

§ 3162. Definitions

For purposes of this subchapter—

(1) The term “applicable law” means any law of general applicability (other than this subchapter) under which any Federal department or agency has jurisdiction to grant any authorization (including but not limited to, any right-of-way, permit, license, lease, or certificate) without which a transportation or utility system cannot, in whole or in part, be established or operated.

(2) The term “applicant” means any public or private person, including, but not limited to, any Federal department or agency.

(3) The term “Federal agency” means any Federal department or agency that has any function or duty under applicable law.

(4)(A) The term “transportation or utility system” means any type of system described in subparagraph (B) if any portion of the route of the system will be within any conservation system unit, national recreation area, or national conservation area in the State (and the system is not one that the department or agency having jurisdiction over the unit or area is establishing incident to its management of the unit or area).

(B) The types of systems to which subparagraph (A) applies are as follows:

(i) Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.

(ii) Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.

(iii) Pipelines, slurry and emulsion systems and conveyor belts for the transportation of solid materials.

(iv) Systems for the transmission and distribution of electric energy.

(v) Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication.

(vi) Improved rights-of-way for snow machines, air cushion vehicles, and other all-terrain vehicles.

(vii) Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

Any system described in this subparagraph includes such related structures and facilities (both temporary and permanent) along the route of the system as may be minimally necessary for the construction, operation, and maintenance of the system. Such related structures and facilities shall be described in the application required by section 3164 of this title, and shall be approved or disapproved in accordance with the procedures set forth in this subchapter.

(Pub. L. 96-487, title XI, §1102, Dec. 2, 1980, 94 Stat. 2458.)

§ 3163. Effect on other laws

Except as specifically provided for in this subchapter, applicable law shall apply with respect to the authorization and administration of transportation or utility systems.

(Pub. L. 96-487, title XI, §1103, Dec. 2, 1980, 94 Stat. 2459.)

§ 3164. Procedural requirements**(a) In general**

Notwithstanding any provision of applicable law, no action by any Federal agency under applicable law with respect to the approval or disapproval of the authorization, in whole or in part, of any transportation or utility system shall have any force or effect unless the provisions of this section are complied with.

(b) Consolidated applications

(1) Within one hundred and eighty days after December 2, 1980, the Secretary, the Secretary of Agriculture, and the Secretary of Transportation, in consultation with the heads of other appropriate Federal agencies, shall jointly prescribe and publish a consolidated application form to be used for applying for the approval of each type of transportation or utility system. Each such application form shall be designed to elicit such information as may be necessary to meet the requirements of this subchapter and the applicable law with respect to the type of system concerned.

(2) For purposes of this section, the heads of all appropriate Federal agencies, including the Secretary of Transportation, shall share decisionmaking responsibility in the case of any transportation or utility system described in section 3162(4)(B)(ii), (iii), or (vii) of this title; but with respect to any such system for which he does not have programmatic responsibility, the Secretary of Transportation shall provide to the other Federal agencies concerned such planning and other assistance as may be appropriate.

(c) Filing

Each applicant for the approval of any transportation or utility system shall file on the same day an application with each appropriate Federal agency. The applicant shall utilize the consolidated form prescribed under subsection (b) for the type of transportation or utility system concerned.

(d) Agency notice

(1) Within sixty days after the receipt of an application filed pursuant to subsection (c), the head of each Federal agency with whom the application was filed shall inform the applicant in writing that, on its face—

(A) the application appears to contain the information required by this subchapter and applicable law insofar as that agency is concerned; or

(B) the application does not contain such information.

(2) Any notice provided under paragraph (1)(B) shall specify what additional information the applicant must provide. If the applicant provides additional information, the head of the Federal agency must inform the applicant in writing, within thirty days after receipt of such information, whether the information is sufficient.

(e) Environmental impact statement

The draft of any environmental impact statement required under the National Environ-

mental Policy Act of 1969 [42 U.S.C. 4321 et seq.] in connection with any application filed under this section shall be completed, within nine months from the date of filing, by the head of the Federal agency assigned lead responsibility for the statement. Any such statement shall be jointly prepared by all Federal agencies with which the application was filed under subsection (c). The final environmental impact statement shall be completed within one year from the date of such filing. Such nine-month and one-year periods may be extended for good cause by the Federal agency head assigned lead responsibility for the preparation of such statement if he determines that additional time is necessary for such preparation, notifies the applicant in writing of such determination, and publishes notice of such determination, together with the reasons therefor, in the Federal Register. The provisions of section 1734 of title 43 shall apply to each environmental impact statement under this subsection in the same manner as such provisions apply to applications relating to the public lands referred to in section 1734 of title 43. The Federal agency assigned lead responsibility shall, in conjunction with such other Federal agencies before which the application is pending, hold public hearings in the District of Columbia and an appropriate location in the State on each draft joint environmental impact statement and the views expressed therein shall be considered by all Federal agencies concerned before publication of the final joint environmental impact statement.

(f) Other views

During both the nine-month period, and the succeeding three-month period plus any extension thereof provided for in subsection (e), the heads of the Federal agencies concerned shall solicit and consider the views of other Federal departments and agencies, the Alaska Land Use Council, the State, affected units of local government in the State, and affected corporations formed pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], and, after public notice, shall receive and consider statements and recommendations regarding the application submitted by interested individuals and organizations.

(g) Agency decision

(1) Within four months after the final environmental impact statement is published in accordance with subsection (e) with respect to any transportation or utility system, each Federal agency shall make a decision to approve or disapprove, in accordance with applicable law, each authorization that applies with respect to the system and that is within the jurisdiction of that agency.

(2) The head of each Federal agency, in making a decision referred to in paragraph (1), shall consider, and make detailed findings supported by substantial evidence, with respect to—

(A) the need for, and economic feasibility of, the transportation or utility system;

(B) alternative routes and modes of access, including a determination with respect to whether there is any economically feasible and prudent alternative to the routing of the system through or within a conservation sys-

tem unit, national recreation area, or national conservation area and, if not, whether there are alternative routes or modes which would result in fewer or less severe adverse impacts upon the conservation system unit;

(C) the feasibility and impacts of including different transportation or utility systems in the same area;

(D) short- and long-term social, economic, and environmental impacts of national, State, or local significance, including impacts on fish and wildlife and their habitat, and on rural, traditional lifestyles;

(E) the impacts, if any, on the national security interests of the United States, that may result from approval or denial of the application for a transportation or utility system;

(F) any impacts that would affect the purposes for which the Federal unit or area concerned was established;

(G) measures which should be instituted to avoid or minimize negative impacts; and

(H) the short- and long-term public values which may be adversely affected by approval of the transportation or utility system versus the short- and long-term public benefits which may accrue from such approval.

(Pub. L. 96-487, title XI, §1104, Dec. 2, 1980, 94 Stat. 2459.)

Editorial Notes

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (e), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (f), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 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