

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memo

June 8, 2015

To: All Natural Resource Committee Members

From: Energy and Mineral Resources Subcommittee Republican Staff x5-9297

Subject: Full Committee Markup of H.R. 2295 (MacArthur, NJ), the “*National Energy Security Corridors Act*”

H.R. 2295, To amend the Mineral Leasing Act to require the Secretary of the Interior to identify and designate National Energy Security Corridors for the construction of natural gas pipelines on federal land, and for other purposes.

Summary of the Bill

H.R. 2295 was introduced on May 13, 2015 by Rep. Tom MacArthur (R-NJ) with Rep. Cedric Richmond (D-LA) as an original cosponsor.

The bill provides the Secretary of the Interior with the authority to negotiate rights-of-way for natural gas pipelines on National Park System lands, which are currently exempt under the Mineral Leasing Act. The bill provides the Secretary of the Interior with the authority to designate National Energy Security Corridors on federal lands for the purpose of issuing streamlined permits for rights-of-way on such corridors. The bill encourages state input by allowing Governors to petition the Secretary of the Interior to establish Corridors across federal lands in their state.

Because there is no land disturbance in designating a specific area as a corridor, the bill clarifies that NEPA is not required for the purposes of Corridor designation. However, the bill does not change the fact that NEPA is required when a company applies to actually use the corridor and applies for right-of-way across a designated corridor. This is a common sense way to ensure that NEPA is not applied twice to the same area. Finally, the bill requires the Secretary of the Interior to notify appropriate Congressional committees when any Interior agency does not meet a Federal Energy Regulatory Commission-assigned deadline for federal authorizations on an inter-state pipeline project.

Surging natural gas production has lowered prices for American consumers and increased our national security through less dependence on foreign sources of oil and natural gas. However – there are still regions of our nation that are facing gas prices that are significantly higher than the national average. H.R. 2295 seeks to address obstacles created by the lack of current access from state and private lands across federal lands. These obstacles are constricting markets in the East Coast, where many American families are paying more than the national average to heat their homes with natural gas. The bill authorizes the Secretary of the Interior to issue rights-of-way across all federal lands, including lands managed by the National Park Service (NPS).

The bill also seeks to responsibly plan for future needs by allowing the Secretary to solicit state and local input to designate National Energy Security Corridors on federal lands – and expedite rights of way across such corridors.

Background

Under the Mineral Leasing Act (MLA), the U.S. Department of the Interior has the authority to issue permits and right-of-ways for the construction of natural gas pipelines across federal land. However, in the MLA the definition of “federal lands” explicitly exempts lands managed by the National Park System (NPS)¹. Separate statutes have been enacted to authorize the Secretary of the Interior to issue approval of rights-of-way for electrical and telephone lines, water pipes and pipelines, mining and timber facilities, and canals and ditches.

Because natural gas pipelines are not explicitly listed in the corresponding statutes, the Department of Interior’s conservative interpretation is that these statutes do not authorize the Department to issue permits and right-of-ways for natural gas pipelines across lands managed by the NPS. This is extremely troubling, given the NPS manages the National Trails System, including the Appalachian Trail, which is over 2,000 miles long (1,090 of which is on federal lands) and spans 17 states. For this reason, a company is forced to seek an Act of Congress in order to obtain legal right of way approval for a natural gas pipeline on NPS lands. To date, five natural gas pipelines have received Congressional approval. These five separate bills have taken between eight and sixteen months to be enacted. This significantly prolongs the process.

The shale gas revolution in the United States has fundamentally changed the energy dynamic in our country. Increased natural gas production on state and private lands has not only driven our nation to a new status as the global energy leader, but has also highlighted a significant need for midstream infrastructure investments to ensure that natural gas production is

¹ 30 U.S. Code §185(b)(1)

capable of reaching areas that are currently underserved. The omission of National Park System land from the Mineral Leasing Act poses significant obstacle to these growing infrastructure needs. Additionally, the complexities in obtaining right-of-way across all federal lands have the potential to constrict the flow of inexpensive, domestically-produced natural gas from reaching areas of our nation, such as the Northeast region, that are currently underserved and facing higher gas prices than the national average.

In recognition of the fact that federal lands are currently an obstacle to needed infrastructure growth, this legislation seeks to plan for a more secure energy future in our country by providing the National Park Service with authority to grant rights of way across NPS lands. Additionally, the bill provides the Secretary of the Interior with the authority to designate certain parcels of federal lands as “National Energy Security Corridors” upon which rights-of-way maybe granted and permitting for such rights-of-way may be streamlined.

Cost

While a CBO score is not available at this time, this legislation would not affect direct spending. The bill requires the establishment of 10 corridors in two years which might require additional personnel. However, testimony provided by a Department of the Interior witness at the legislative hearing claimed that they already have much of this authority. As such, no additional personnel should be required.

Administration Position

The U.S. Department of the Interior opposes providing the National Park Service with the authority to negotiate and issue rights-of-way across National Park System lands.

Ramseyer (Showing Existing Law as Amended by the Bill)

§185. Rights-of-way for pipelines through Federal lands

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) National Energy Security Corridors-

(1) DESIGNATION- In addition to other authorities under this section, the Secretary shall--

`(A) identify and designate suitable Federal lands as National Energy Security Corridors (in this subsection referred to as a `Corridor'), which shall be used for natural gas transmission facilities; and

`(B) incorporate such Corridors upon designation into the relevant agency land use and resource management plans or equivalent plans.

`(2) CONSIDERATIONS- In evaluating Federal lands for designation as a National Energy Security Corridor, the Secretary shall--

`(A) employ the principle of multiple use to ensure route decisions balance national energy security needs with existing land use principles;

`(B) seek input from other Federal counterparts, State, local, and tribal governments, and affected utility and pipeline industries to determine the best suitable, most cost-effective, and commercially viable acreage for natural gas transmission facilities;

`(C) focus on transmission routes that improve domestic energy security through increasing reliability, relieving congestion, reducing natural gas prices, and meeting growing demand for natural gas; and

`(D) take into account technological innovations that reduce the need for surface disturbance.

`(3) PROCEDURES- The Secretary shall establish procedures to expedite and approve applications for rights-of-way for natural gas pipelines across National Energy Security Corridors, that--

`(A) ensure a transparent process for review of applications for rights-of-way on such corridors;

`(B) require an approval time of not more than 1 year after the date of receipt of an application for a right-of-way; and

`(C) require, upon receipt of such an application, notice to the applicant of a predictable timeline for consideration of the application, that clearly delineates important milestones in the process of such consideration.

`(4) STATE INPUT-

`(A) REQUESTS AUTHORIZED- The Governor of a State may submit a request to the Secretary of the Interior to designate a Corridor on Federal land in that State.

`(B) CONSIDERATION OF REQUESTS- After receiving such a request, the Secretary shall respond in writing, within 30 days--

`(i) acknowledging receipt of the request; and

`(ii) setting forth a timeline in which the Secretary shall grant, deny, or modify such request and state the reasons for doing so.

`(5) SPATIAL DISTRIBUTION OF CORRIDORS- In implementing this subsection, the Secretary shall coordinate with other Federal Departments to--

`(A) minimize the proliferation of duplicative natural gas pipeline rights-of-way on Federal lands where feasible;

`(B) ensure Corridors can connect effectively across Federal lands; and

`(C) utilize input from utility and pipeline industries submitting applications for rights-of-way to site corridors in economically feasible areas that reduce impacts, to the extent practicable, on local communities.

`(6) NOT A MAJOR FEDERAL ACTION- Designation of a Corridor under this subsection, and incorporation of Corridors into agency plans under paragraph (1)(B), shall not be treated as a

major Federal action for purpose of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(7) NO LIMIT ON NUMBER OR LENGTH OF CORRIDORS- Nothing in this subsection limits the number or physical dimensions of Corridors that the Secretary may designate under this subsection.

(8) OTHER AUTHORITY NOT AFFECTED- Nothing in this subsection affects the authority of the Secretary to issue rights-of-way on Federal land that is not located in a Corridor designated under this subsection.

(b) Applications Received Before Designation of Corridors- Any application for a right-of-way under section 28 of the Mineral Leasing Act (30 U.S.C. 185) that is received by the Secretary of the Interior before designation of National Energy Security Corridors under the amendment made by subsection (a) of this section shall be reviewed and acted upon independently by the Secretary without regard to the process for such designation.

(c) Deadline- Within 2 years after the date of the enactment of this Act, the Secretary of the Interior shall designate at least 10 National Energy Security Corridors under the amendment made by subsection (a) in contiguous States referred to in section 368(b) of the Energy Policy Act of 2005 (42 U.S.C. 15926(b)).

(c) Inter-agency coordination

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) Width limitations

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head 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, roads, airstrips and campsites and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) Temporary permits

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(f) Regulatory authority

Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.

(g) Pipeline safety

The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

(h) Environmental protection

(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) [42 U.S.C. 4332(2)(C)] or any other provision of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section 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 or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect 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. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

(i) Disclosure

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to 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 per centum 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.

(j) Technical and financial capability

The Secretary or agency head shall 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 project for which the right-of-way or permit is requested in accordance with the requirements of this section.

(k) Public hearings

The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

(l) Reimbursement of costs

The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

(m) Bonding

Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head 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 of the Secretary or agency head.

(n) Duration of grant

Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o) Suspension or termination of right-of-way

(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to [section 554 of title 5](#), the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) Statutes

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section 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.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, 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)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act [15 U.S.C. 717 et seq.] 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.

(B) 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 Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without

discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head 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: (A) 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; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Exports of Alaskan North Slope oil

(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this chapter or any other provision of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to [section 1652 of title 43](#), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of November 28, 1995. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider-

- (A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;
- (B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of November 28, 1995; and
- (C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant

to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to [section 1652 of title 43](#) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with [section 50501 of title 46](#)).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act ([50 U.S.C. 1701 et seq.](#)), the National Emergencies Act ([50 U.S.C. 1601 et seq.](#)), or Part B of title II of the Energy Policy and Conservation Act ([42 U.S.C. 6271–76](#)) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to [sections 551 and 553 through 559 of title 5](#).

(t) Existing rights-of-way

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to [section 102\(2\)\(C\) of the National Environmental Policy Act of 1970 \(Public Law 90–190; 42 U.S.C. 4321\)](#).¹

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, 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 limitations and licensing requirements of the Export Administration Act of 1979 ([50 U.S.C. App. 2401](#) and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of

receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

(w) Reports

(1) The Secretary and other appropriate agency heads shall report to 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 annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head 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 a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to the terms and conditions he proposes to impose, has been submitted to such committees.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(x) Liability

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) 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.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.

(Feb. 25, 1920, ch. 85, §28, 41 Stat. 449; Aug. 21, 1935, ch. 599, §1, 49 Stat. 678; Aug. 12, 1953, ch. 408, 67 Stat. 557 ; Pub. L. 93–153, title I, §101, Nov. 16, 1973, 87 Stat. 576 ; Pub. L. 95–91, title III, §§301(b), 306, title IV, §402(a), (b), title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 578 , 581, 583, 584, 606, 607; Pub. L. 99–64, title I, §123(b), July 12, 1985, 99 Stat. 156 ; Pub. L. 101–475, §1, Oct. 30, 1990, 104 Stat. 1102 ; Pub. L. 103–437, §11(a)(1), Nov. 2, 1994, 108 Stat. 4589 ; Pub. L. 104–58, title II, §201, Nov. 28, 1995, 109 Stat. 560 ; Pub. L. 104–66, title I, §1121(k), Dec. 21, 1995, 109 Stat. 724 .)

(z) Definitions

~~(1) For the purposes of this section "Federal lands" means~~ (1) For the purposes of this section "Federal lands"--

~~(A) except as provided in subparagraph (B), means~~

all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(B) for purposes of granting an application for a natural gas pipeline right-of-way, means all lands owned by the United States except--

(i) such lands held in trust for an Indian or Indian tribe; and

(ii) lands on the Outer Continental Shelf.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.