

## B.2 FEDERAL REGULATIONS: TERMS AND CONDITIONS

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### CODE OF FEDERAL REGULATIONS (CFR)

These (right-of-way, permits, leases and/or unit operations -APDs) will be subject to all applicable regulations contained in 43 CFR 2800, 2880, 3100 and 30 CFR 221 as they now exist or as they may hereafter be revised. The titles of the specific regulatory sections are as follows:

#### 43 CFR

- 2800 - Rights-of-Way, General.
- 2801 - Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits.
- 2880 - Oil and Natural Gas Pipelines and Related Facilities, General.
- 2881 - Terms and Conditions of Rights-of-Way Grants, and Temporary Use Permits.
- 3100 - Oil and Gas Leasing.

#### 30 CFR

- 221 - Oil and Gas Operating Regulations.

The holder/operator will abide by these regulations and is fully responsible for the action of his/her subcontractors. The subject regulation terms and conditions are listed in part for the benefit of the reviewing public.

#### 43 CFR

##### PART 2800 - RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800 - Rights-of-Way, General.

Subpart 2801 - Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits.

2801.1 Nature of Interest.

2801.101 Nature of Right-of-Way Interest.

- A. All rights in public lands subject to be a right-of-way grant or temporary use permit not expressly granted are retained and may be exercised by the United States. These rights include, but are not limited to:

1. A continuing right of access onto the public lands covered by the right-of-way grant or temporary use permit, and upon reasonable notice to the holder, access and entry to any facility constructed on the right-of-way or permit area.
  2. The right to require common use of the right-of-way and the right to authorize use of the right-of-way for compatible uses (including the subsurface and air space).
- B. A right-of-way grant or temporary use permit may be used only for the purpose specified in the authorization. The holder may allow others to use the land as his/her agent in exercising the rights granted.
  - C. All right-of-way grants and temporary use permits shall be issued subject to valid existing rights.
  - D. A right-of-way grant or temporary use permit shall not give or authorize the holder to take from the public lands any mineral or vegetative material, including timber, without securing authorization under the Materials Act (30 U.S.C. 60 et seq.), and paying in advance the fair market value of the material cut, removed, used, or destroyed. However, common varieties of stone and soil necessarily removed in the construction of a project may be used elsewhere along the same right-of-way or permit area in the construction of the project without additional authorization and payment.
  - E. A holder of a right-of-way grant or temporary use permit may assign a grant or permit to another, provided the holder obtains the written approval of the authorized officer.
  - F. The holder of a right-of-way grant may authorize other parties to use a facility constructed, except for roads, on the right-of-way with the prior written consent of the authorized officer and charge for such use. In any such arrangement, the holder shall continue to be responsible for compliance with all conditions of the grant. This paragraph does not limit in any way the authority of the authorized officer to issue additional right-of-way grants or temporary use permits for compatible uses on or adjacent to the right-of-way, nor does it authorize the holder to impose charges for the use of lands made subject to such additional right-of-way grants or temporary use permits.
  - I. Each grant issued for a term of 20 years or more shall contain a provision requiring periodic review of the grant at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.
  - J. Each grant shall have a provision stating whether it is renewable or not and if renewable, the terms and conditions applicable to the renewal.

- K. Each grant shall not only comply with the regulations of this part, but also, comply with the provisions of any other applicable law and implementing regulations as appropriate.

#### 2801.1-2 Reciprocal Grants

When the authorized officer determines from an analysis of land use plans or other management decisions that a right-of-way for an access road is or shall be needed by the United States across lands directly or indirectly owned or controlled by an applicant for a right-of-way grant, he or she shall, if it is determined to be in the public interest, require the applicant, as a condition to receiving a right-of-way grant, to grant the United States an equivalent right-of-way that is adequate in duration and rights.

#### 2801.2 Terms and Conditions of Interest Granted

- A. An applicant by accepting a right-of-way grant, temporary use permit, assignment, amendment or renewal agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the secretary may waive in a particular case:
1. To the extent possible, all state and federal laws applicable to the authorized use and such additional state and federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit.
  2. That in the construction, operation, maintenance, and termination of the authorized use, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex, or national origin and all subcontracts shall include an identical provision.
  3. To rebuild and repair roads, fences, and established trails that may be destroyed or damaged by construction, operation, or maintenance of the project and to build and maintain suitable crossings for existing roads and significant trails that intersect the project.
  4. To do everything reasonable within his or her power, both independently and upon request of the authorized office, to prevent and suppress fires on or in the immediate vicinity of the right-of-way or permit area. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

- B. All right-of-way grants and temporary use permits issued, renewed, amended or assigned under these regulations shall contain such terms, conditions, and stipulations as may be required by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:
1. Requirements for restoration, revegetation, and curtailment of erosion of the surface of the land, or any other rehabilitation measure determined necessary.
  2. Requirements to ensure that activities in connection with the grant or permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal or State law.
  3. Requirements designed to control or prevent damage to scenic, aesthetic, cultural, and environmental values (including damage to fish and wildlife habitat), damage to federal property and hazards to public health and safety.
  4. Requirements to protect the interests of individuals living in the general area who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.
  5. Requirements to ensure that the facilities to be constructed, used, and operated on the prescribed location are maintained and operated in a manner consistent with the grant or permit.
  6. Requirements for compliance with State standards for public health and safety, environmental protection and siting, construction, operation, and maintenance when those standards are more stringent than Federal standards.

#### 2801.8 Unauthorized Occupancy

Any occupancy or use of the public lands, other than casual use as set forth in 2800.0-5(m) and 2802.1 (d) of this title, without authorization shall be considered a trespass and shall subject the trespasser to prosecution and liability for the trespass. This provision applies to all unauthorized use of the public lands and precludes the issuance of a right-of-way grant of temporary use permit until the trespass case has been settled. Once the trespass case has been settled, a new grant or permit may be made by the authorized officer in accordance with the procedures set forth in this part.

PART 2880 - RIGHT-OF-WAY UNDER THE MINERAL LEASING ACT

Subpart 2880 - Oil and Natural Gas Pipelines and Related Facilities,  
General.

Subpart 2881 - Terms and Conditions of Rights-of-Way Grants and Temporary  
Use Permits.

2881.1 Nature of Interest

2881.1-1 Nature of Right-of-Way Interest

- A. The United States retains a right to use a right-of-way and temporary use permit area or authorize the use of it to others in any manner not inconsistent with pipeline construction, operation, maintenance, and termination. The holder of a right-of-way grant or temporary use permit has no right to any of the product of the land including, but not limited to, timber, forage, mineral, and animal resources. The holder may not allow the use of a right-of-way or temporary use permit area by others except its contractors, subcontractors, employees, agents or servants for purposes of construction, operation, maintenance, or termination of the pipeline.
- B. A holder shall not use a right-of-way and temporary use permit area for any purpose other than for the construction, operation, maintenance, and termination of the pipeline specified in the holders right-of-way grant. A holder shall not locate or construct any other pipelines, including looping lines, or other improvements within a right-of-way without first securing appropriate authorization therefore.
- C. The width of a right-of-way shall not exceed 50 feet, plus the ground occupied by the pipeline (that is, the pipe and related facilities) unless the authorized officer finds and records the reasons for his finding, that a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety.
- D. An applicant may apply to the authorized officer for a wider right-of-way in limited areas if necessary.
  - 1. For the operation and maintenance of the project after construction.
  - 2. To protect the environment.
  - 3. To provide for the public safety. If the authorized officer finds that the additional width is necessary for one of the above reasons, he may authorize a wider width. Such authorization shall include a written report recording the reasons why the additional width is necessary.

- G. No purported transfer of an interest in a right-of-way grant, a right-of-way, or any portion of a pipeline system located within a right-of-way shall be valid without the prior written approval of the authorized officer. Applications for such approval shall be directed to the authorized officer. A transferee shall meet all the requirements of an original pipeline right-of-way. Grantee is bound by and shall assume all of the transferor's responsibility to the United States with respect to the transferred interest and shall agree to be bound by all terms of any outstanding right-of-way grant or temporary use permit. Applications for a transfer of interest shall be accompanied by a nonrefundable fee of \$50.

#### 2881.1-2 Nature of Temporary Use Permit Interest

- A. A temporary use permit does not grant any interest in land and is revocable at will by the authorized officer.
- B. The area covered by a temporary use permit shall be no greater than is necessary to accommodate the authorized use or to protect the environment or provide for public safety.
- D. A temporary use permit may be renewed at the discretion of the authorized officer, but the permittee has no right of renewal. The authorized officer may modify the terms and conditions of the temporary use permit at the time of renewal.
- E. A temporary use permit may be assigned at the discretion of the authorized officer, provided the use for which the permit was issued continues.

#### 2881.1-3 Reservation of Rights to the United States.

All rights in Federal lands subject to a right-of-way grant or temporary use permit not expressly granted are retained by the United States. These rights include, but are not limited to:

- A. A continuing right of access across right-of-way and temporary use permit areas to all Federal lands (including the subsurface and air space).
- B. A continuing right of physical entry to any part of the pipeline system for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any law or regulation.
- C. The right to make, issue, or grant right-of-way grants, temporary use permits, easements, leases, licenses, contracts, patents, permits, and other authorizations to or with third parties for compatible uses on, under, above, or adjacent to the federal lands subject to a right-of-way grant or temporary use permit.

## 2881.2 Terms and Conditions of Interest Granted.

- A. An applicant, by accepting a right-of-way grant or a temporary use permit, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case.
1. To the extent practicable, all state and federal laws applicable to the pipeline system construction, operation, and maintenance which is authorized and all such additional state and federal law, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit.
  2. That the pipeline and related facilities be subject to the express covenant that they will be modified, adapted, or discontinued within the provisions of the Act and without liability to the United States, if found by the Secretary that the use of the land for pipeline and related facility purposes conflicts with any future proposed use or occupancy of the land when it is determined that the proposal will better serve the national interest.
  3. That in the construction, operation, and maintenance of the pipeline and related facilities, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex, or national origin and all subcontracts shall include an identical provision.
  4. To build and repair roads, fences, and trails that may be destroyed or damaged by construction, operation, or maintenance of the pipeline and related facilities and to build and maintain suitable crossings for roads and trails that intersect the right-of-way and related facilities.
  5. To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or near the right-of-way and related facilities. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.
- B. All right-of-way grants and temporary use permits issued, renewed, or amended under these regulations shall contain such terms, conditions, and stipulations as may be prescribed by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:
1. Requirements for restoration, revegetation, and curtailment of erosion of the surface of the land.

2. Requirements to insure that activities in connection with the right-of-way grant or temporary use permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal and State law.
  3. Requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat), damage to public or private property, and hazards to public health and safety.
  4. Requirements to protect the interests of individuals living in the general vicinity of the right-of-way or temporary use permit area who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.
- C. Right-of-way grants or temporary use permits issued, renewed or amended under this title shall include requirements which comply with applicable Federal and State law that will protect the safety and health of pipeline workers and the general public, including, but not limited to protection against the sudden rupture and slow degradation of the pipeline. Applicants and holders shall design, construct, operate, and maintain all facilities in accordance with applicable Federal and State law governing pipelines and pipeline construction.

### 2881.3 Unauthorized Occupancy

No holder of a right-of-way grant or temporary use permit shall use or knowingly allow any other person to use the right-of-way or temporary use permit area for any purpose not authorized by the right-of-way grant or temporary use permit. Any person occupying or using Federal lands without authorization may be subject to prosecution under applicable law.

### Subpart 2883 - Administration of Rights Granted

#### § 2883.1-4 Liability.

(a) Except as provided in paragraph (f) of this section holders shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standard shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed \$1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction, in accordance with the law of the jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the use and occupancy of right-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damage or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by a holder.

(h) Except as otherwise expressly provided in this section, the provisions in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, they shall be jointly and severally liable under this section.

## PART 3100 - OIL AND GAS LEASING

### Subpart 3105 - Cooperative Conservation Provisions

#### 3105.4-1 Rights-of-Way

Rights-of-way for oil and gas pipelines may be granted as provided for in Group 2800 of this chapter.

### Subpart 3109 - Surface Management Requirements

#### 3109.2-1 Bureau of Land Management Stipulations

The Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any permit or lease. (See Montana Power Decision A 30310 December 3, 1965, I.M. No. 85-500 December 23, 1966).

## 30 CFR

### PART 221 - OIL AND GAS OPERATING REGULATIONS

#### Part 221.1 - Purpose and Scope

The regulations in this part govern operations associated with the exploration, development, and production of oil and gas deposits from leases issued or approved by the United States, restricted Indian land leases, and those under the jurisdiction of the Secretary of the Interior by law or administrative arrangement, including the National Petroleum Reserve in Alaska. They are intended to promote the orderly and efficient exploration, development, and production of oil and gas.

#### Part 221.20 General Requirements

The lessee shall comply with applicable laws and regulations; with the lease terms, Onshore Oil and Gas Orders, NTLs; and with other orders and instructions of the supervisor. These include, but are not limited to, conducting all operations in a manner which ensures the proper handling, measurement, disposition, and site security of leasehold production; which protects other natural resources and environmental quality; which protects life and property; and which results in maximum ultimate economic recovery of oil and gas with minimum waste and with minimum adverse effect on ultimate recovery of other mineral resources.

#### Part 221.30 Environmental Obligations

- A. The lessee shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality. In that respect, the lessee shall comply with the pertinent orders of the Supervisor and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan. Before approving any Application for Permit to Drill submitted pursuant to Part 221.23, or other plan requiring environmental review, the Supervisor shall prepare an environmental record of review or an environmental assessment, as appropriate. These environmental documents will be used in

determining whether or not an environmental impact statement is required and in determining any appropriate terms and conditions of approval of the submitted plan.

- B. The lessee shall exercise due care and diligence to assure that leasehold operations do not result in undue damage to surface or subsurface resources or surface improvements. All produced water must be disposed of by injection into the subsurface, by approved pits, or by other methods which have been approved by the Supervisor. Upon the conclusion of operations, the lessee shall restore or rehabilitate the disturbed surface in a manner approved or reasonably prescribed by the Supervisor.
- C. All spills or leakages of oil, gas, produced water, toxic liquids, or waste materials, blowouts, fires, personal injuries, and fatalities shall be reported by the lessee in accordance with these regulations and as prescribed in applicable order or notices. The lessee shall exercise due diligence in taking necessary measures, subject to approval by the Supervisor, to control and remove pollutants and to extinguish fires. A lessee's compliance with the requirements of the regulations in this part shall not relieve the lessee of the obligation to comply with other applicable laws and regulations.
- D. When reasonably required by the Supervisor, a contingency plan shall be submitted describing procedures to be implemented to protect life, property, and the environment.
- E. The lessee's liability for damages to third parties shall be governed by applicable law.

#### Part 221.31 Safety Precautions

The lessee shall perform operations and maintain equipment in a safe and workmanlike manner. The lessee shall take all precautions necessary to provide adequate protection for the health and safety of life and the protection of property. Compliance with health and safety requirements prescribed by the Supervisor shall not relieve the lessee of the responsibility for compliance with other pertinent health and safety requirements under applicable laws or regulations.