

## § 28.43

may be impounded and disposed of in accordance with State statutes insofar as they may be applicable. In the absence of such State statutes, the animals shall be disposed of in accordance with this section.

(b) If the owner is known, prompt written notice of the impounding will be served in person with written receipt obtained or delivery by certified mail with return receipt requested. In the event of his failure to remove the impounded animal within five (5) days from receipt of such notice, it will be sold or otherwise disposed of as prescribed in this section.

(c) If the owner is unknown, no disposition of the animal shall be made until at least fifteen (15) days have elapsed from the date of a legal notice of the impounding has been posted at the county courthouse and 15 days after the second notice published in a newspaper in general circulation in the county in which the trespass took place.

(d) The notice shall state when and where the animal was impounded and shall describe it by brand or earmark or distinguishing marks or by other reasonable identification. The notice shall specify the time and place the animal will be offered at public sale to the highest bidder, in the event it is not claimed or redeemed. The notice shall reserve the right of the official conducting the sale to reject any and all bids so received.

(e) Prior to such sale, the owner may redeem the animal by submitting proof of ownership and paying all expenses of 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 ref-

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uges, 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.

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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.

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

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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, 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 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

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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.* (1) 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, must 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 offices are provided at 50 CFR 2.2.

(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 or 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 re-

quire 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)(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)(i)(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.

[31 FR 16026, Dec. 15, 1966, as amended at 42 FR 43917, Aug. 31, 1977; 44 FR 42976, July 23, 1979; 48 FR 31655, July 11, 1983; 77 FR 5715, Feb. 6, 2012; 78 FR 35152, June 12, 2013]

#### § 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 approved 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

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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 16026, 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 ap-

plicant 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 or 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 or 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 disposal by the United States of the land affected thereby. The applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the 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



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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]

### § 29.21-6 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 easement or permit.* Any proposed transfer, by assignment, lease, operating agreement or otherwise, of an easement or permit must be filed in triplicate with the Regional Director and must be supported by a stipulation that the transferee agrees to comply with and be bound by the terms and conditions of the original grant. A \$25 nonreturnable service fee must accompany the proposal. No transfer will be recognized 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, the holder

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of the right-of-way will be allowed 6 months after termination to remove all property or improvements other than a road and useable improvements to a road, placed thereon by him; otherwise, all such property and improvements shall become the property of the United States. Extensions of time may be granted at the discretion of the Regional Director.

[31 FR 16026, Dec. 15, 1966, as amended at 42 FR 43919, Aug. 31, 1977]

### § 29.21-7 What payment do we require for use and occupancy of national wildlife refuge lands?

(a) Payment for use and occupancy of lands under the regulations of this subpart will be required and will be for fair market value as determined by appraisal by the Regional Director. At the discretion of the Regional Director, the payment may be a lump sum payment or an annual fair market rental payment, to be made in advance. If any Federal, State or local agency is exempted from such payment by and any other provision of Federal law, such agency shall otherwise compensate the Service by any other means agreeable to the Regional Director, including, but not limited to, making other land available or the loan of equipment or personnel, except that any such compensation shall relate to, and be consistent with the objectives of the National Wildlife Refuge System. The Regional Director may waive such requirement for compensation if he finds such requirement impracticable or unnecessary.

(b) When annual rental payments are used, such rates shall be reviewed by the Regional Director at any time not less than 5 years after the grant of the permit, right-of-way, or easement or the last revision of charges thereunder. The Regional Director will furnish a notice in writing to the holder of an easement or permit of intent to impose new charges to reflect fair market value commencing with the ensuing charge year. The revised charges will be effective unless the holder files an appeal in accordance with § 29.22.

[42 FR 43919, Aug. 31, 1977, as amended at 65 FR 62483, Oct. 18, 2000]

**§ 29.21-8 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 § 29.21-4(b).

(a) To protect in a workmanlike manner, at crossings and at places in proximity to his 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 his 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 him of any legal liability for causing inductive or conductive interference between any project transmission line or other project works constructed, operated, or maintained by him 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.

[42 FR 43919, Aug. 31, 1977, as amended at 48 FR 31655, July 11, 1983]

**§ 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.**

(a) *Application procedure.* Applications for pipelines and related facilities under this section are to be filed in accordance with § 29.21-2 of these regulations with the following exception:

When the right-of-way or proposed facility will occupy Federal land under the control of more than one Federal Agency and/or more than one bureau or office of the Department of the Interior, a single application shall be filed with the appropriate State Director of the Bureau of Land Management in accordance with regulations in 43 CFR part 2800.

Any portion of the facility occupying land of the National Wildlife Refuge

System will be subject to the provisions of these regulations.

(b) *Right-of-way grants* under this section will be subject to the special requirements of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended, as set forth below. Gathering lines and associated structures used solely in the production of oil and gas under valid leases on the lands administered by the Fish and Wildlife Service are excepted from the provisions of this section.

(1) *Pipeline safety.* Rights-of-way or permits granted 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 parts 192 and/or 195 of title 49 of the CFR and in accordance with the Occupational Safety and Health Act of 1970, Pub. L. 91-596, including any amendments thereto.

(2) *Environmental protection.* An application for a right-of-way must contain environmental information required by § 29.21-2(a)(4) of this subpart. If the Regional Director determines that a proposed project will have a significant affect on the environment, there must also be furnished a plan of construction, operations, and rehabilitation of the proposed facilities. In addition to terms and conditions imposed under § 29.21-4, the Regional director will impose such stipulations as may be required to assure: (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 or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(c) *Disclosure.* If the applicant is a partnership, corporation, association,

or other business entity it must disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 percentum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

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

(e) *Reimbursement of costs.* In accordance with § 29.21-2(a)(3) of this subpart, the holder of a right-of-way or permit must reimburse the Service for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline or related facilities as determined by the Regional Director.

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

(g) *Bonding.* Where appropriate the Regional Director may require the holder of a right-of-way or permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation,

not to exceed the period of construction plus one year or a longer period if necessary for the pipeline to stabilize.

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

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

(j) *Common carriers.* (1) Pipelines and related facilities used for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom shall be constructed, operated, and maintained as common carriers.

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

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

(3)(i) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the

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Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

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

(4) The Regional Director shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (i) 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; (ii) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (iii) minimum shipment or purchase tenders.

(k) *Limitations on export.* Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to section 28 of the Mineral Leasing Act of 1920, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitation and licensing requirements of the Export Administration Act of 1969.

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

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

[42 FR 43921, Aug. 31, 1977, as amended at 77 FR 5716, Feb. 6, 2012]

### § 29.22 Hearing and appeals procedures.

An appeal may be taken from any final disposition of the Regional Director to the Director, 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. Appeals to the Secretary shall be taken pursuant to 43 CFR part 4, subpart G.

[44 FR 42976, July 23, 1979]

## Subpart C—Mineral Operations

### § 29.31 Mineral ownerships in the United States.

Where mineral rights to lands in wildlife refuge areas are vested in the United States, the provisions of 43 CFR 3101.3-3, 3109.4, 3201.1-6 and 3501.2-2 govern.

[31 FR 16026, Dec. 15, 1966, as amended at 44 FR 42976, July 23, 1979]

### § 29.32 Non-Federal mineral rights.

(a) Non-Federal mineral rights owners within the National Wildlife Refuge System, not including coordination areas, must, to the greatest extent practicable, conduct all exploration, development, and production operations in such a manner as to prevent damage, erosion, pollution, or contamination to Service-administered lands,

## § 29.40

waters, facilities, and to wildlife thereon. So far as is practicable, such operations must also be conducted without interference to the operation of the refuge and disturbance to the wildlife thereon.

(1) Physical occupancy must be kept to the minimum space necessary to conduct efficient mineral operations.

(2) Persons conducting mineral operations on Service-administered lands and waters must comply with all applicable Federal and State laws and regulations for the protection of wildlife and the administration of the area.

(3) All waste and contaminating substances must be kept in the smallest practicable area, confined so as to prevent escape as a result of rains and high water or otherwise, and removed from Service-administered lands and waters as quickly as practicable in such a manner as to prevent contamination, pollution, damage, or injury to Service-administered lands, waters, or facilities, or to wildlife thereon.

(4) Structures and equipment must be removed when the need for them has ended, and, upon the cessation of operations, the habitat in the area of operations must be restored to the extent possible to pre-operation conditions.

(b) Nothing in this section will be applied so as to contravene or nullify rights vested in holders of mineral interests on refuge lands.

[81 FR 79971, Nov. 14, 2016]

### Subpart D—Management of Non-Federal Oil and Gas Rights

SOURCE: 81 FR 79971, Nov. 14, 2016, unless otherwise noted.

#### PURPOSE AND SCOPE

#### § 29.40 What are the purpose and scope of the regulations in this subpart?

(a) The purpose of this subpart is to ensure that operators exercising non-Federal oil and gas rights within the National Wildlife Refuge System (NWRS) outside of Alaska use technologically feasible, least damaging methods to:

(1) Protect Service-administered lands and waters, and resources of refuges;

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(2) Protect refuge wildlife-dependent recreational uses and experiences and visitor or employee health and safety; and

(3) Conserve refuges for the benefit of present and future generations of Americans.

(b) This subpart applies to all operators conducting non-Federal oil and gas operations outside of Alaska on Service-administered lands held in fee or less-than fee (excluding coordination areas) or Service-administered waters to the extent necessary to protect those property interests. These regulations do not apply to non-Federal surface locations within the boundaries of a refuge (*i.e.*, inholdings), except to the extent that activities associated with those operations, including access to an inholding, occur on Service-administered lands or waters.

(c) This subpart is not intended to result in a taking of any property interest. The purpose of this subpart is to reasonably regulate operations to protect Service-administered lands and waters, resources of refuges, visitor uses and experiences, and visitor or employee health and safety.

#### § 29.41 When does this subpart apply to me?

This subpart applies to you if you are an operator who conducts or proposes to conduct non-Federal oil or gas operations on Service-administered lands or waters outside of Alaska.

#### § 29.42 What authorization do I need to conduct operations?

(a) You must demonstrate to the Service that you have the right to operate in order to conduct operations on Service-administered lands or waters.

(b) Except as provided in §§ 29.43 or 29.44, before starting operations, you must obtain a temporary access permit under §§ 29.70 through 29.73 for reconnaissance surveys and/or an operations permit under §§ 29.90 through 29.97.

#### § 29.43 If I am already operating under Service authorization, what do I need to do?

If you already have a Service-issued permit, you may continue to operate according to the terms and conditions

of that approval, subject to the provisions of this subpart. If you propose to conduct new operations, modify your existing operations, conduct well plugging or reclamation operations, or obtain an extension of the well plugging requirement to maintain your well in shut-in status, you must either amend your current authorization or obtain an operations permit in accordance with §§ 29.90 through 29.97, Operations Permit: Application, and such new operations or modifications will be subject to the applicable provisions of this subpart. Additionally, your existing operations are subject to the following regulations:

- (a) § 29.120(b) and (d)–(g) and § 29.121(a) and (c)–(f);
- (b) § 29.170(a);
- (c) §§ 29.180 and 29.181;
- (d) § 29.190; and
- (e) § 29.200.

**§ 29.44 If I am operating without prior Service authorization, what do I need to do?**

Any operator that has commenced operations prior to December 14, 2016 in accordance with applicable local, State, and Federal laws and regulations may continue without an operations permit. However, your operation is subject to the requirements of §§ 29.60 through 29.64, Pre-Existing Operations, and the requirements that when you propose to conduct new operations, modify your pre-existing operations, conduct well plugging and reclamation operations, or obtain an extension of the well plugging requirement to maintain your well in shut-in status, you must obtain an operations permit in accordance with §§ 29.90 through 29.97, Operations Permit: Application, and all applicable requirements of this subpart.

DEFINITIONS

**§ 29.50 What do the terms used in this subpart mean?**

In addition to the definitions in §§ 25.12, 29.21, and 36.2 of this subchapter, the following definitions apply to this subpart:

*Access* means any method of entering or traversing on or across Service-administered lands or waters, including but not limited to: Vehicle, watercraft,

fixed-wing aircraft, helicopter, unmanned aerial vehicle, off-road vehicle, mobile heavy equipment, snowmobile, pack animal, and foot. Access does not include the use of aircraft, including, but not limited to, airplanes, helicopters, and unmanned aircraft vehicles, that do not land on, or are not launched from, Service-administered lands or waters.

*Area of operations* means the area of Service-administered lands or waters on which operations are carried out, including roads or other areas that you are authorized to use related to the exercise of your oil and gas rights.

*Contaminating substance* means any toxic or hazardous substance that is used in or results from the conduct of operations and is listed under the Clean Air Act (42 U.S.C. 7401 *et seq.*), Clean Water Act regulations at 40 CFR parts 112 and 116, the Resource Conservation and Recovery Act regulations at 40 CFR part 261, or the Hazardous Materials Transportation Act regulations at 49 CFR part 172. This includes, but is not limited to, explosives, radioactive materials, brine waters, formation waters, petroleum products, petroleum byproducts, and chemical compounds used for drilling, production, processing, well testing, well completion, and well servicing.

*Gas* means any fluid, either combustible or noncombustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

*Oil* means any viscous combustible liquid hydrocarbon or solid hydrocarbon substance that occurs naturally in the earth and is easily liquefiable on warming.

*Modifying* means changing operations in a manner that will result in additional impacts on refuge resources, visitor uses, refuge administration, or human health and safety beyond the scope, intensity, and/or duration of existing impacts. In order to determine if activities would have additional impacts, you must consult with the Service.

*Operations* means all existing and proposed functions, work, and activities in connection with the exercise of oil or gas rights not owned by the

United States and located on Service-administered lands or waters.

(1) Operations include, but are not limited to: Access by any means to or from an area of operations; construction; geological and geophysical exploration; drilling, well servicing, workover, or recompletion; production; hydraulic fracturing, well simulation, and injection wells; gathering (including installation and maintenance of flowlines and gathering lines); storage, transport, or processing of petroleum products; earth moving; excavation; hauling; disposal; surveillance, inspection, monitoring, or maintenance of wells, facilities, and equipment; reclamation; road and pad building or improvement; shot hole and well plugging and abandonment, and reclamation; and all other activities incident to any of the foregoing.

(2) Operations do not include reconnaissance surveys as defined in this subpart or oil and gas pipelines that are located within a refuge under authority of a deeded or other right-of-way.

*Operations permit* means a permit issued by the Service under this subpart authorizing an operator to conduct operations on Service-administered lands or waters.

*Operator* means any person or entity, agent, assignee, designee, lessee, or representative thereof exercising or proposing to exercise non-Federal oil and gas rights on Service-administered lands or waters.

*Reconnaissance survey* means an inspection or survey conducted by qualified specialists for the purpose of preparing a permit application. A reconnaissance survey:

(1) Includes identification of the area of operations and collection of natural and cultural resource information within and adjacent to the proposed area of operations.

(2) Does not include surface disturbance activities except for minimal disturbance necessary to perform cultural resource surveys, natural resource surveys, and location surveys required under this subpart.

*Right to operate* means a deed, lease, memorandum of lease, designation of operator, assignment of right, or other documentation demonstrating that you

hold a legal right to conduct the operations you are proposing on Service-administered lands or waters.

*Service, we, us and our* means the U.S. Fish and Wildlife Service.

*Technologically feasible, least damaging methods* are those that we determine, on a case-by-case basis, to be most protective of refuge resources and uses while ensuring human health and safety, taking into consideration all relevant factors, including environmental, economic, and technological factors and the requirements of applicable law.

*Temporary access permit* means a permit issued by the Service authorizing an operator to access that operator's proposed area of operations to conduct reconnaissance surveys to collect basic information necessary to prepare an operations permit application.

*Third-party monitor* means a qualified specialist, who is not an employee, agent, or representative of the operator, nor has any conflicts of interest that could preclude objectivity in monitoring an operator's compliance, and who has the relevant expertise to monitor operations for compliance with applicable laws, regulations, and permit requirements.

*Usable water* means an aquifer or its portion that:

(1)(i) Supplies any public water system; or

(ii) Contains a sufficient quantity of ground water to supply a public water system and either:

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/l total dissolved solids; and

(2) Is not an exempted aquifer.

*Waste* means any material that is discarded. It includes, but is not limited to: Drilling fluids and cuttings; produced fluids not under regulation as a toxic or hazardous substance; human waste; garbage; fuel drums; pipes; oil; refined oil and other hydrocarbons; contaminated soil; synthetic materials; manmade structures or equipment; or native and nonnative materials.

*You* means the operator, unless otherwise specified or indicated by the context.

## PRE-EXISTING OPERATIONS

**§ 29.60 Do I need an operations permit for my pre-existing operation?**

No. Pre-existing operations are those conducted as of December 14, 2016 without an approved permit from the Service or prior to a boundary change or establishment of a new refuge. Your pre-existing operations may be continued without an operations permit, but you are required to operate in accordance with applicable local, State, and Federal laws and regulations, and are subject to applicable provisions of this subpart, including requirements for a permit when you propose to conduct new operations or to modify pre-existing operations.

**§ 29.61 What information must I provide to the Service?**

You must submit the following information to the Service where your pre-existing operation is occurring by February 13, 2017 or 90 days after a boundary change or establishment of a new refuge:

- (a) Documentation demonstrating that you hold the right to operate on Service-administered lands or waters.
- (b) The names, phone numbers, and addresses of your:
  - (1) Primary company representative;
  - (2) Representative responsible for field supervision; and
  - (3) Representative responsible for emergency response.
- (c) A brief description of your current operations, and any anticipated changes to current operations, including:
  - (1) A scaled map clearly delineating your existing area of operations;
  - (2) Documentation of the current operating methods, surface equipment, materials produced or used, and monitoring methods; and
  - (3) Copies of all plans and permits required by local, State, and Federal agencies, including a Spill Prevention Control and Countermeasure Plan if required by Environmental Protection Agency regulations at 40 CFR part 112.

**§ 29.62 What if I intend to conduct new operations or modify my pre-existing operations?**

(a) You must obtain an operations permit before conducting operations that are begun after December 14, 2016 for those new operations in accordance with §§ 29.90 through 29.97, Operations Permit: Application, and all applicable requirements of this subpart.

(b) You must obtain an operations permit prior to modifying your pre-existing operations for that modification in accordance with §§ 29.90 through 29.97, Operations Permit: Application, and all applicable requirements of this subpart.

**§ 29.63 What plugging and reclamation requirements apply to my pre-existing operations?**

Upon completion of your production operation, you are subject to the reclamation standards in § 29.117(d). You must obtain an operations permit in accordance with §§ 29.90 through 29.97, Operations Permit: Application, and all applicable requirements of this subpart, prior to plugging your well and conducting site reclamation.

**§ 29.64 What other provisions apply to my operations?**

Your pre-existing operations are also subject to the following regulations in this part 29:

- (a) § 29.120(b), (d), (f), and (g) and § 29.121(a) and (c)–(f);
- (b) § 29.170(a);
- (c) §§ 29.180 and 29.181;
- (d) § 29.190; and
- (e) § 29.200.

## TEMPORARY ACCESS PERMITS

**§ 29.70 When do I need a temporary access permit?**

You must apply to the Service and obtain a temporary access permit to access your proposed area of operations in order to conduct reconnaissance surveys within a refuge. This permit will describe the means, routes, timing, and other terms and conditions of your access determined by the Service to result in only the minimum disturbance necessary to perform surveys.



## **§ 29.71**

### **§ 29.71 How do I apply for a temporary access permit?**

You must submit the information requested in FWS Form 3-2469 (Oil and Gas Operations Special Use Permit Application) to the refuge in which you propose to conduct operations. Information includes, but is not limited to:

(a) The name, legal address, and telephone number of the operator, employee, agent, or contractor responsible for overall management of the proposed operations;

(b) Documentation demonstrating that you hold the right to operate on Service-administered lands or waters;

(c) The name, legal address, telephone number, and qualifications of all specialists responsible for conducting the reconnaissance surveys (only required if the assistants/subcontractors/subpermittees will be operating on Service-administered lands or waters without the permittee being present);

(d) A brief description of the intended operation so that we can determine reconnaissance survey needs;

(e) A description of the survey methods you intend to use to identify the natural and cultural resources;

(f) A map (to-scale and determined by us to be acceptable) delineating the proposed reconnaissance survey area in relation to the refuge boundary and the proposed area of operations; and

(g) A description of proposed means of access and routes for conducting the reconnaissance surveys.

### **§ 29.72 When will the Service grant a temporary access permit?**

Within 30 calendar days of receipt of the application for a reconnaissance survey, we will advise you whether the application fulfills the requirements of §§ 29.70 through 29.71 and issue you a temporary access permit or provide you with a statement of additional information that is needed for us to conduct review of your application.

### **§ 29.73 How much time will I have to conduct my reconnaissance surveys?**

Your temporary access permit will be in effect for a maximum of 60 calendar days from the date of issuance, unless a longer term is approved in the permit. We may extend the term of the

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permit for a reasonable period of time, based upon your written request that explains why an extension is necessary.

### **ACCESSING OIL AND GAS RIGHTS FROM A NON-FEDERAL SURFACE LOCATION**

### **§ 29.80 Do I need a permit for accessing oil and gas rights from a non-Federal location?**

No. Using directional drilling from a non-Federal surface location to reach your oil and gas rights within a refuge is exempt from these regulations. However, you are encouraged to provide the Service the names, phone numbers, and addresses of your primary company representative, representative responsible for field supervision, and representative responsible for emergency response at least 60 calendar days prior to conducting your operation. If you require access across Service-administered lands or waters, that access is subject to applicable provisions of this subpart, including obtaining an operations permit for any new access or modification of existing access.

### **OPERATIONS PERMIT: APPLICATION**

### **§ 29.90 Who must apply for an operations permit?**

Except as otherwise provided in §§ 29.43, 29.44, 29.70, and 29.80, if you are proposing to conduct operations on Service-administered lands or waters outside of Alaska, you must submit an application (FWS Form 3-2469) for an operations permit to the Service.

### **§ 29.91 What should I do before filing an application?**

You should participate in a pre-application meeting with the Service to allow for an early exchange of information between you and the Service with the intent of avoiding delays in your application process.

(a) For the meeting, you should provide:

(1) Documentation demonstrating that you hold the legal right to operate on Service-administered lands or waters; and

(2) An overview of your proposed operation and timing.

(b) The Service will provide guidance on the permitting process and information on available resource data, and identify additional data needs.

**§ 29.92 May I use previously submitted information?**

Yes.

(a) You do not need to resubmit information that is already on file with the Service, provided that such information is still current and accurate. You should reference this information in your oil and gas operations permit application.

(b) You may submit documents and materials submitted to other Federal and State agencies noting how the information meets the specific requirements of §§ 29.93 through 29.97.

**§ 29.93 Do I need to submit information for all possible future operations?**

No. You need only provide information for those operations for which you are seeking immediate approval. Approval of activities beyond the scope of your application may be subject to a new application and approval process.

**§ 29.94 What information must be included in all applications?**

All applications must include the information requested on FWS Form 3-2469, including, but not limited to:

(a) The name, legal address, and telephone number of the operator, employee, agent, or contractor responsible for overall management of the proposed operations.

(b) Documentation demonstrating that you hold the legal right to operate within the refuge.

(c) A description of the natural features of your proposed area of operations, such as: Streams, lakes, ponds, wetlands, estimated depths to the top and bottom of zones of usable water and topographic relief.

(d) The location of existing roads, trails, railroad tracks, pipeline rights-of-way, pads, and other disturbed areas.

(e) The location of existing structures that your operations could affect, including buildings, pipelines, oil and gas wells including both producing and plugged and abandoned wells, injection

wells, freshwater wells, underground and overhead electrical lines, and other utility lines.

(f) Descriptions of the natural and cultural resource conditions from your reconnaissance survey reports or other sources collected for your proposed area of operations, including any baseline testing of soils and surface and near-surface ground waters within your area of operations that reasonably may be impacted by your surface operations.

(g) Locations map(s) (to-scale and determined by us to be acceptable) that clearly identifies:

(1) Proposed area of operations, existing conditions, and proposed new surface uses, including the boundaries of each of your oil and gas tracts in relation to your proposed operations and the relevant refuge boundary.

(2) Proposed access routes of new surface disturbances as determined by a location survey.

(3) Proposed location of all support facilities, including those for transportation (*e.g.*, vehicle parking areas, helicopter pads, etc.), sanitation, occupation, staging areas, fuel storage areas, refueling areas, loading docks, water supplies, and disposal facilities.

(h) The method and diagrams, including cross-sections, of any proposed pad construction, road construction, cut-and-fill areas, and surface maintenance, including erosion control.

(i) The number and types of equipment and vehicles, including an estimate of vehicular round trips associated with your operation.

(j) An estimated timetable for the proposed operations, including any operational timing constraints.

(k) The type and extent of security measures proposed at your area of operations.

(l) The power sources and their transmission systems for the proposed operations.

(m) The types and quantities of all solid and liquid waste generated and the proposed methods of storage, handling, and disposal.

(n) The source, quantity, access route, and transportation/conveyance method for all water to be used in operations, including hydraulic fracturing, and estimations of any anticipated

wastewater volumes generated, including flowback fluids from hydraulic fracturing, and the proposed methods of storage, handling, and recycling or disposal.

(o) The following information regarding mitigation actions and alternatives considered:

(1) A description of the steps you propose to take to mitigate anticipated adverse environmental impacts on refuge resources and uses, including, but not limited to, the refuge's land features, land uses, fish and wildlife, vegetation, soils, surface and subsurface water resources, air quality, noise, lightscapes, viewsheds, cultural resources, and economic environment.

(2) A description of any anticipated impacts that you cannot mitigate.

(3) A description of alternatives considered that meet the criteria of technologically feasible, least damaging methods of operations, as well as the costs and environmental effects of such alternatives.

(p) You must submit the following information about your spill control and emergency preparedness plan. You may use a spill prevention control and countermeasure plan prepared under 40 CFR part 112 if the plan includes all of the information required by this section. You must submit:

(1) The names, addresses, and telephone numbers of the people whom the Service can contact in the event of a spill, fire, or accident, including the order in which the individuals should be contacted.

(2) The notification procedures and steps taken to minimize damage in the event of a spill, fire, or accident.

(3) Identification of contaminating substances used within your area of operations or expected to be encountered during operations.

(4) Trajectory analysis for potential spills that are not contained on location.

(5) Identification of abnormal pressure, temperature, toxic gases or substances, or other hazardous conditions at your area of operations or expected to be encountered during operations.

(6) Measures (*e.g.*, procedures, facility design, equipment) to minimize risks to human health and safety, and the environment.

(7) Steps to prevent accumulations of oil or other materials deemed to be fire hazards from occurring in the vicinity of well locations and lease tanks.

(8) The equipment and methods for containment and cleanup of contaminating substances, including a description of the equipment available at your area of operations and equipment available from local contractors.

(9) A stormwater drainage plan and actions intended to mitigate stormwater runoff.

(10) Material safety data sheets for each material you will use or encounter during operations, including expected quantities maintained at your area of operations.

(11) A description of the emergency actions you will take in the event of injury or death to fish and wildlife or vegetation.

(12) A description of the emergency actions you will take in the event of accidents causing human injury.

(13) Contingency plans for conditions and emergencies other than spills, such as if your area of operations is located in areas prone to hurricanes, flooding, tornadoes, fires, or earthquakes.

(q) A description of the specific equipment, materials, methods, and schedule that will be used to meet the operating standards for reclamation at § 29.117.

(r) An itemized list of the estimated costs that a third party would charge to complete reclamation.

**§ 29.95 What additional information must be included if I am proposing geophysical exploration?**

If you propose to conduct geophysical exploration, you must submit the information requested on FWS Form 3–2469, including, but not limited to:

(a) A map showing the positions of each survey line including all source and receiver locations as determined by a locational survey, and including shot point offset distances from wells, buildings, other infrastructure, cultural resources, and environmentally sensitive areas;

(b) The number of crews and numbers of workers in each crew;

(c) A description of the acquisition methods, including the procedures and specific equipment you will use, and

energy sources (*e.g.*, explosives, vibroseis trucks);

(d) A description of the methods of access along each survey line for personnel, materials, and equipment; and

(e) A list of all explosives, blasting equipment, chemicals, and fuels you will use in the proposed operations, including a description of proposed disposal methods, transportation methods, safety measures, and storage facilities.

**§ 29.96 What additional information must be included if I am proposing drilling operations?**

If you are proposing to drill a well, you must submit the information requested on FWS Form 3-2469, including, but not limited to:

(a) A description of the well pad construction, including dimensions and cross sections of cut-and-fill areas and excavations for ditches, sumps, and spill control equipment or structures, including lined areas;

(b) A description of the drill rig and equipment layout, including rig components, fuel tanks, testing equipment, support facilities, storage areas, and all other well-site equipment and facilities;

(c) A description of the type and characteristics of the proposed drilling mud systems; and

(d) A description of the equipment, materials, and methods of surface operations associated with your drilling, well casing and cementing, well control, well evaluation and testing, well completion, hydraulic fracturing or other well stimulation, and well plugging programs.

**§ 29.97 What additional information must be included if I am proposing production operations?**

If you are proposing to produce a well, you must submit the information requested on FWS Form 3-2469, including, but not limited to:

(a) The dimensions and the to-scale layout of the well pad, clearly identifying well locations, noting partial reclamation areas; gathering, separation, metering, and storage equipment; electrical lines; fences; spill control equipment or structures, including lined areas, artificial lift equipment, tank

batteries, treating and separating vessels, secondary or enhanced recovery facilities, water disposal facilities, gas compression and/or injection facilities; metering points; sales point (if on lease); tanker pickup points; gas compressor, including size and type (if applicable); and any other well site equipment.

(b) A general description of anticipated stimulations, servicing, and workovers.

(c) A description of the procedures and equipment used to maintain well control.

(d) A description of the method and means used to transport produced oil and gas, including vehicular transport; flowline and gathering line construction and operation, pipe size, and operating pressure; cathodic protection methods; surface equipment use; surface equipment location; maintenance procedures; maintenance schedules; pressure detection methods; and shutdown procedures.

(e) A road and well pad maintenance plan, including equipment and materials to maintain the road surface and control erosion.

(f) A vegetation management plan on well sites, roads, pipeline corridors, and other disturbed surface areas, including control of noxious and invasive species.

(g) A stormwater management plan on the well site.

(h) A produced water storage and disposal plan.

(i) A description of the equipment, materials, and procedures proposed for well plugging.

**OPERATIONS PERMIT: APPLICATION  
REVIEW AND APPROVAL**

**§ 29.100 How will the Service process my application?**

We will conduct initial review of your application to determine if all information is complete. Once your information is complete, we will begin formal review.

**§ 29.101 How will the Service conduct an initial review?**

(a) Within 30 calendar days of receipt of your application, the Service will

notify you in writing that one of the following situations exists:

- (1) Your application is complete, and the Service will begin formal review;
- (2) Your application does not meet the information requirements, in which case we will identify the additional information required to be submitted before the Service will be able to conduct formal review of your application; or
- (3) More time is necessary to complete the review, in which case the Service will provide the amount of additional time reasonably needed along with a justification.

(b) If you submit additional information as requested under paragraph (a)(2) of this section, and the Service determines that you have met all applicable information requirements, the Service will notify you within 30 calendar days from receipt of the additional information that either:

- (1) Your application is complete, and the Service will begin formal review; or
- (2) More time is necessary to complete the initial review, in which case the Service will provide the amount of additional time reasonably needed along with a justification.

**§ 29.102 How will the Service conduct a formal review?**

For those applications for which the Service determines that the applicant holds a valid property right, the Service will conduct a formal review of your application by:

- (a) Evaluating the potential impacts of your proposal on Service-administered lands and waters, or resources of refuges; visitor uses or experiences; or visitor or employee health and safety in compliance with applicable Federal laws; and
- (b) Identifying any additional operating conditions that would apply to your approved application.

**§ 29.103 What standards must be met to approve my application?**

(a) In order to approve your operations permit application, the Service must determine that your operations will:

- (1) Use technologically feasible, least damaging methods; and
- (2) Meet all applicable operating standards.

(b) Before operations begin, you must submit to the Service:

- (1) Financial assurance in the amount specified by the Service and in accordance with the requirements of §§ 29.150 through 29.154, Financial Assurance;
- (2) Proof of liability insurance with limits sufficient to cover injuries to persons or property caused by your operations; and
- (3) A statement under penalty of perjury, signed by an official who is authorized to legally bind the company, stating that proposed operations are in compliance with any applicable Federal law or regulation or any applicable State law or regulation related to non-Federal oil and gas operations and that all information submitted to the Service is true and correct.

**§ 29.104 What actions may the Service take on my operations permit application?**

(a) We will make a decision on your application within 180 days from the date we deem your application complete unless:

- (1) We and you agree that such decision will occur within a shorter or longer period of time; or
- (2) We determine that an additional period of time is required to ensure that we have, in reviewing the permit application, complied with all applicable legal requirements.

(b) We will notify you in writing that your permit application is:

- (1) Approved, with or without operating conditions; or
- (2) Denied, and provide justification for the denial. Any such denial must be consistent with § 29.40(c).

OPERATING STANDARDS

**§ 29.110 What are the purposes of the Service's operating standards?**

The purposes are to:

- (a) Protect Service-administered lands and waters, and refuge resources; wildlife-dependent visitor uses and experiences; and visitor and employee health and safety; and

(b) Ensure use of technologically feasible, least damaging methods. The operating standards give us and the operator flexibility to consider using alternative methods, equipment, materials design, and conduct of operations.

**§ 29.111 What general facility design and management standards must I meet?**

As a permittee, you must:

(a) Design, construct, operate, and maintain access to your operational site to cause the minimum amount of surface disturbance needed to safely conduct operations and to avoid areas we have identified as containing sensitive resources.

(b) Install and maintain secondary containment materials and structures for all equipment and facilities using or storing contaminating substances. The containment system must be sufficiently impervious to prevent discharge and must have sufficient storage capacity to contain, at a minimum, the largest potential spill incident.

(c) Keep temporarily stored waste in the smallest area feasible, and confine the waste to prevent escape as a result of percolation, rain, high water, or other causes. You must regularly remove waste from the refuge and lawfully dispose of the waste in a direct and workable timeframe. You may not establish a solid waste disposal site on a refuge.

(d) Use engines that adhere to applicable Federal and State emission standards.

(e) Construct, maintain, and use roads in a manner to minimize fugitive dust emissions.

(f) Design, operate, and maintain your operations and equipment in a manner consistent with good air pollution control practices so as to minimize emissions and leaks of air pollutants and hydrocarbons, including intentional releases or flaring of gases.

(g) Control the invasion of noxious and invasive plant and animal species in your area of operations from the beginning through final reclamation.

(h) Avoid conducting ground-disturbing operations within 500 feet of any surface water, including an intermittent or ephemeral watercourse, or wetland, or any refuge structure or fa-

cility used by refuges for interpretation, public recreation, or administration. We may increase or decrease this distance consistent with the need to protect Service-administered structures or facilities, visitor uses or experiences, or visitor or employee health and safety; or to ensure that you have reasonable access to your non-Federal oil and gas. Measurements for purposes of this paragraph are by map distance.

**§ 29.112 What fish and wildlife protection standards must I meet?**

To protect fish and wildlife resources on the refuge, you must:

(a) Along with your employees and contractors, adhere to all refuge regulations for the protection of fish, wildlife, and plants;

(b) Ensure that you, your employees, and contractors have been informed and educated by the refuge staff on the appropriate protection practices for wildlife conservation;

(c) Conduct operations in a manner that does not create an unsafe environment for fish and wildlife by avoiding or minimizing exposure to physical and chemical hazards; and

(d) Conduct operations in a manner that avoids or minimizes impacts to sensitive wildlife, including timing and location of operations.

**§ 29.113 What hydrologic standards must I meet?**

You must:

(a) Construct facilities in a manner that maintains hydrologic movement and function.

(b) Not cause measurable degradation of surface water or groundwater beyond that of existing conditions.

(c) Conduct operations in a manner that maintains natural processes of erosion and sedimentation.

**§ 29.114 What safety standards must I meet?**

To ensure the safety of your operations, you must:

(a) Maintain your area of operations in a manner that avoids or minimizes the cause or spread of fire and does not intensify fire originating outside your operations area;

(b) Maintain structures, facilities, improvements, and equipment in a safe

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and professional manner in order not to create an unsafe environment for refuge resources, visitors, and employees, by avoiding or minimizing exposure to physical and chemical hazards; and

(c) Provide site-security measures to protect visitors from hazardous conditions resulting from your operations.

### § 29.115 What lighting and visual standards must I meet?

(a) You must design, shield, and focus lighting to minimize the effects of spill light on the night sky or adjacent areas; and

(b) You must reduce visual contrast in the landscape in selecting the area of operations, avoiding unnecessary disturbance, choosing appropriate colors and materials for roads and permanent structures, and other means.

### § 29.116 What noise reduction standards must I meet?

You must prevent or minimize all noise that:

(a) Adversely affects refuge resources or uses, taking into account frequency, magnitude, or duration; or

(b) Exceeds levels that have been identified through monitoring as being acceptable to or appropriate for uses at the sites being monitored.

### § 29.117 What reclamation and protection standards must I meet?

(a) You must promptly clean up and remove from the refuge any released contaminating substances in accordance with all applicable Federal, State, and local laws.

(b) You must perform partial reclamation of areas that are no longer necessary to conduct operations. You must begin final reclamation within 6 months after you complete your authorized operations unless we authorize a different reclamation period in writing.

(c) You must protect all survey markers (*e.g.*, monuments, witness corners, reference monuments, and bearing trees) against destruction, obliteration, or damage from operations. You are responsible for reestablishment, restoration, and referencing of any monuments, corners, and bearing trees

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that are destroyed, obliterated, or damaged by your operations.

(d) You must complete reclamation by:

(1) Plugging all wells;

(2) Removing all above-ground structures, equipment, roads, and all other manmade material and debris resulting from operations;

(3) Removing or neutralizing any contaminating substances;

(4) Reestablishing native vegetative communities, or providing for conditions where ecological processes typical of the ecological zone (*e.g.*, plant or wildlife succession) will reestablish themselves;

(5) Grading to conform the contours to pre-existing elevations as necessary to maximize ecological function;

(6) Restoring conditions to pre-disturbance hydrologic movement and functionality;

(7) Restoring natural systems using native soil material that is similar in character to the adjacent undisturbed soil profiles;

(8) Ensuring that reclamation does not interfere with visitor use or with administration of the refuge;

(9) Attaining conditions that are consistent with the management objectives of the refuge, designed to meet the purposes for which the refuge was established; and

(10) Coordinating with us or with other operators who may be using a portion of your area of operations to ensure proper and equitable apportionment of reclamation responsibilities.

### § 29.118 What additional operating standards apply to geophysical operations?

If you conduct geophysical operations, you must do all of the following:

(a) Use surveying methods that minimize the need for vegetative trimming and removal.

(b) Locate source points using industry-accepted minimum safe-offset distances from pipelines, telephone lines, railroad tracks, roads, power lines, water wells, oil and gas wells, oil- and gas-production facilities, and buildings.

(c) Use equipment and methods that, based upon the specific environment,

will minimize impacts to Service-administered lands and waters, and resources of refuges; visitor uses and experiences; and visitor and employee health and safety.

(d) If you use shot holes, you must:

- (1) Use biodegradable charges;
- (2) Plug all shot holes to prevent a pathway for migration for fluids along any portion of the bore; and
- (3) Leave the site in a clean and safe condition that will not impede surface reclamation or pose a hazard to wildlife or human health and safety.

**§ 29.119 What additional operating standards apply to drilling and production operations?**

If you conduct drilling and production operations, you must meet all of the following standards:

(a) To conduct drilling operations, you must:

- (1) Use containerized mud circulation systems for operations;
- (2) Not create or use earthen pits;
- (3) Take all necessary precautions to keep your wells under control at all times, using only employees, contractors, or subcontractors trained and competent in well control procedures and equipment operation, and using industry-accepted well control equipment and practices; and
- (4) Design, implement, and maintain integrated casing, cementing, drilling fluid, completion, stimulation, and blowout prevention programs to prevent escape of fluids to the surface and to isolate and protect usable water zones throughout the life of the well, taking into account all relevant geologic and engineering factors.

(b) To conduct production operations, in addition to meeting the standards of paragraphs (a)(1) through (a)(4) of this section, you must do all of the following:

- (1) Monitor producing conditions for early indications that could lead to loss of mechanical integrity of producing equipment.
- (2) Maintain all surface equipment and the wellhead to prevent leaks or releases of any fluids or air pollutants.
- (3) Identify wells and related facilities with appropriate signage. Signs must remain in place until the well is plugged and abandoned and the related

facilities are removed. Signs must be of durable construction, and the lettering must be legible and large enough to be read under normal conditions at a distance of at least 50 feet. Each sign must show the name of the well, name of the operator, and the emergency contact phone number.

(4) Remove all equipment and materials when not needed for the current phase of your operation.

(5) Plug all wells, leaving the surface in a clean and safe condition that will not impede surface reclamation or pose a hazard to wildlife or human health and safety, in accordance with § 29.117.

**GENERAL TERMS AND CONDITIONS**

**§ 29.120 What terms and conditions apply to all operators?**

The following terms and conditions apply to all operators, regardless of whether these terms and conditions are expressly included in the permit:

(a) You must comply with all applicable operating standards in §§ 29.111 through 29.119; these operating standards will be incorporated in the terms and conditions of your operations permit. Violation of these operating standards, unless otherwise provided in your operations permit, will subject you to the Prohibited Acts and Penalties provisions of §§ 29.190 through 29.192.

(b) You are responsible for ensuring that all of your employees, agents, contractors, and subcontractors comply fully with the requirements of this subpart.

(c) You may be required to reimburse the Service for the costs of processing and administering temporary access permits and operations permits.

(d) You may not use any surface water or groundwater from a source located on a refuge unless you have demonstrated a right to use that water or the use has been approved by the Service as the technologically feasible, least damaging method.

(e) You agree to indemnify and hold harmless the United States and its officers and employees from and against any and all liability of any kind whatsoever arising out of or resulting from the acts or omissions of you and your employees, agents, representatives,



contractors, and subcontractors in the conduct of activities under a Service-issued permit.

(f) You will be required to take all reasonable precautions to avoid, minimize, rectify, or reduce the overall impacts of your proposed oil and gas activities to the refuge. You may be required to mitigate for impacts to refuge resources and lost uses. Mutually agreed to mitigation tools for this purpose may include providing alternative habitat creation or restoration, land purchase, or other resource compensation.

(g) You are responsible for unanticipated and unauthorized damages as a direct or indirect result of your operations. You will be responsible for the actions and consequences of your employees and subcontractors. You will also be responsible for any reclamation of damages to refuge resources directly or indirectly caused by your operations through the occurrence of severe weather, fire, earthquakes, or the like thereof.

**§ 29.121 What monitoring and reporting is required for all operators?**

(a) The Service may access your area of operations at any time to monitor the effects of your operations to ensure compliance with the regulations in this subpart.

(b) The Service may determine that third-party monitors are necessary to ensure compliance with your operations permit and to protect Service-administered lands and waters, or the resources of refuges, visitor uses and experiences, and visitor or employee health and safety.

(1) The Service's determination will be based on the scope and complexity of the proposed operation, reports that you are required to submit under paragraph (e) of this section, and whether the refuge has the staff and technical ability to ensure compliance with the operations permit and any provision of this subpart.

(2) A third-party monitor will report directly to the Service at intervals determined by the Service. We will make the information reported available to you upon your request.

(3) You will be responsible for the cost of the third-party monitor.

(c) You must notify the Service within 24 hours of any injuries to or mortality of fish, wildlife, or endangered or threatened plants resulting from your operations.

(d) You must notify the Service of any accidents involving serious personal injury or death and of any fires or spills on the site immediately after the accident occurs. You must submit a full written report on the accident to the Service within 90 days after the accident occurs.

(e) Upon our request, you must submit reports or other information necessary to verify compliance with your permit or with any provision of this subpart. To fulfill this request, you may submit to us reports that you have submitted to the State under State regulations, or that you have submitted to any other Federal agency to the extent they are sufficient to verify compliance with permits or this subpart.

(f) If your operations include hydraulic fracturing, you must provide the Service with a report including the true vertical depth of the well, total water volume used, and a description of the base fluid and each additive in the hydraulic fracturing fluid, including the trade name, supplier, purpose, ingredients, Chemical Abstract Service Number (CAS), maximum ingredient concentration in additive (percent by mass), and maximum ingredient concentration in hydraulic fracturing fluid (percent by mass). The report must be either submitted through FracFocus or another Service-designated database.

**§ 29.122 For how long is my operations permit valid?**

Operations permits remain valid for the duration of the operation. Provisions of § 29.160 apply.

**ACCESS FEES**

**§ 29.140 May I cross Federal property to reach the boundary of my oil and gas right?**

The Service may grant you the privilege of access on, across, or through Service-administered lands or waters to reach the boundary of your oil and gas right. You should contact the Service to determine if additional permits are necessary for access.

**§ 29.141 Will the Service charge me a fee for access?**

(a) The Service will charge you a fee if you require use of Service-administered lands or waters outside the boundary or scope of your oil and gas right:

(1) If you require new use of Service-administered lands or waters, we will charge you a fee based on the fair market value of that use.

(2) Fees under this section will not be charged for access within the scope of your oil and gas right or access to your right that is otherwise provided for by law.

(b) If access to your oil and gas right is across an existing refuge road, we may charge a fee according to a posted fee schedule.

**§ 29.142 Will I be charged a fee for emergency access to my operations?**

No.

(a) The Service will not charge a fee for access across Service-administered lands or waters beyond the scope of your oil and gas right as necessary to respond to an emergency situation at your area of operations if we determine after the fact that the circumstances required an immediate response to either:

(1) Prevent or minimize injury to refuge resources; or

(2) Ensure public health and safety.

(b) You will remain liable for any damage caused to refuge resources as a result of such emergency access.

## FINANCIAL ASSURANCE

**§ 29.150 When do I have to provide financial assurance to the Service?**

You will need to provide financial assurance as a condition of approval for your operations permit when you submit your application. You must file financial assurance with us in a form acceptable to the Service and payable upon demand. This financial assurance is in addition to any financial assurance required by any other Federal or State regulatory authority.

**§ 29.151 How does the Service establish the amount of financial assurance?**

(a) You are responsible for completing reclamation of your disturbances, whether within or outside your permit area, in accordance with this subpart and the terms of your permit. If you fail to properly complete reclamation, you will be liable for the full costs of completing the reclamation. We will base the financial assurance amount upon the estimated cost that a third-party contractor would charge to complete reclamation in accordance with this subpart. If the cost of reclamation exceeds the amount of your financial assurance, you will remain liable for all costs of reclamation in excess of the financial assurance.

(b) The Service will reduce the required amount of your financial assurance during the pendency of operations by the amount we determine is represented by in-kind reclamation you complete during your operations.

**§ 29.152 Will the Service adjust the amount required for my financial assurance?**

The Service may require, or you may request, an adjustment to the financial assurance amount because of any circumstances that increase or decrease the estimated costs established under § 29.151.

**§ 29.153 When will the Service release my financial assurance?**

(a) Your responsibility under the financial assurance will continue until either:

(1) The Service determines that you have met all applicable reclamation operating standards and any additional reclamation requirements that may be included in your operations permit; or

(2) A new operator assumes your operations, as provided in § 29.170(b).

(b) You will be notified by the Service within 30 calendar days of our determination that your financial assurance has been released.

**§ 29.154 Under what circumstances will I forfeit my financial assurance?**

(a) You may forfeit all or part of your financial assurance if we cannot

## § 29.160

secure your compliance with the provisions of your operations permit or a provision of this subpart. The part of your financial assurance forfeited is based on costs to the Service to remedy your noncompliance.

(b) In addition to forfeited financial assurance, we may temporarily:

(1) Prohibit you from removing all structures, equipment, or other materials from your area of operations;

(2) Require you to secure the operations site and take any necessary actions to protect Service-administered lands and waters, and resources of the refuge; visitor uses; and visitor or employee health and safety; and

(3) Suspend review of any permit applications you have submitted until we determine that all violations of permit provisions or of any provision of this subpart are resolved.

(4) Seek recovery as provided in § 29.151 for all costs of reclamation in excess of the posted financial assurance.

### MODIFICATION TO AN OPERATION

#### **§ 29.160 Can I modify operations under an approved permit?**

The Service may amend an approved temporary access permit or an operations permit to adjust to changed conditions or to address unanticipated conditions, either upon our own action or at your request.

(a) To request a modification to your operation, you must provide, in writing, to the Service, your assigned permit number, a description of the proposed modification, and an explanation of why the modification is needed. We will review your request for modification under the approval standards at §§ 29.72 or 29.103. You may not implement any modification until you have received the Service's written approval.

(b) If the Service needs to amend your temporary access permit or operations permit, you will receive a written notice that:

(1) Describes the modification required and justification;

(2) Specifies the time within which you must notify the Service that you either accept the modifications to your

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permit or explain any concerns you may have; and

(3) Absent any concerns, specifies the time within which you must incorporate the modification into your operations.

### CHANGE OF OPERATOR

#### **§ 29.170 What are my responsibilities if I transfer my right to operate?**

(a) If your operations are being conducted under § 29.44, you must notify the Service in writing within 30 calendar days from the date the new operator acquires the rights to conduct operations. Your written notification must include:

(1) The names and addresses of the person or entity conveying the right and of the person or entity acquiring the right;

(2) The effective date of transfer;

(3) The description of the rights, assets, and liabilities being transferred and which ones, if any, are being reserved by the previous operator; and

(4) A written acknowledgement from the new operator that the contents of the notification are true and correct.

(b) If your operations are being conducted under § 29.43 or an operations permit:

(1) You must provide notice under paragraph (a) of this section.

(2) You remain responsible for compliance with your operations permit, and we will retain your financial assurance until the new operator:

(i) Adopts and agrees in writing to conduct operations in accordance with all terms and conditions of your operations permit;

(ii) Provides financial assurance with us that is acceptable to the Service and made payable to the Service; and

(iii) Receives written notification from the Service that transfer of the operations permit has been approved.

#### **§ 29.171 What must I do if operations are transferred to me?**

(a) If another operator transfers operations conducted under § 29.44, as the transferee you may continue operating under the requirements of that section, but:

(1) Within 30 calendar days from the date of the transfer, you must provide to the Service:

(i) Documentation demonstrating that you hold the right to operate; and  
 (ii) The names, phone numbers, and addresses of your:

- (A) Primary company representative;
- (B) Representative responsible for field supervision; and
- (C) Representative responsible for emergency response.

(2) Within 90 days, or as otherwise agreed to by the Service, submit an operations permit application in compliance with §§ 29.90–29.97, Operations Permit: Application, that must be approved in compliance with applicable provisions of this subpart and under the timelines outlined in §§ 29.100–29.103, Operations Permit: Application Review and Approval.

(b) If another operator transfers operations conducted under § 29.43 or an operations permit, you must within 30 days of commencing transferred operations:

(1) Provide documentation demonstrating that you hold the right to operate.

(2) Provide the names, phone numbers, and addresses of your:

- (i) Primary company representative;
- (ii) Representative responsible for field supervision; and
- (iii) Representative responsible for emergency response.

(3) Agree in writing to conduct operations in accordance with all terms and conditions of the previous operator's permit.

(4) File financial assurance with us that is acceptable to the Service and made payable to the Service.

(5) Receive written approval from the Service for the transfer of the operation's permit.

(c) You may modify operations transferred to you in accordance with § 29.160.

#### WELL PLUGGING

#### § 29.180 When must I plug my well?

Except as provided in § 29.181, you must plug your well, in accordance with the standards and procedures outlined in this subpart, when any of the following occurs:

(a) Your drilling operations have ended and you have taken no further

action on your well within 60 calendar days;

(b) Your well, which has been completed for production operations, has no measurable production quantities for 12 consecutive months; or

(c) The period approved in your permit to maintain your well in shut-in status has expired.

#### § 29.181 Can I get an extension to the well plugging requirement?

(a) You may apply for either an operations permit or a modification to your approved operations permit to maintain your well in a shut-in status for up to 5 years. Provide the information requested on FWS Form 3–2469, including, but not limited to:

(1) An explanation of why the well is shut-in or temporarily abandoned and your future plans for utilization;

(2) A demonstration of the mechanical integrity of the well; and

(3) A description of the manner in which your well, equipment, and area of operations will be maintained in accordance with the standards in the subpart.

(b) Based on the information provided under this section, we may approve your application to maintain your well in shut-in status for a period up to 5 years. We may condition an extension on an adjustment of your financial assurance.

(c) You may apply for additional extensions by submitting a new application under paragraph (a) of this section.

#### PROHIBITED ACTS AND PENALTIES

#### § 29.190 What acts are prohibited under this subpart?

The following acts are prohibited:

(a) Operating in violation of the terms or conditions of a temporary access permit, an operations permit, a permit under § 29.43, or any applicable provision of this subpart, including §§ 29.60–29.64 for pre-existing operations.

(b) Damaging Service-administered lands or waters, or resources of a refuge, as a result of failure to comply with the terms or conditions of a temporary access permit, an operations permit, operations being conducted under §§ 29.43 or 29.44, or any provision of this subpart.

## § 29.191

(c) Conducting operations without a temporary access permit or an operations permit, unless conducting operations under §§ 29.43 or 29.44.

(d) Failure to comply with any suspension or revocation order issued under this subpart.

(e) Failure to comply with the applicable provisions of Federal law or regulation including this subchapter.

(f) Failure to comply with the applicable provisions of the laws and regulations of the State wherein any operation is located unless further restricted by Federal law or regulation including this subchapter.

### § 29.191 What enforcement actions can the Service take?

If you engage in a prohibited act:

(a) The Service may suspend and/or revoke your approved operations permit and your authorization for operations as set forth at § 29.43 and § 29.44; and/or

(b) All prohibited acts are subject to the penalty provisions set forth at § 28.31 of this subchapter.

### § 29.192 How do violations affect my ability to obtain a permit?

Until you comply with the regulations in this subpart, we will not consider a request to conduct any new operations, except plugging and reclamation operations, on Service-administered lands or waters.

## APPEALS

### § 29.200 Can I, as operator, appeal Service decisions?

Yes. If you disagree with a decision made by the Service under this subpart, you may use the appeals process in § 25.45 of this subchapter. The process set forth in § 25.45 will be used for appeal of any written decision concerning approval, denial, or modification of an operation made by the Service under this subpart. No Service decision under this subpart that is subject to appeal to the Regional Director or the Director shall be considered final agency action subject to judicial review under 5 U.S.C. 704 until the Regional Director has rendered his or her decision on the matter. The decision of the Regional Director will constitute

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the Service's final agency action, and no further appeal will lie in the Department from that decision.

## PUBLIC INFORMATION

### § 29.210 How can the public learn about oil and gas activities on refuge lands?

(a) Interested parties may view publicly available documents at the refuge's office during normal business hours or by other means prescribed by the refuge. The availability for public inspection of information about the nature, location, character, or ownership of refuge resources will conform to all applicable laws and implementing regulations, standards, and guidelines.

(b) The refuge will make available for public inspection any documents that an operator submits to the Service under this subpart except those that the operator has identified as proprietary or confidential.

(c) For the information required in § 29.121(f), the operator and the owner of the information will be deemed to have waived any right to protect from public disclosure information submitted through FracFocus or another Service-designated database.

(d) For information required under this subpart that the owner of the information claims to be exempt from public disclosure and is withheld from the Service, a corporate officer, managing partner, or sole proprietor of the operator must sign and the operator must submit to the authorized officer an affidavit that:

(1) Identifies the owner of the withheld information and provides the name, address, and contact information for a corporate officer, managing partner, or sole proprietor of the owner of the information;

(2) Identifies the Federal statute or regulation that would prohibit the Service from publicly disclosing the information if it were in the Service's possession;

(3) Affirms that the operator has been provided the withheld information from the owner of the information and is maintaining records of the withheld information, or that the operator has access and will maintain access to the withheld information held by the owner of the information;

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(4) Affirms that the information is not publicly available;

(5) Affirms that the information is not required to be publicly disclosed under any applicable local, State, tribal, or Federal law;

(6) Affirms that the owner of the information is in actual competition and identifies competitors or others that could use the withheld information to cause the owner of the information substantial competitive harm;

(7) Affirms that the release of the information would likely cause substantial competitive harm to the owner of the information and provides the factual basis for that affirmation; and

(8) Affirms that the information is not readily apparent through reverse engineering with publicly available information.

(e) If the operator relies upon information from third parties, such as the owner of the withheld information, to make the affirmations in paragraphs (d)(6) through (d)(8) of this section, the operator must provide a written affidavit from the third party that sets forth the relied-upon information.

(f) The Service may require any operator to submit to the Service any withheld information, and any information relevant to a claim that withheld information is exempt from public disclosure.

(g) If the Service determines that the information submitted under paragraphs (d) or (e) of this section is not exempt from disclosure, the Service will make the information available to the public after providing the operator and owner of the information with no fewer than 10 business days' notice of the Service's determination.

(h) The operator must maintain records of the withheld information until the later of the Service's release of the operator's financial assurance or 7 years after completion of operations on refuge lands. Any subsequent operator will be responsible for maintaining access to records required by this paragraph during its operation of the well. The operator will be deemed to be maintaining the records if it can promptly provide the complete and accurate information to the Service, even if the information is in the custody of its owner.

(i) If any of the chemical identity information required in this subpart is withheld, the operator must provide the generic chemical name in the submission required. The generic chemical name must be only as nonspecific as is necessary to protect the confidential chemical identity, and should be the same as or no less descriptive than the generic chemical name provided to the Environmental Protection Agency.

### INFORMATION COLLECTION

#### § 29.220 Has the Office of Management and Budget approved the collection of information?

The Office of Management and Budget reviewed and approved the information collection requirements contained in this subpart and assigned OMB Control No. 1018-0162. We use the information collected under this subpart to manage non-Federal oil and gas operations on Service-administered lands or waters for the purpose of protecting wildlife and habitat, water quality and quantity, wildlife-dependent recreational opportunities, and the health and safety of employees and visitors on the NWRS. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

## PART 30—RANGE AND FERAL ANIMAL MANAGEMENT

### Subpart A—Range Animals

Sec.

30.1 Surplus range animals.

30.2 Disposition of surplus range animals.

### Subpart B—Feral Animals

30.11 Control of feral animals.

30.12 Disposition of feral animals.

AUTHORITY: 5 U.S.C. 301; 16 U.S.C. 668dd, as amended; 16 U.S.C. 715i, as amended; 41 CFR 101-44.

### Subpart A—Range Animals

#### § 30.1 Surplus range animals.

Range animals on fenced wildlife refuge areas, including buffalo and long-horn cattle, determined to be surplus