

the United States for, capturing, impounding, advertising, care, forage, and damage claims.

(f) If an animal impounded under this section is offered at public sale and no bid is received or if the highest bid received is an amount less than the claim of the United States, the animal may be sold at private sale for the highest amount obtainable, or be condemned and destroyed or converted to the use of the United States. Upon the sale of any animal in accordance with this section, the buyer shall be issued a certificate of sale.

(g) In determining the claim of the Federal Government in all livestock trespass cases on national wildlife refuges, the value of forage consumed shall be computed at the commercial unit rate prevailing in the locality for that class of livestock. In addition, the claim shall include damages to national wildlife refuge property injured or destroyed, and all the related expenses incurred in the impounding, caring for and disposing of the animal. The salary of Service employees for the time spent in and about the investigations, reports, and settlement or prosecution of the case shall be prorated in computing the expense. Payment of claims due the United States shall be made by certified check or postal money order payable to the U.S. Fish and Wildlife Service.

§ 28.43 Destruction of dogs and cats.

Dogs and cats running at large on a national wildlife refuge and observed by an authorized official in the act of killing, injuring, harassing or molesting humans or wildlife may be disposed of in the interest of public safety and protection of the wildlife.

PART 29—LAND USE MANAGEMENT

Subpart A—General Rules

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AUTHORITY: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

SOURCE: 31 FR 16026, Dec. 15, 1966, unless otherwise noted.

Subpart A—General Rules

§ 29.1 May we allow economic uses on national wildlife refuges?

We may only authorize public or private economic use of the natural resources of any national wildlife refuge, in accordance with 16 U.S.C. 715s, where we determine that the use contributes to the achievement of the national wildlife refuge purposes or the National Wildlife Refuge System mission. We may authorize economic use by appropriate permit only when we have determined the use on a national wildlife refuge to be compatible. Persons exercising economic privileges on national wildlife refuges will be subject to the applicable provisions of this subchapter and of other applicable laws and regulations governing national wildlife refuges. Permits for economic use will contain such terms and conditions that we determine to be necessary for the proper administration of the resources. Economic use in this section includes but is not limited to grazing livestock, harvesting hay and stock feed, removing timber, firewood or other natural products of the soil,

§ 29.2

removing shell, sand or gravel, cultivating areas, or engaging in operations that facilitate approved programs on national wildlife refuges.

[65 FR 62483, Oct. 18, 2000]

§ 29.2 Cooperative land management.

Cooperative agreements with persons for crop cultivation, haying, grazing, or the harvest of vegetative products, including plantlife, growing with or without cultivation on wildlife refuge areas may be executed on a share-in-kind basis when such agreements are in aid of or benefit to the wildlife management of the area.

§§ 29.3-29.4 [Reserved]

§ 29.5 Fees.

Fees and charges for the grant of privileges on wildlife refuge areas and for the sale of products taken therefrom, where not otherwise prescribed by law or regulation, shall be set at a rate commensurate with fees and charges for similar privileges and products made by private land owners in the vicinity or in accordance with their local value. Fees or rates of charge for products and privileges may be based either on a monetary exchange or on a share in kind of the resource or product.

Subpart B—Rights-of-Way General Regulations

§ 29.21 What do these terms mean?

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

National Wildlife Refuge System land means lands and waters, or interests therein, administered by the Secretary

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as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas.

Other lands means all other lands, or interests therein, and waters administered by the Secretary through the U.S. Fish and Wildlife Service which are not included in National Wildlife Refuge System lands, e.g., administrative sites, research stations, fish hatcheries, and fishery research stations.

Project Manager means the officer in charge of the land under administration by the U.S. Fish and Wildlife Service.

[34 FR 19907, Dec. 19, 1969, as amended at 39 FR 5490, Feb. 13, 1974; 42 FR 43917, Aug. 31, 1977; 44 FR 42976, July 23, 1979; 48 FR 31655, July 11, 1983; 51 FR 7575, Mar. 5, 1986; 65 FR 62483, Oct. 18, 2000]

§ 29.21-1 Purpose and scope.

The regulations in this subpart prescribe the procedures for filing applications and the terms and conditions under which rights-of-way over and across the lands administered by the U.S. Fish and Wildlife Service may be granted.

(a) *National Wildlife Refuge System lands*. Applications for all forms of rights-of-way on or over such lands shall be submitted under authority of Pub. L. 89-669, (80 Stat. 926; 16 U.S.C. 668dd) as amended, or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185) as amended by Pub. L. 93-153, following application procedures set out in § 29.21-2. No right-of-way will be approved unless it is determined by the Regional Director to be compatible. See § 29.21-8 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.21-9 for additional requirements applicable to rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(b) *National Wildlife Refuge System lands—easement interest*. Applications for all forms of rights-of-way across lands in which the United States owns

only an easement interest may be submitted to the Regional Director in letter form. No map exhibit is required, however, the affected land should be described in the letter or shown on a map sketch. If the requested right-of-way will not adversely affect the United States' interest, the Regional Director may issue a letter stating that the interest of the United States to the right-of-way easement would not be affected provided there would be no objection to a right-of-way by the fee owner. If the interest of the United States will be affected, application for the right-of-way must be submitted in accordance with procedures set out in § 29.21-2.

(c) *Other lands outside the National Wildlife Refuge System.* Rights-of-way on or over other lands will be granted in accordance with controlling authorities cited in 43 CFR part 2800, or for oil and gas pipelines under section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185) as amended by Pub. L. 93-153. See § 29.21-8 for additional requirements applicable to rights-of-way for electric power transmission lines and § 29.21-9 for additional requirements applicable to rights-of-way for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any other refined product produced therefrom. Applications will be submitted in accordance with procedures set out in § 29.21-2.

[34 FR 19907, Dec. 19, 1969, as amended at 36 FR 2402, Feb. 4, 1971; 39 FR 5490, Feb. 13, 1974; 42 FR 43917, Aug. 31, 1977; 44 FR 42976, July 23, 1979; 48 FR 31655, July 11, 1983]

§ 29.21-2 Application procedures.

(a) *Application.* (i) No special form of application is required. The application should state the purpose for which the right-of-way is being requested together with the length, width on each side of the centerline, and the estimated acreage. Applications, including exhibits, shall be filed in triplicate with the Regional Director for the region in which the State is located. A list of States in each region and the addresses of the Regional Directors are contained in paragraph (c) of this section.

(2)(i) All applications filed pursuant to this subpart in the name of individuals, corporations, or associations must be accompanied by a nonreturnable application fee. No application fee will be required of (A) State of local governments or agencies or instrumentalities thereof except as to rights-of-way, easements or permits under section 28 of the Mineral Leasing Act of 1920, as amended by Pub. L. 93-153, or (B) Federal Government agencies.

(ii) Application fees will be in accordance with the following schedule:

(A) For linear facilities (e.g., powerlines, pipelines, roads, etc.).

Length	Payment
Less than 5 miles	\$50 per mile or fraction thereof.
5 to 20 miles	\$500.
20 miles and over	\$500 for each 20 miles or fraction thereof.

(B) For nonlinear facilities, \$250 for each 40 acres or fraction thereof.

(C) Where an application includes both linear and nonlinear facilities, payment will be the aggregate of amounts under paragraphs (a)(2)(ii)(A) and (B) of this section.

(D) When an application is received, the Regional Director will estimate the costs expected to be incurred in processing the application. If the estimated costs exceed the payments under paragraph (a)(2)(ii) (A), (B), or (C) of this section by an amount greater than the cost of maintaining actual cost records, the Regional Director shall require the applicant to make periodic payments in advance of the incurrence of such costs by the United States except for the last payment which will reflect final reimbursement for actual costs of the United States in processing the application. Overpayments may be refunded or adjusted by the Regional Director as appropriate.

(E) The Regional Director shall, on request by an applicant or prospective applicant, give an estimate based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement will not be limited to the estimate of the Regional Director if the actual costs exceed the estimate. Prospective applicants are encouraged to consult with the Regional Director in advance

of filing an application in regard to probable costs and other requirements.

(3)(i) By accepting an easement or permit under this subpart, the holder agrees to reimburse the United States for reasonable costs incurred by the Fish and Wildlife Service in monitoring the construction, operation, maintenance, and termination of facilities within or adjacent to the easement or permit area. No reimbursement of monitoring costs will be required of (A) State or local governments or agencies or instrumentalities thereof except as to right-of-way, easements, or permits granted under section 28 of the Mineral Leasing Act of 1920 as amended by Pub. L. 93-153, or (B) Federal Government agencies.

(ii) Within 60 days of the issuance of an easement or permit the holder must submit a nonreturnable payment in accordance with the following:

(A) For linear facilities e.g., powerlines, pipelines, roads, etc.).

Length	Payment
Less than 5 miles	\$20 per mile or fraction thereof.
5 to 20 miles	\$200.
20 miles and over	\$200 for each 20 miles or fraction thereof.

(B) For nonlinear facilities, \$100 for each 40 acres or fraction thereof.

(C) Where an easement or permit includes both linear and nonlinear facilities, payment will be the aggregate amounts under paragraph (a)(3)(2)(ii) (A) and (B) of this section.

(D) When an easement or permit is granted the Regional Director shall estimate the costs, based on the best available cost information, expected to be incurred by the United States in monitoring holder activity. If the estimated costs exceed the payments under paragraph (a)(3)(2)(ii), (A), (B), or (C) of this section by an amount which is greater than the cost of maintaining actual cost records for the monitoring process, the Regional Director shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Overpayments may be refunded or adjusted by the Regional Director as appropriate.

(E) Following the termination of an easement or permit, the former holder will be required to pay additional

amounts to the extent the actual costs to the United States have exceeded the payments required by paragraphs (a)(3)(ii)(A), (B), and (C) of this section.

(4) All applications filed pursuant to this subpart must include a detailed environmental analysis which shall include information concerning the impact of the proposed use of the environment including the impact on air and water quality; scenic and esthetic features; historic, architectural, archeological, and cultural features; wildlife, fish and marine life, etc. The analysis shall include sufficient data so as to enable the Service to prepare an environmental assessment and/or impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), Executive Order 11593 "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921), and "Procedures for the Protection of Historic and Cultural Properties" (36 CFR, part 800). Concerning the National Environmental Policy Act, the Regional Director may, at his discretion, rely on an environmental assessment or impact statement prepared by a "lead agency."

(b) *Maps.* A map or plat must accompany each copy of the application and must show the right-of-way in such detail that the right-of-way can be accurately located on the ground. Ties to Service land boundary corner monuments or some prominent cultural features which can be readily recognized and recovered should be shown where the right-of-way enters and leaves Service project land together with courses and distances of the centerline. The width of the right-of-way on each side of the centerline together with the acreage included within the right-of-way or site must also be shown. If the right-of-way or site is located wholly within Service project land, a tie to a Government corner or prominent cultural feature which can be readily recognized and recovered should be shown.

(c) *Regional or Area Director's Addresses.*

(1) For the States of California, Hawaii, Idaho, Nevada, Oregon and Washington:

Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland Oregon 97232.

(2) For the States of Arizona, New Mexico, Oklahoma, and Texas:

Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, P.O. Box 1306, Albuquerque, New Mexico 87103.

(3) For the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin:

Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

(4) For the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and Virgin Islands:

Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell, Federal Building, Suite 1200, 75 Spring Street, S.W., Atlanta, Georgia 30303.

(5) For the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia:

Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 03158.

(6) For the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming:

Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

(7) For the State of Alaska:

Regional Director, U.S. Fish and Wildlife Service, 1101 E. Tudor Road, Anchorage, Alaska 99503.

[31 FR 18026, Dec. 15, 1966, as amended at 42 FR 43917, Aug. 31, 1977; 44 FR 42976, July 23, 1979; 48 FR 31655, July 11, 1983]

§ 29.21-3 Nature of interest granted.

(a) Where the land administered by the Secretary is owned in fee by the United States and the right-of-way is compatible with the objectives of the area, permit or easement may be ap-

proved and granted by the Regional Director. Generally an easement or permit will be issued for a term of 50 years or so long as it is used for the purpose granted, or for a lesser term when considered appropriate. For rights-of-way granted under authority of section 28 of the Mineral Leasing Act of 1920, as amended, for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, the grant may be for a term not to exceed 30 years and the right-of-way may not exceed 50 feet, plus the area occupied by the pipeline and its related facilities unless the Regional Director finds, and records the reasons for his finding, that, in his judgment, a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, etc. However, a temporary permit supplementing a right-of-way may be granted for additional land needed during construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

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

[31 FR 18026, Dec. 15, 1966, as amended at 42 FR 43918, Aug. 31, 1977]

§ 29.21-4 Terms and conditions.

(a) Any right-of-way easement or permit granted will be subject to outstanding rights, if any, in third parties.

(b) An applicant, by accepting an easement or permit agrees to such terms and conditions as may be prescribed by the Regional Director in the granting document. Such terms and conditions shall include the following, unless waived in part by the Regional Director, and may include additional

special stipulations at his discretion. See § 29.21-8 for special requirements for electric powerlines and § 29.21-9 for special requirements for oil and gas pipelines.

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

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

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

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

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

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

(7) To pay the United States the full value for all damages to the lands or

other property of the United States caused by him or by his employees, contractors, or employees of the contractors, and to indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under the easement or permit, except where the easement or permit is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages. Where the easement of permit involves lands which are under the exclusive jurisdiction of the United States, the holder or his employees, contractors, or agents of the contractors, shall be liable to third parties for injuries incurred in connection with the easement or permit area. Grants of easements or permits involving special hazards will impose liability without fault for injury and damage to the land and property of the United States up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than \$1,000,000.

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

(9) That all or any part of the easement or permit granted may be terminated by the Regional Director, for failure to comply with any or all of the terms or conditions of the grant, or for abandonment. A rebuttable presumption of abandonment is raised by deliberate failure of the holder to use for any continuous 2-year period the easement or permit for the purpose for which it was granted or renewed. In the event of noncompliance of abandonment, the Regional Director will notify in writing the holder of the easement or permit of his intention to suspend or terminate such grant 60 days from the

date of the notice, stating the reasons therefor, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may grant an extension of time within which to complete corrective actions when, in his judgment, extenuating circumstances not within the holder's control such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons warrant. Should the holder of a right-of-way issued under authority of the Mineral Leasing Act, as amended, 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 easement or permit. In the case of all other right-of-way holders, failure to take corrective action within the 60-day period will result in a determination by the Regional Director to suspend or terminate the easement or permit. No administrative proceeding shall be required where the easement or permit terminates under its terms.

(10) To restore the land to its original condition to the satisfaction of the Regional Director so far as it is reasonably possible to do so upon revocation and/or termination of the easement or permit, unless this requirement is waived in writing by the Regional Director. Termination also includes permits or easements that terminate under the terms of the grant.

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

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

(13) That the grant of the easement or permit shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or dis-

posal by the United States of the land affected thereby. The applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the easement or permit area not actually occupied for the purpose of the granted rights to the extent that it does not interfere with the full and safe utilization thereof by the holder. The holder of an easement or permit also agrees that authorized representatives of the United States shall have the right of access to the easement or permit area for the purpose of making inspections and monitoring the construction, operation and maintenance of facilities.

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

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

[31 FR 16026, Dec. 15, 1966, as amended at 42 FR 43918, Aug. 31, 1977]

§ 29.21-5 Construction.

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

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

[42 FR 43919, Aug. 31, 1977]