

§ 3165. Standards for granting certain authorizations

In any case in which there is no applicable law with respect to a transportation or utility system, the head of the Federal agency concerned shall, within four months after the date of filing of any final Environmental Impact Statement, make recommendations, for purposes of section 3166(b) of this title, to grant such authorizations as may be necessary to establish such system, in whole or in part, within the conservation system unit concerned if he determines that—

(1) such system would be compatible with the purposes for which the unit was established; and

(2) there is no economically feasible and prudent alternative route for the system.

(Pub. L. 96-487, title XI, §1105, Dec. 2, 1980, 94 Stat. 2461.)

§ 3166. Agency, Presidential, and Congressional actions

(a) Agency action in cases other than those involving section 3165 or wilderness areas

(1) In the case of any application for the approval of any transportation or utility system to which section 3165 of this title does not apply or that does not occupy, use, or traverse any area within the National Wilderness Preservation System, if, in compliance with section 3164 of this title—

(A) each Federal agency concerned decides to approve each authorization within its jurisdiction with respect to that system, then the system shall be deemed to be approved and each such agency shall promptly issue, in accordance with applicable law, such rights-of-way, permits, licenses, leases, certificates, or other authorizations as are necessary with respect to the establishment of the system; or

(B) one or more Federal agencies decide to disapprove any authorization within its jurisdiction with respect, to that system, then the system shall be deemed to be disapproved and the applicant for the system may appeal the disapproval to the President.

(2) If an applicant appeals under paragraph (1)(B), the President, within four months after receiving the appeal, shall decide whether to approve or deny the application. The President shall approve the application if he finds, after consideration of the factors set forth in section 3164(g)(2) of this title, that such approval would be in the public interest and that (1) such system would be compatible with the purposes for which the unit was established; and (2) there is no economically feasible and prudent alternative route for the system. In making a decision, the President shall consider any environmental impact statement prepared pursuant to section 3164(e) of this title, comments of the public and Federal agencies received during the preparation of such statement, and the findings and recommendations, if any, of each Federal agency that rendered a decision with respect to the application. The President's decision to approve or deny the application shall be published in the Federal Register, together with a statement of the reasons for his determination.

(3) If the President approves an application under paragraph (2), each Federal agency concerned shall promptly issue, in accordance with applicable law, such rights-of-way, permits, licenses, leases, certificates, or other authorizations as are necessary with respect to the establishment of the system

(4) If the President denies an application under paragraph (2), the applicant shall be deemed to have exhausted his administrative remedies and may file suit in any appropriate Federal court to challenge such decision.

(b) Agency action in cases involving section 3165 or wilderness areas

(1) In the case of any application for the approval of a transportation or utility system to which section 3165 of this title applies or that proposes to occupy, use, or traverse any area within the National Wilderness Preservation System, each Federal agency concerned shall promptly submit to the President notification whether the agency tentatively approved or disapproved each authorization within its jurisdiction that applies with respect to the system. Such notification shall be accompanied by a statement of the reasons and findings supporting the agency position.

(2) Within four months after receiving all notification referred to in paragraph (1) and after considering such notifications, any environmental impact statement prepared pursuant to section 3164(e) of this title, and the comments of the public and Federal agencies received during the preparation of such statement, the President shall decide whether or not the application for the system concerned should be approved. If the President denies an application the applicant shall be deemed to have exhausted his administrative remedies, and may file suit in any appropriate Federal court to challenge such decision. If the President approves the application, he shall submit to Congress his recommendation for approval of the transportation or utility system covered, whereupon the Congress shall consider the application as provided in subsection (c). The President shall include with his recommendation to Congress—

(A) the application which is the subject of his recommendation;

(B) a report setting forth in detail the relevant factual background and the reasons for his findings and recommendation;

(C) the joint environmental impact statement;¹

(D) a statement of the conditions and stipulations which would govern the use of the system if approved by the Congress.

(c) Congressional approval

(1) No application for any transportation or utility system with respect to which the President makes a recommendation for approval under subsection (b) shall be approved unless the Senate and House of Representatives approve a resolution described in paragraph (4) within the first period of one hundred and twenty calendar days of continuous session of the Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such recommendation.

¹ So in original. Probably should be followed by "and".

(2) For purposes of this subsection—

(A) continuity of session of the Congress is broken only by an adjournment sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the one-hundred-and-twenty-day calendar period.

(3) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of each House of the Congress respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by paragraph (6) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(4) For the purposes of this subsection, the term “resolution” means a joint resolution, the resolving clause of which is as follows: “That the House of Representatives and Senate approve the application for _____ under title XI of the Alaska National Interest Lands Conservation Act submitted by the President to the Congress on _____, 19 ____”; the first blank space therein to be filled in with the appropriate transportation or utility system and the second blank therein to be filled with the date on which the President submits the application to the House of Representatives and the Senate.

(5) Except as otherwise provided in this subsection, the provisions of section 719f(d) of title 15 shall apply to the consideration of the resolution.

(6) After an application for a transportation or utility system has been approved under subsection (a), the appropriate Federal agencies shall issue appropriate authorizations in accordance with applicable law. In any case in which an application for a transportation or utility system has been approved pursuant to subsection (b), the appropriate Federal agencies shall issue appropriate authorizations in accordance with title V of the Federal Lands Policy Management Act [43 U.S.C. 1761 et seq.] or other applicable law. After issuance pursuant to this subsection, the appropriate land managing agency shall administer the right-of-way in accordance with relevant management authorities of the land managing agency and title V of the Federal Lands Policy Management Act.

(Pub. L. 96-487, title XI, §1106, Dec. 2, 1980, 94 Stat. 2461.)

REFERENCES IN TEXT

The Alaska National Interest Lands Conservation Act, referred to in subsec. (c)(4), is Pub. L. 96-487, Dec. 2, 1980, 94 Stat. 2371. Title XI of the Alaska National Interest Lands Conservation Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

The Federal Land Policy and Management Act, referred to in subsec. (c)(6), probably means the Federal

Land Policy and Management Act of 1976, Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743. Title V of the Federal Land Policy and Management Act of 1976 is classified generally to subchapter V (§1761 et seq.) of chapter 35 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

§ 3167. Rights-of-way terms and conditions

(a) Terms and conditions

The Secretary, or the Secretary of Agriculture where national forest wilderness is involved, shall include in any right-of-way issued pursuant to an application under this subchapter, terms and conditions which shall include, but not be limited to—

(1) requirements to insure that, to the maximum extent feasible, the right-of-way is used in a manner compatible with the purposes for which the affected conservation system unit, national recreation area, or national conservation area was established or is managed;

(2) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land;

(3) requirements to insure that activities in connection with the right-of-way will not violate applicable air and water quality standards and related facility siting standards established pursuant to law;

(4) requirements, including the minimum necessary width, designed to control or prevent—

(A) damage to the environment (including damage to fish and wildlife habitat),

(B) damage to public or private property, and

(C) hazards to public health and safety;

(5) requirements to protect the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes; and

(6) requirements to employ measures to avoid or minimize adverse environmental, social or economic impacts.

(b) Wild and Scenic Rivers System

Any transportation or utility system approved pursuant to this subchapter which occupies, uses, or traverses any area within the boundaries of a unit of the National Wild and Scenic Rivers System shall be subject to such conditions as may be necessary to assure that the stream flow of, and transportation on, such river are not interfered with or impeded, and that the transportation or utility system is located and constructed in an environmentally sound manner.

(c) Pipeline rights-of-way

In the case of a pipeline described in section 185(a) of title 30, a right-of-way issued pursuant to this subchapter shall be issued in the same manner as a right-of-way is granted under section 185 of title 30, and the provisions of subsections (c) through (j), (l) through (q), and (u) through (y) of section 185 of title 30 shall apply to rights-of-way issued pursuant to this subchapter.

(Pub. L. 96-487, title XI, §1107, Dec. 2, 1980, 94 Stat. 2463.)