

Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 1764. General requirements

(a) Boundary specifications; criteria; temporary use of additional lands

The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

(b) Terms and conditions of right-of-way or permit

Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) Applicability of regulations or stipulations

Rights-of-way shall be granted, issued, or renewed pursuant to this subchapter under such regulations or stipulations, consistent with the provisions of this subchapter or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

(d) Submission of plan of construction, operation, and rehabilitation by new project applicants; plan requirements

The Secretary concerned prior to granting or issuing a right-of-way pursuant to this subchapter for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 1765 of this title.

(e) Regulatory requirements for terms and conditions; revision and applicability of regulations

The Secretary concerned shall issue regulations with respect to the terms and conditions

that will be included in rights-of-way pursuant to section 1765 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this subchapter and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this subchapter.

(f) Removal or use of mineral and vegetative materials

Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws or for emergency repair work necessary for those rights-of-way authorized under section 1761(c) of this title.

(g) Rental payments; amount, waiver, etc.

The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder. The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however,* That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are

hereby authorized to be appropriated and made available until expended. Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities eligible for financing pursuant to the Rural Electrification Act of 1936, as amended [7 U.S.C. 901 et seq.], determined without regard to any application requirement under that Act, or any extensions from such facilities: *Provided*, That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection.

(h) Liability for damage or injury incurred by United States for use and occupancy of rights-of-way; indemnification of United States; no-fault liability; amount of damages

(1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this subchapter shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Bond or security requirements

Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way 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 by any rule or regulation of the Secretary concerned.

(j) Criteria for grant, issue, or renewal of right-of-way

The Secretary concerned shall grant, issue, or renew a right-of-way under this subchapter only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this subchapter.

(Pub. L. 94-579, title V, §504, Oct. 21, 1976, 90 Stat. 2778; Pub. L. 98-300, May 25, 1984, 98 Stat. 215; Pub. L. 99-545, §2, Oct. 27, 1986, 100 Stat. 3048; Pub. L. 104-333, div. I, title X, §1032(a), Nov. 12, 1996, 110 Stat. 4239.)

REFERENCES IN TEXT

The Rural Electrification Act of 1936, referred to in subsec. (g), is act May 20, 1936, ch. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (§901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104-333 substituted “eligible for financing pursuant to the Rural Electrification Act

of 1936, as amended, determined without regard to any application requirement under that Act,” for “financed pursuant to the Rural Electrification Act of 1936, as amended.”

1986—Subsec. (f). Pub. L. 99-545, §2(1), inserted before the period at end “or for emergency repair work necessary for those rights-of-way authorized under section 1761(c) of this title”.

Subsec. (g). Pub. L. 99-545, §2(2), substituted “The holder of a right-of-way shall pay in advance the fair market value thereof, as determined by the Secretary granting, issuing, or renewing such right-of-way. The Secretary concerned may require either annual payment or a payment covering more than one year at a time except that private individuals may make at their option either annual payments or payments covering more than one year if the annual fee is greater than one hundred dollars. The Secretary concerned may waive rentals where a right-of-way is granted, issued or renewed in consideration of a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder.” for “The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: *Provided*, That when the annual rental is less than \$100, the Secretary concerned may require advance payment for more than one year at a time: *Provided further*, That the Secretary concerned may waive rentals where a right-of-way is granted, issued, or renewed in reciprocation for a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder.”

1984—Subsec. (g). Pub. L. 98-300 inserted at end “Rights-of-way shall be granted, issued, or renewed, without rental fees, for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936, as amended, or any extensions from such facilities: *Provided*, That nothing in this sentence shall be construed to affect the authority of the Secretary granting, issuing, or renewing the right-of-way to require reimbursement of reasonable administrative and other costs pursuant to the second sentence of this subsection.”

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-333, div. I, title X, §1032(b), Nov. 12, 1996, 110 Stat. 4239, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to rights-of-way leases held on or after the date of enactment of this Act [Nov. 12, 1996].”

TRANSFER OF FUNCTIONS

See note set out under section 1763 of this title.

§ 1765. Terms and conditions

Each right-of-way shall contain—

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (i) protect Federal property and economic interests;