have significant takings implications as it applies only to Service 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 rule will 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 the Service 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 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 Service use of Common Form SF–299 and assigned OMB Control Number 0596–0249 (expires 01/31/2027). You may view the information collection request(s) at *https://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 Secretary's 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 rule has no impact on Tribal lands, as it applies only to Service permitting of rights-of-way across lands, and interests in land, owned by the United States. Consistent with 512 DM 2 and Secretary's Order 3206, we sought comments from Tribes, and addressed the comments we received from Tribes concerning permitting of rights-of-way across lands, and interests in land, owned by the United States and managed by the Service.

List of Subjects in 50 CFR Part 29

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

Regulation Promulgation

For the reasons given in the preamble, we hereby 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. Revise and republish subpart B to read as follows:

Subpart B—Rights-of-Way General Regulations

Sec.
29.10 Definitions.
29.11 Purpose and scope.
29.12 Preexisting uses.
29.13 Compatibility-determination requirement.
29.14 Preapplication meeting.
29.15 General application procedures.
29.16 Right-of-way permit application.
29.17 Survey plat and legal description.
29.18 Reimbursement of costs.
29.19 Nature of interest granted.
29.20 Terms and conditions.
29.21 Construction.
29.22 Disposal, transfer, or termination of interest.
29.23 Required payment for use and occupancy of National Wildlife Refuge System land.
29.24 Electric power transmission line rights-of-way.
29.25 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.
29.26 Hearing and appeals procedures.
29.27 Severability.

§ 29.10 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.*).

Applicant means an entity that has submitted an application for a right-of-way permit.

Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purposes of the national wildlife refuge. The term ''inconsistent'' in section 28(b)(1) of the Mineral Leasing Act of 1920 (30 U.S.C. 185) means a use that is not compatible.

Department means the U.S. Department of the Interior unless otherwise specified.

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.

Permit holder means an entity that holds a current, fully executed right-of-way permit.

Permitted area means the area of land or water mapped, described, and authorized for use, including construction, operation, maintenance, as well as routes and means of access, in a right-of-way permit issued by the U.S. Fish and Wildlife Service.

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.

Right-of-way permit means a discretionary and revocable permit issued by the U.S. Fish and Wildlife Service to authorize a use on, under, or over Federal lands, excluding uses that are included in a contract for services to a Service facility and excluding uses requested by the Service to benefit the mission of the National Wildlife Refuge System or the National Fish Hatchery System. A right-of-way permit does not grant, convey, or imply transfer of title to any interest in, including a leasehold or easement interest in, the lands or waters authorized for use.

§ 29.11 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 are submitted under authority of Public Law 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 § 29.15. The Service will not issue a right-of-way permit for a requested use that would conflict with the goals or objectives in an approved refuge management plan, nor will the Service issue a right-of-way permit unless the use is a compatible use as described in § 29.13. See § 29.24 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.25 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 ANILCA (see 16 U.S.C. 3162(B)) 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 § 29.15, except that compatibility determinations for Alaska Native Claims Settlement Act 22(g) lands shall follow the procedures in § 25.21(b)(1) of this chapter.

(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 in this section.

(d) *National Wildlife Refuge System lands—less than fee interest.* The Service requires permits for rights-of-way that 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 § 29.15, except those applications for rights-of-way authorized under ANILCA (see 16 U.S.C. 3162(B)) will follow the procedures set forth in 43 CFR part 36. If the Regional Director determines that the proposed right-of-way and regular maintenance of the proposed right-of-way will not 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 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 § 29.24 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.25 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 § 29.15, except that the compatibility-determination requirement in § 29.13 does not apply to lands outside the National Wildlife Refuge System and National Fish Hatchery System.

§ 29.12 Preexisting uses.

The regulations in this subpart have no impact on permanent rights and rights-of-way in existence prior to acquisition by the United States, except those activities not explicitly authorized by a preexisting right-of-way, as well as activities that fall outside the footprint of such a right-of-way, are subject to § 26.41 of this chapter and the procedures in this subpart.

§ 29.13 Compatibility-determination requirement.

The Service will not issue or renew a right-of-way permit across National Wildlife Refuge System land if the use would conflict with the goals or objectives in an approved refuge management plan. The Service will not issue or renew a right-of-way permit across National Wildlife Refuge System land unless the agency determines that the use is a compatible use in accordance with the requirements and procedures of § 25.21 of this chapter. 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 except as modified by any other prevailing provision of law. None of the requirements in this subpart apply to the access of privately owned minerals or to activities explicitly authorized by a permanent right or right-of-way obtained prior to acquisition by the United States, nor do they apply when access is required by any other prevailing provision of law. No compatibility determination is necessary to permit or renew a right-of-way across lands outside the National Wildlife Refuge System and National Fish Hatchery System.

§ 29.14 Preapplication meeting.

Before submitting an application for a new right-of-way permit or a modification of an existing right-of-way permit across lands managed by the Service, a potential 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 potential applicant may ask questions about the application process, provide information about the scope of the requested right-of-way permit and its location, and receive feedback. The Service will advise the potential applicant about documentation needed to make an application complete and provide the potential applicant with an expected timeline and potential costs to review and process the application.

§ 29.15 General application procedures.

(a) *Preapplication meeting.* To request the preapplication meeting required by § 29.14 for a new right-of-way or a modification of an existing right-of-way, 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 submission.* Applicants must submit an application that includes the completed form and required attachments as described in § 29.16. The Service will deem a right-of-way application to be complete, and notify the applicant of such, after the Service has determined that the provided information is sufficient for the agency to make a compatibility determination and comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The Service will also notify the applicant if additional information is required for a complete application.

(c) *Payment for cost recovery.* After the Service has determined that an application is complete, the agency will notify the applicant and provide an updated estimate of application processing costs, as set forth at § 29.18(a). The Service will review and process a right-of-way permit application after it has requested and received payment for these costs.

(d) *Providing additional information for permit.* If the Service determines that the requested right-of-way is a compatible use, then the agency will request additional information from the applicant necessary to draft a right-of-way permit document for applicant review. This includes but is not limited to the survey plat or Global Positioning System (GPS) location information described in § 29.17. The applicant must provide this information in order for the Service to develop the permit.

(e) *No guarantee of right-of-way permit.* Submitting a complete application and payment for application processing costs do not guarantee that the Service will issue or renew a right-of-way permit. Issuance or renewal of a right-of-way permit is contingent on a Service determination that the right-of-way is a compatible use. Permit issuance or renewal is also contingent on the applicant:

(1) Providing the information the Service requires to develop the right-of-way permit;

(2) Agreeing to the permit's terms and conditions; and

(3) Providing payment for use and occupancy of the land as well as for future right-of-way monitoring costs.

§ 29.16 Right-of-way permit application.

(a) *Complete application requirement.* The Service will not begin processing a right-of-way permit application until after the applicant has submitted a complete application with all required information. See paragraph (e) of this section for submission instructions.

(b) *Application form.* To request a new right-of-way permit, modifications to an existing right-of-way permit, or renewal of an existing right-of-way permit, applicants must submit a complete Standard Form 299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property (SF–299), or the applicable common form approved by the General Services Administration at the time of the application, including all materials required in the SF–299 and the regulations in this subpart. The SF–299 must be signed by the applicant or applicant's authorized representative.

(c) *Required application attachments.* In addition to a completed and signed SF–299, an application for a right-of-way permit must include the attachments described in this section.

(1) *Map(s).* The map(s) must show a general view of the proposed right-of-way and a detailed view of the proposed project area in relation to the Service unit boundary. If the proposed right-of-way is within a Public Land Survey System area, the map(s) must show the section(s), township(s), and range(s) within which the proposed right-of-way

would be located. The maps must identify:

(i) The area proposed to be included in the right-of-way permit, including the placement of proposed infrastructure; and

(ii) Proposed access points and routes (including uses of existing roads), and other areas associated with the requested right-of-way.

(2) *Preliminary site and facility construction plans.* These plans, which are listed as an attachment to SF–299, are required for applications for rights-of-way or renewals of rights-of-way where construction is required. The plans must show all proposed construction work and include a list of equipment to be used in construction and a proposed construction timeline.

(3) *Proposed access.* The application must include a description of proposed access routes and means of access for construction and maintenance of the requested right-of-way.

(4) *Supplemental environmental information.* In addition to the basic environmental information on the SF–299, the applicant must provide supplemental information on the environmental impact of the proposed right-of-way that is suitable for the Service to determine whether the proposed use is compatible with the mission of the Refuge System and the purpose(s) of the refuge. This supplemental information may include, but is not limited to, anticipated impacts of the proposed use 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. The supplemental information also may describe proposed design measures that will minimize or avoid resource impacts. The Service will review the provided supplemental environmental information to determine what additional information, if any, the agency requires from the applicant to determine whether the proposed use is compatible with the mission of the Refuge System and the purpose(s) of the refuge.

(d) *Other required documents.* During the preapplication meeting or in a subsequent communication, the Service will inform the applicant when the agency requires the following information and other information to prepare a right-of-way permit, which the applicant must provide before the Service may issue a right-of-way permit.

(1) *Survey plat and legal description.* See § 29.17 for requirements.

(2) *Detailed environmental analysis.* To comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment or environmental impact statement must be prepared in accordance with section 102(2)(C) of the National Environmental Policy Act 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.*). The environmental assessment or environmental impact statement may be prepared by the Service, another Federal agency, the applicant, or the applicant's contractor; however, in all cases, this documentation must be prepared in consultation with the Regional Director.

(i) If the environmental assessment or environmental impact statement will be prepared by the Service or another Federal agency, rather than the applicant or the applicant's contractor, the applicant must provide sufficient data to enable the Service or the other agency to satisfy the requirements in this paragraph (d)(2) and reimburse the Service for its costs as described in § 29.18.

(ii) For renewals of existing rights-of-way permitted 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. The environmental analysis must also address any statutory requirements not in place when the original permit was issued and therefore not previously considered.

(3) *Proposed vegetation management plan.* A proposed vegetation management plan is required for a requested right-of-way permit or permit renewal where there will be disturbance of vegetation resulting from the construction, operation, or maintenance of the right-of-way. The plan must be prepared in consultation with the Regional Director's designee 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.

(4) *Financial assurance and liability insurance.* As appropriate to the proposed right-of-way, the Service may require proof of acceptable financial assurance and liability insurance.

(e) *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(s), the preliminary site and facility construction plans, and the supplemental environmental information, 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(s), the preliminary site and facility construction plans, and the supplemental environmental information, 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.''

§ 29.17 Survey plat and legal description.

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

(c) A licensed Service land surveyor may waive the requirement of a survey plat for a proposed right-of-way in a remote location if they determine that the GPS coordinates and supporting location information submitted by the applicant for inclusion in the right-of-way permit are adequate to locate the proposed right-of-way with minimal risk to the United States.

§ 29.18 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.

(i) These costs may include, but are not limited to, the Service's costs to review the application and related materials, conduct surveys of the proposed permit area, prepare a compatibility determination, obtain an appraisal, draft correspondence, and draft the permit.

(ii) If the applicant or the applicant's contractor will prepare the environmental assessment or environmental impact statement necessary to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and other applicable laws, then the Service shall require no reimbursement for National Environmental Policy Act compliance with exception to the costs the Service incurs to ensure that the materials meet agency requirements.

(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 § 29.26.

(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.

§ 29.19 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 in writing 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 whatsoever 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.

§ 29.20 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 § 29.24 for specific requirements for electric powerlines and § 29.25 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 the 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 unless the other party first obtains a right-of-way permit from the Service. Any entity that wants to collocate equipment or activities must apply for its own Service right-of-way permit by following the procedures set forth in § 29.15.

(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 portion 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 the 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 the 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 proposed use:

(1) The permit holder may not restrict public access to any portion of the permitted area unless the Service project manager concurs in writing that making the area accessible to the public would pose a threat to public safety or the environment.

(2) 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.

(3) 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.

(4) The permit holder must rebuild and repair such roads, fences, structures, and trails as may be

destroyed or injured by construction work.

(5) Notwithstanding the issuance of the 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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 permit holder's use of the permitted area.

(11) 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 the 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 the permit. The insurance policy must also 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 the permit, the applicant 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 the permit is for a communications facility as defined by the Mobile Now Act (47 U.S.C. 1455(d)(1)), and the permit holder will operate or maintain wireless communications equipment, then they must also agree to the following terms and conditions. These terms and conditions are not applicable to neutral host providers, sometimes referred to as tower companies, that own and maintain tower or support structures but do not operate or maintain wireless communications equipment on those structures.

(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 the 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 Construction.

(a) If construction is not commenced within 2 years after the date of the right-of-way grant, the right-of-way may be canceled by the Director of the U.S. Fish and Wildlife Service.

(b) Upon completion of construction, the applicant shall file a certification of completion with the Regional Director.

§ 29.22 Disposal, transfer, or termination of interest.

(a) *Change in jurisdiction over and disposal of lands.* The final disposal by the United States of any tract of land traversed by a right-of-way shall not be construed to be a revocation of the right-of-way in whole or in part, but such final disposition shall be deemed and taken to be subject to such right-of-way unless it has been specifically canceled.

(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.

§ 29.23 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 § 29.14. 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 § 29.26.

(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.

§ 29.24 Electric power transmission line rights-of-way.

By accepting a right-of-way for a power transmission line, the applicant thereby agrees and consents to comply with and be bound by the following terms and conditions, except those which the Secretary may waive in a particular case, in addition to those specified in § 29.20.

(a) To protect in a workmanlike manner, at crossings and at places in proximity to the transmission lines on the right-of-way authorized, in accordance with the rules prescribed in the National Electric Safety Code, all Government and other telephone, telegraph, and power transmission lines from contact and all highways and railroads from obstruction and to maintain the transmission lines in such manner as not to menace life or property.

(b) Neither the privilege nor the right to occupy or use the lands for the purpose authorized shall relieve the applicant of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by the applicant on the servient lands, and any radio installation, telephone line, or other communication facilities now or hereafter constructed and operated by the United States or any agency thereof.

§ 29.25 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 § 29.15 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.* Right-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 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 § 29.16(c)(4). The applicant must also provide a plan of construction, operation, and rehabilitation of the proposed facilities. In addition to terms and conditions imposed under § 29.20, 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 § 29.18, 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 right-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 the regulations in 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.

§ 29.26 Hearing and appeals procedures.

(a) *Application for a right-of-way.* When denial of an application for a

right-of-way permit is based on a determination that the proposed use is not compatible with the purposes for which the area was established, the denial may be appealed to the Regional Director and subsequently to the Director, but no further.

(b) *Existing authorized right-of-way.* The termination of an existing authorized right-of-way permit may be appealed to the Regional Director and subsequently to the Director and then further appealed to the Secretary.

(c) *Grant of a requested right-of-way.* A party with standing may appeal the Service's decision to issue a requested right-of-way permit to the Regional Director, subsequently to the Director, and finally to the Secretary.

(d) *Appeals to the Secretary.* Appeals to the Secretary must follow the applicable regulations in 43 CFR part 4.

§ 29.27 Severability.

If a court holds any provisions of the regulations in this subpart or their applicability to any person or circumstance invalid, the remainder of the regulations in this subpart and their applicability to other people or circumstances will not be affected.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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