

§ 36.5

last appropriate Federal agency receives the application. The lead agency, determined pursuant to § 36.5(a), shall determine the date of filing or that the application was not filed within the 15 day period and inform all appropriate Federal agencies.

(d) The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1024-0026 and 1004-0060. The information collected by the appropriate Federal agency will be used to determine whether or not to issue a permit to obtain a benefit. A response is required to obtain or retain a benefit.

§ 36.5 Application review.

(a) When there is more than one appropriate Federal agency, the Federal agency having management jurisdiction over the longest lineal portion of the right-of-way requested in the TUS application shall be the lead agency for the purpose of coordinating appropriate Federal agency actions in the review and processing of the SF 299, as well as for the purpose of compliance with the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*

(1) By agreement among the appropriate Federal agencies, a different Federal agency may be designated the lead agency for any or all parts of the review, processing or NEPA compliance.

(2) Upon identification of the lead agency, other involved agencies will provide assistance as requested by the lead agency.

(b) Upon receipt of an application, the lead agency will review it and determine the filing date pursuant to § 36.4. If it is determined that the applicant has not met the 15 calendar day filing deadline, pursuant to § 36.4(c) of this part, the lead agency shall notify each appropriate Federal agency to return the application to the applicant without further action.

(c) Within 60 days of the date of filing, each appropriate Federal agency shall inform the applicant and the lead agency, in writing, whether the application on its face:

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(1) Contains the required information; or

(2) Is insufficient, together with a specific listing of the additional information the applicant must submit.

(d) When the application is insufficient, the applicant must furnish the specific information requested within 30 days of receipt of notification of deficiency:

(1) If the applicant needs more time to obtain information, additional time may be granted by the appropriate Federal agency upon request of the applicant, provided the applicant agrees that the application filing date will change to the date of filing of the specific additional information.

(2) Unless extended pursuant to the provisions of paragraph (d)(1) of this section, failure of the applicant to respond within the 30 day period will result in return of the application without further action.

(3) The lead agency shall keep all appropriate Federal agencies informed of actions occurring under paragraphs (d) (1) and (2) of this section, in order that such agencies may note their application records accordingly.

(e) Within 30 days of the receipt of additional information requested by the appropriate Federal agency, the applicant shall be notified in writing whether the supplemental information is sufficient.

(1) If the applicant fails to provide all the requested information, the application shall be rejected and returned to the applicant along with a list of the specific deficiencies.

(2) When the applicant furnishes the additional information, the application will be reinstated, and it will be considered filed as of the date the final supplemental information is actually received by the appropriate Federal agency.

(3) The lead agency shall notify appropriate Federal agencies of any final rejection under paragraph (e)(1) of this section.

§ 36.6 NEPA compliance and lead agency.

(a) The provisions of NEPA and the Council for Environmental Quality regulations (40 CFR parts 1500-1508) will be

applied to determine whether an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required, or that a categorical exclusion applies.

(1) The lead agency, with cooperation of all appropriate Federal agencies, shall complete an EA or a draft environmental impact statement (DEIS) within nine months of the date the SF 299 was filed.

(2) If the lead agency determines, for good cause, that the nine-month period is insufficient, it may extend such period for a reasonable specific time. Notification of the extension, together with the reasons therefore, shall be provided to the applicant and published in the FEDERAL REGISTER at least 30 days prior to the end of the nine-month period.

(3) If the lead agency determines that an EIS is not required, a Finding of No Significant Impact (FONSI) will be prepared.

(4) If an EIS is determined to be necessary, the lead agency shall hold a public hearing on the joint DEIS in Washington, DC, and at least one location in Alaska.

(5) The appropriate Federal agencies shall solicit and consider the views of other Federal departments and agencies, the Alaska Land Use Council, the State, affected units of local government in the State and affected corporations formed pursuant to the Alaska Native Claims Settlement Act. After public notice, the agencies shall receive and consider statements and recommendations regarding the application submitted by interested individuals and organizations.

(6) The lead agency shall ensure compliance with section 810 of ANILCA.

(b) When an EIS is determined to be necessary, within three months of completing the DEIS or within one year of the filing of the application, whichever is later, the lead agency shall complete the EIS and publish a notice of its availability in the FEDERAL REGISTER.

(c) Cost reimbursement. (1) The costs to the United States of application processing, other than costs for EIS preparation and review as provided in paragraph (c)(2) of this section, shall be reimbursed by the applicant, if such reimbursement is required pursuant to

the applicable law and procedures of the appropriate Federal agency incurring the costs.

(2) The reasonable administrative and other costs of EIS preparation shall be reimbursed by the applicant, according to the BLM's cost recovery procedures and regulations implementing section 304 of FLPMA, 43 U.S.C. 1734.

§ 36.7 Decision process.

There are two separate decision processes. The first is used when the appropriate Federal agencies have an applicable law to issue a right-of-way permit and the area involved is outside the National Wilderness Preservation System. The second is used when an area involved in the application is within the National Wilderness Preservation System or an appropriate Federal agency has no applicable law with respect to issuing a right-of-way permit across all or any area covered by a TUS application.

(a) When the appropriate Federal agencies have an applicable law and the area involved is outside the National Wilderness Preservation System:

(1) Within four months of the date of the notice of availability of a FONSI or final EIS, each appropriate Federal agency shall make a decision based on applicable law to approve or disapprove the TUS and so notify the applicant in writing.

(2) Each appropriate Federal agency in making its decision shall consider and make detailed findings supported by substantial evidence as to the portion of the TUS, within that agency's jurisdiction, with respect to:

(i) The need for and economic feasibility of the TUS;

(ii) Alternative routes and modes of access, including a determination with respect to whether there is any economically feasible and prudent alternative to routing the system through or within an area and, if not, whether there are alternate routes or modes which would result in fewer or less severe adverse impacts upon the area;

(iii) The feasibility and impacts of including different TUSs in the same area;