APPENDIX H
PROCEDURE FOR ALTERNATIVE DISPUTE RESOLUTION

1. General. The United States Court of Federal Claims recognizes the value of encouraging the use of alternative dispute resolution (ADR) in appropriate cases.

(a) Goal. The goal of ADR is to aid parties' efforts in negotiating a settlement of all or part of the dispute.

(b) Techniques. The most commonly requested technique is mediation conducted by a settlement judge. Other techniques also available upon request include early neutral evaluation, mini-trials, outcome prediction assistance, and non-binding arbitration. Additionally, parties may select a private sector ADR provider to serve as a private third-party neutral.

In addition to these guidelines, the Office of Special Masters has established its own ADR guidelines. *See* Guidelines for Practice under the National Vaccine Injury Compensation Program (available on the court's website at www.uscfc.uscourts.gov).

2. Terms.

(a) Assigned Judge. The judge regularly assigned to the case.

(b) Settlement Judge. A judge of the court, other than the assigned judge. Appointment of a settlement judge permits parties to engage in a confidential, frank, in-depth discussion of the strengths and weaknesses of each party's case before a judicial officer without the constraints that might exist before the assigned judge. A settlement judge may act both as a mediator and as a neutral evaluator. Use of a settlement judge permits parties to gain the benefit of a judicial perspective without jeopardizing their ability to gain a resolution of their case by the assigned judge should settlement efforts fail.

(c) Private Third-Party Neutral. Parties may select any qualified individual to serve as a third-party neutral.

(d) Mediation. A flexible and voluntary dispute resolution procedure in which a settlement judge or a third-party neutral, acting as a mediator, facilitates negotiations to reach a mutually agreeable resolution. The mediation process involves one or more sessions in which counsel, litigants, and the mediator participate and may continue over a period of time. The mediator can help the parties improve communication, clarify interests, and probe the strengths and weaknesses of their respective positions. The mediator can also identify areas of agreement and help generate options that lead to settlement.

(e) Early Neutral Evaluation. Early in the litigation—preferably before or shortly after the filing of the Joint Preliminary Status Report—the assigned judge may suggest that the case is appropriate for assignment to a settlement judge knowledgeable in the subject matter of the litigation to assess the strengths and weaknesses of the parties' positions. In this manner, the parties may gain a more realistic view of their prospects for success, thus narrowing the issues and facilitating settlement. If the parties agree to early neutral evaluation, a settlement judge will be assigned or the parties may elect to secure their own private third-party neutral to conduct an early evaluation.

(f) Mini-Trials. A flexible, abbreviated procedure in which parties present their case, or a portion of it, to a settlement judge or third-party neutral.

(g) Outcome Prediction Assistance. A procedure by which a settlement judge or third-party neutral reviews the facts and law in dispute and informs the parties how he or she believes the litigation would be resolved.

(h) Non-Binding Arbitration. A procedure by which a settlement judge or third-party neutral, acting as an arbitrator, makes a determination of the rights of the parties to the dispute, but the determination is not binding upon the parties, and no enforceable arbitration award is issued.

3. Procedures. RCFC 16 and Appendix A, paragraphs 3, 4(f), and 4(i), set out the parties' obligations with respect to consideration of ADR. At any point in the litigation, however, the parties may notify the assigned judge of their desire to pursue ADR. There is no single format for ADR.

Any procedures agreed to by the parties and adopted by the settlement judge or third-party neutral may be used. Certain basic ground rules will be observed, however, as follows:

(a) ADR is voluntary. A party's good-faith determination that ADR is not appropriate in a particular case should be respected by other parties and by the court.

(b) If the parties and the assigned judge agree that ADR would be beneficial, the assigned judge will issue an order directing the clerk of court as follows:

(1) to assign the case to an ADR judge who serves on the court's ADR Committee upon the agreement of the parties and both judges; or

(2) to refer the case to a third-party neutral upon whom the parties have agreed, in which case the order will additionally provide contact information for the third-party neutral.

(c) The settlement judge or third-party neutral and the parties will develop a written memorandum of understanding at the outset of the settlement process, to be executed by the settlement judge or neutral, outlining the terms of the settlement process, including an indication of assent to confidentiality by all parties.

(d) All scheduling orders issued by the settlement judge or third-party neutral and a notice of each conference or hearing conducted within the scope of the ADR proceeding will be entered on the case docket. There will be no transcript of any ADR proceeding. All ADR proceedings, including documents generated solely for a proceeding and communications within the scope of a proceeding, are confidential and will not be provided to a judge, counsel, or party not a part of the proceeding.

(e) In the event a party or counsel fails to maintain the confidentiality of any documents generated solely for the ADR proceeding or any communications made within the scope of the proceeding, the assigned judge may issue an order for sanctions pursuant to RCFC 16(f)(2). Documents and information that are otherwise discoverable or admissible do not lose that characteristic merely because of their use in the ADR proceedings.

(f) Participation in ADR constitutes agreement by the parties not to subpoena or seek in any way the testimony of the settlement judge or third-party neutral in any subsequent proceeding of any kind.

(g) During the ADR process, the matter will remain on the docket of the assigned judge and the assigned judge will require the parties to file periodic reports with the assigned judge indicating the status of the ADR proceeding.

(h) At the conclusion of the ADR process, the settlement judge or third-party neutral will issue an order concluding the ADR proceeding and indicating whether a proposed settlement has been reached in whole or in part. The details of the ADR proceeding will remain confidential between the parties and the settlement judge or third-party neutral.

(i) Within 14 days after the entry of judgment following an ADR settlement, the clerk may request the parties to respond to a confidential survey designed to elicit quantitative data to assist the court with its statistical reporting requirements on the use of ADR in the court.

(j) Case Filed Under 28 U.S.C. § 1498. For most cases filed under 28 U.S.C. § 1498, the assigned judge may suggest ADR at any time—including following the court's claim construction decision. After claim construction, unless the parties agreed to ADR earlier in the case, the parties will meet with the assigned judge to determine if ADR would be appropriate in resolving (1) whether there has been an infringement, and (2) if so, what damages, if any, are owed. To help minimize costs, the court may determine what discovery is needed. The procedures enumerated herein may be modified as appropriate at the discretion of the settlement judge or third-party neutral.

(1) Patent Cases.

(A) The following core information should be disclosed by plaintiff in an ADR proceeding involving a claim of patent infringement:

(i) for ADR proceedings in which liability is an issue, preliminary identification of accused devices, systems, or processes, and preliminary infringement contentions in the form of a claim chart, showing how plaintiff contends claims infringe on the accused devices, systems, or processes; and

(ii) a statement of plaintiff's contentions regarding the priority date, and for any patents governed by the patent act predating the America Invents Act of 2011, plaintiff's contentions, if any, regarding the date the invention was conceived and reduced to practice. If plaintiff claims an earlier conception date, it should proffer documents to support conception and reduction to practice.

(B) The following core information should be disclosed by defendant in an ADR proceeding involving a patent:

(i) a listing of contracts awarded, including use or manufacture of the accused devices, systems, or processes and the amount of the awarded contract. Where possible, the contracts should be produced; and

(ii) a preliminary identification of defendant's invalidity contentions, including prior art references.

(2) Copyright Cases.

(A) The following core information should be disclosed by the parties in any ADR proceeding involving a copyright:

(i) a copy of a valid copyright registration and deposit, together with any correspondence with the Copyright Office; and

(ii) when compensatory damages are sought, a statement of the estimated amount of damages claimed.

(B) The following core information should be disclosed by defendant in any ADR proceeding involving a copyright:

(i) identification of all uses of the subject work by defendant, including any contractual agreements; and

(ii) a preliminary identification of any invalidity and/or fair use contentions.

Rules Committee Notes

2002 Revision

Appendix H formerly appeared as General Order No. 13, dated April 15, 1987, and later amended through Amended General Order No. 13, dated November 8, 1996. The adoption of the ADR process as an appendix to the rules reflects the court's recognition of the increasing usefulness of ADR procedures in the resolution of claims against the United States.

2016 Amendment

Appendix H has been amended to more comprehensively describe the range of available ADR techniques and to outline the administrative procedures involved in the initiation and pursuit of ADR proceedings. In particular, Appendix H now recognizes that referral of a case to ADR will proceed pursuant to an agreement between the parties and the assigned judge that names either a consenting judge selected from the court's ADR Committee to serve as the ADR judge or a qualified individual to serve as a third-party neutral. Additionally, Appendix H continues the practice of restricting filings in ADR proceedings to the orders and notices issued by the ADR judge or third-party neutral. In accordance with this procedure, the written submissions of the parties are not filed. Further, Appendix H stresses the need to maintain confidentiality of all ADR disclosures, permits the imposition of sanctions for the failure to maintain that confidentiality, and notes that documents otherwise discoverable do not lose that character because of their use in ADR. Finally, in regard to patent and copyright cases, Appendix H identifies the core information parties should disclose, including facts and

contentions, to meaningfully engage the ADR process.

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 61. Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs (Refs & Annos)
Subchapter III. Uniform Real Property Acquisition Policy

42 U.S.C.A. § 4654

§ 4654. Litigation expenses

Currentness

(a) Judgment for owner or abandonment of proceedings

The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if--

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Payment

Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was [1] instituted.

(c) Claims against United States

The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of Title 28, awarding compensation for the taking of property by a Federal agency, or the Attorney General effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

CREDIT(S)

(Pub.L. 91-646, Title III, § 304, Jan. 2, 1971, 84 Stat. 1906.)

Notes of Decisions (85)

Footnotes

1 So in original. Probably should be “were”.

42 U.S.C.A. § 4654, 42 USCA § 4654

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 16. Conservation
Chapter 27. National Trails System (Refs & Annos)

16 U.S.C.A. § 1241

§ 1241. Congressional statement of policy and declaration of purpose

Currentness

(a) Considerations for determining establishment of trails

In order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation, trails should be established (i) primarily, near the urban areas of the Nation, and (ii) secondarily, within scenic areas and along historic travel routes of the Nation, which are often more remotely located.

(b) Initial components

The purpose of this chapter is to provide the means for attaining these objectives by instituting a national system of recreation, scenic and historic trails, by designating the Appalachian Trail and the Pacific Crest Trail as the initial components of that system, and by prescribing the methods by which, and standards according to which, additional components may be added to the system.

(c) Volunteer citizen involvement

The Congress recognizes the valuable contributions that volunteers and private, nonprofit trail groups have made to the development and maintenance of the Nation's trails. In recognition of these contributions, it is further the purpose of this chapter to encourage and assist volunteer citizen involvement in the planning, development, maintenance, and management, where appropriate, of trails.

CREDIT(S)

(Pub.L. 90-543, § 2, Oct. 2, 1968, 82 Stat. 919; Pub.L. 95-625, Title V, § 551(1)-(3), Nov. 10, 1978, 92 Stat. 3511; Pub.L. 98-11, Title II, § 202, Mar. 28, 1983, 97 Stat. 42.)

EXECUTIVE ORDERS

EXECUTIVE ORDER NO. 13195

<Jan. 18, 2001, 66 F.R. 7391>

TRAILS FOR AMERICA IN THE 21ST CENTURY

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of purposes of the National Trails System Act of 1968, as amended (16 U.S.C. 1241-1251), the Transportation Equity Act for the 21st Century (Public Law 105-178), and other pertinent statutes, and to achieve the common goal of better establishing and operating America's national system of trails, it is hereby ordered as follows:

Section 1. Federal Agency Duties. Federal agencies will, to the extent permitted by law and where practicable--and in cooperation with Tribes, States, local governments, and interested citizen groups--protect, connect, promote, and assist trails of all types throughout the United States. This will be accomplished by:

(a) Providing trail opportunities of all types, with minimum adverse impacts and maximum benefits for natural, cultural, and community resources;

(b) Protecting the trail corridors associated with national scenic trails and the high priority potential sites and segments of national historic trails to the degrees necessary to ensure that the values for which each trail was established remain intact;

(c) Coordinating maps and data for the components of the national trails system and Millennium Trails network to ensure that these trails are connected into a national system and that they benefit from appropriate national programs;

(d) Promoting and registering National Recreation Trails, as authorized in the National Trails System Act, by incorporating where possible the commitments and partners active with Millennium Trails;

(e) Participating in a National Trails Day the first Saturday of June each year, coordinating Federal events with the National Trails Day's sponsoring organization, the American Hiking Society;

(f) Familiarizing Federal agencies that are active in tourism and travel with the components of a national system of trails and the Millennium Trails network and including information about them in Federal promotional and outreach programs;

(g) Fostering volunteer programs and opportunities to engage volunteers in all aspects of trail planning, development, maintenance, management, and education as outlined in 16 U.S.C. 1250;

(h) Encouraging participation of qualified youth conservation or service corps, as outlined in 41 U.S.C. 12572 and 42 U.S.C. 12656, to perform construction and maintenance of trails and trail-related projects, as encouraged in sections 1108(g) [23 U.S.C.A. § 133 note] and 1112(e) [23 U.S.C.A. § 206 note] of the Transportation Equity Act for the 21st Century, and also in trail planning protection, operations, and education;

(i) Promoting trails for safe transportation and recreation within communities;

(j) Providing and promoting a wide variety of trail opportunities and experiences for people of all ages and abilities;

(k) Providing historical interpretation of trails and trail sites and enhancing cultural and heritage tourism through special events, artworks, and programs; and

(l) Providing training and information services to provide high-quality information and training opportunities to Federal employees, Tribal, State, and local government agencies, and the other trail partners.

Sec. 2. The Federal Interagency Council on Trails. The Federal Interagency Council on Trails (Council), first established by agreement between the Secretaries of Agriculture and the Interior in 1969, is hereby recognized as a long-standing interagency working group. Its core members represent the Department of the Interior's Bureau of Land of Management and National Park Service, the Department of Agriculture's Forest Service, and the Department of Transportation's Federal Highway Administration. Other Federal agencies, such as those representing cultural and heritage interests, are welcome to join this council. Leadership of the Council may rotate among its members as decided among themselves at the start of each fiscal year. The Council's mission is to coordinate information and program decisions, as well as policy recommendations, among all appropriate Federal agencies (in consultation with appropriate nonprofit organizations) to foster the development of America's trails through the following means:

(a) Enhancing federally designated trails of all types (e.g., scenic, historic, recreation, and Millennium) and working to integrate these trails into a fully connected national system;

(b) Coordinating mapping, signs and markers, historical and cultural interpretations, public information training, and developing plans and recommendations for a national trails registry and database;

(c) Ensuring that trail issues are integrated in Federal agency programs and that technology transfer and education programs are coordinated at the national level; and

(d) Developing a memorandum of understanding among the agencies to encourage long-term interagency coordination and cooperation to further the spirit and intent of the National Trails System Act and related programs.

Sec. 3. Issue Resolution and Handbook for Federal Administrators of the National Trails System. Federal agencies shall together develop a process for resolving interagency issues concerning trails. In addition, reflecting the authorities of the National Trails System Act, participating agencies shall coordinate preparation of (and updates for) an operating handbook for Federal administrators of the National Trails System and others involved in creating a national system of trails. The handbook shall reflect each agencies' governing policies and provide guidance to each agencies' field staff and partners about the roles and responsibilities needed to make each trail in the national system fully operational.

Sec. 4. Observance of Existing Laws. Nothing in this Executive Order shall be construed to override existing laws, including those that protect the lands, waters, wildlife habitats, wilderness areas, and cultural values of this Nation.

Sec. 5. Judicial Review. This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity by any party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON

Notes of Decisions (20)

16 U.S.C.A. § 1241, 16 USCA § 1241
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 16. Conservation
Chapter 27. National Trails System (Refs & Annos)

16 U.S.C.A. § 1242

§ 1242. National trails system

Effective: November 12, 1996
Currentness

(a) Composition: recreation trails; scenic trails; historic trails; connecting or side trails; uniform markers

The national system of trails shall be composed of the following:

(1) National recreation trails, established as provided in section 1243 of this title, which will provide a variety of outdoor recreation uses in or reasonably accessible to urban areas.

(2) National scenic trails, established as provided in section 1244 of this title, which will be extended trails so located as to provide for maximum outdoor recreation potential and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass. National scenic trails may be located so as to represent desert, marsh, grassland, mountain, canyon, river, forest, and other areas, as well as landforms which exhibit significant characteristics of the physiographic regions of the Nation.

(3) National historic trails, established as provided in section 1244 of this title, which will be extended trails which follow as closely as possible and practicable the original trails or routes of travel of national historical significance. Designation of such trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous onsite. National historic trails shall have as their purpose the identification and protection of the historic route and its historic remnants and artifacts for public use and enjoyment. Only those selected land and water based components of an historic trail which are on federally owned lands and which meet the national historic trail criteria established in this chapter are included as Federal protection components of a national historic trail. The appropriate Secretary may certify other lands as protected segments of an historic trail upon application from State or local governmental agencies or private interests involved if such segments meet the national historic trail criteria established in this chapter and such criteria supplementary thereto as the appropriate Secretary may prescribe, and are administered by such agencies or interests without expense to the United States.

(4) Connecting or side trails, established as provided in section 1245 of this title, which will provide additional points of public access to national recreation, national scenic or national historic trails or which will provide connections between such trails.

The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker for the national trails system.

(b) Extended trails

For purposes of this section, the term "extended trails" means trails or trail segments which total at least one hundred miles in length, except that historic trails of less than one hundred miles may be designated as extended trails. While it is desirable that extended trails be continuous, studies of such trails may conclude that it is feasible to propose one or more trail segments which, in the aggregate, constitute at least one hundred miles in length.

CREDIT(S)

(Pub.L. 90-543, § 3, Oct. 2, 1968, 82 Stat. 919; Pub.L. 95-625, Title V, § 551(4), (5), Nov. 10, 1978, 92 Stat. 3511, 3512; Pub.L. 98-11, Title II, § 203, Mar. 28, 1983, 97 Stat. 42; Pub.L. 104-333, Div. I, Title VIII, § 814(d)(1)(E), Nov. 12, 1996, 110 Stat. 4196.)

Notes of Decisions (8)

16 U.S.C.A. § 1242, 16 USCA § 1242
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

United States Code Annotated
Title 16. Conservation
Chapter 27. National Trails System (Refs & Annos)

16 U.S.C.A. § 1243

§ 1243. National recreation trails; establishment and designation; prerequisites

Currentness

(a) The Secretary of the Interior, or the Secretary of Agriculture where lands administered by him are involved, may establish and designate national recreation trails, with the consent of the Federal agency, State, or political subdivision having jurisdiction over the lands involved, upon finding that--

(i) such trails are reasonably accessible to urban areas, and, or

(ii) such trails meet the criteria established in this chapter and such supplementary criteria as he may prescribe.

(b) As provided in this section, trails within park, forest, and other recreation areas administered by the Secretary of the Interior or the Secretary of Agriculture or in other federally administered areas may be established and designated as "National Recreation Trails" by the appropriate Secretary and, when no Federal land acquisition is involved--

(i) trails in or reasonably accessible to urban areas may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the States, their political subdivisions, or other appropriate administering agencies;

(ii) trails within park, forest, and other recreation areas owned or administered by States may be designated as "National Recreation Trails" by the appropriate Secretary with the consent of the State; and

(iii) trails on privately owned lands may be designated "National Recreation Trails" by the appropriate Secretary with the written consent of the owner of the property involved.

CREDIT(S)

(Pub.L. 90-543, § 4, Oct. 2, 1968, 82 Stat. 919; Pub.L. 98-11, Title II, § 204, Mar. 28, 1983, 97 Stat. 43.)

Notes of Decisions (4)

16 U.S.C.A. § 1243, 16 USCA § 1243
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

16 U.S.C.A. § 1244

§ 1244. National scenic and national historic trails

Effective: March 30, 2009
Currentness

(a) Establishment and designation; administration

National scenic and national historic trails shall be authorized and designated only by Act of Congress. There are hereby established the following National Scenic and National Historic Trails:

(1) The Appalachian National Scenic Trail, a trail of approximately two thousand miles extending generally along the Appalachian Mountains from Mount Katahdin, Maine, to Springer Mountain, Georgia. Insofar as practicable, the right-of-way for such trail shall comprise the trail depicted on the maps identified as "Nationwide System of Trails, Proposed Appalachian Trail, NST-AT-101-May 1967", which shall be on file and available for public inspection in the office of the Director of the National Park Service. Where practicable, such rights-of-way shall include lands protected for it under agreements in effect as of October 2, 1968, to which Federal agencies and States were parties. The Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.

(2) The Pacific Crest National Scenic Trail, a trail of approximately two thousand three hundred fifty miles, extending from the Mexican-California border northward generally along the mountain ranges of the west coast States to the Canadian-Washington border near Lake Ross, following the route as generally depicted on the map, identified as "Nationwide System of Trails, Proposed Pacific Crest Trail, NST-PC-103-May 1967" which shall be on file and available for public inspection in the office of the Chief of the Forest Service. The Pacific Crest Trail shall be administered by the Secretary of Agriculture, in consultation with the Secretary of the Interior.

(3) The Oregon National Historic Trail, a route of approximately two thousand miles extending from near Independence, Missouri, to the vicinity of Portland, Oregon, following a route as depicted on maps identified as "Primary Route of the Oregon Trail 1841-1848", in the Department of the Interior's Oregon Trail study report dated April 1977, and which shall be on file and available for public inspection in the office of the Director of the National Park Service. The trail shall be administered by the Secretary of the Interior. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land. The authority of the Federal Government to acquire fee title under this paragraph shall be limited to an average of not more than ¼ mile on either side of the trail.

(4) The Mormon Pioneer National Historic Trail, a route of approximately one thousand three hundred miles extending from Nauvoo, Illinois, to Salt Lake City, Utah, following the primary historical route of the Mormon Trail

as generally depicted on a map, identified as, "Mormon Trail Vicinity Map, figure 2" in the Department of the Interior Mormon Trail study report dated March 1977, and which shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land. The authority of the Federal Government to acquire fee title under this paragraph shall be limited to an average of not more than ¼ mile on either side of the trail.

(5) The Continental Divide National Scenic Trail, a trail of approximately thirty-one hundred miles, extending from the Montana-Canada border to the New Mexico-Mexico border, following the approximate route depicted on the map, identified as "Proposed Continental Divide National Scenic Trail" in the Department of the Interior Continental Divide Trail study report dated March 1977 and which shall be on file and available for public inspection in the office of the Chief, Forest Service, Washington, D.C. The Continental Divide National Scenic Trail shall be administered by the Secretary of Agriculture in consultation with the Secretary of the Interior. Notwithstanding the provisions of section 1246(c) of this title, the use of motorized vehicles on roads which will be designated segments of the Continental Divide National Scenic Trail shall be permitted in accordance with regulations prescribed by the appropriate Secretary. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land. The authority of the Federal Government to acquire fee title under this paragraph shall be limited to an average of not more than ¼ mile on either side of the trail.

(6) The Lewis and Clark National Historic Trail, a trail of approximately three thousand seven hundred miles, extending from Wood River, Illinois, to the mouth of the Columbia River in Oregon, following the outbound and inbound routes of the Lewis and Clark Expedition depicted on maps identified as, "Vicinity Map, Lewis and Clark Trail" study report dated April 1977. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land. The authority of the Federal Government to acquire fee title under this paragraph shall be limited to an average of not more than ¼ mile on either side of the trail.

(7) The Iditarod National Historic Trail, a route of approximately two thousand miles extending from Seward, Alaska, to Nome, Alaska, following the routes as depicted on maps identified as "Seward-Nome Trail", in the Department of the Interior's study report entitled "The Iditarod Trail (Seward-Nome Route) and other Alaskan Gold Rush Trails" dated September 1977. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, D.C. The trail shall be administered by the Secretary of the Interior. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land. The authority of the Federal Government to acquire fee title under this paragraph shall be limited to an average of not more than ¼ mile on either side of the trail.

(8) The North Country National Scenic Trail, a trail of approximately thirty-two hundred miles, extending from eastern New York State to the vicinity of Lake Sakakawea in North Dakota, following the approximate route depicted on the map identified as "Proposed North Country Trail-Vicinity Map" in the Department of the Interior "North Country Trail Report", dated June 1975. The map shall be on file and available for public inspection in the office of the Director, National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary

of the Interior. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land.

(9) The Overmountain Victory National Historic Trail, a system totaling approximately two hundred seventy-two miles of trail with routes from the mustering point near Abingdon, Virginia, to Sycamore Shoals (near Elizabethton, Tennessee); from Sycamore Shoals to Quaker Meadows (near Morganton, North Carolina); from the mustering point in Surry County, North Carolina, to Quaker Meadows; and from Quaker Meadows to Kings Mountain, South Carolina, as depicted on the map identified as Map 3--Historic Features--1780 in the draft study report entitled "Overmountain Victory Trail" dated December 1979. The map shall be on file and available for public inspection in the Office of the Director, National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

(10) The Ice Age National Scenic Trail, a trail of approximately one thousand miles, extending from Door County, Wisconsin, to Interstate Park in Saint Croix County, Wisconsin, generally following the route described in "On the Trail of the Ice Age--A Hiker's and Biker's Guide to Wisconsin's Ice Age National Scientific Reserve and Trail", by Henry S. Reuss, Member of Congress, dated 1980. The guide and maps shall be on file and available for public inspection in the Office of the Director, National Park Service, Washington, District of Columbia. Overall administration of the trail shall be the responsibility of the Secretary of the Interior pursuant to subsection (d) of this section. The State of Wisconsin, in consultation with the Secretary of the Interior, may, subject to the approval of the Secretary, prepare a plan for the management of the trail which shall be deemed to meet the requirements of subsection (e) of this section. Notwithstanding the provisions of section 1246(c) of this title, snowmobile use may be permitted on segments of the Ice Age National Scenic Trail where deemed appropriate by the Secretary and the managing authority responsible for the segment. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land.

(11) The Potomac Heritage National Scenic Trail, a corridor of approximately seven hundred and four miles following the route as generally depicted on the map identified as "National Trails System, Proposed Potomac Heritage Trail" in "The Potomac Heritage Trail", a report prepared by the Department of the Interior and dated December 1974, except that no designation of the trail shall be made in the State of West Virginia. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall initially consist of only those segments of the corridor located within the exterior boundaries of federally administered areas. The trail shall be administered by the Secretary of the Interior. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land.

(12) The Natchez Trace National Scenic Trail, a trail system of approximately six hundred and ninety-four miles extending from Nashville, Tennessee, to Natchez, Mississippi, as depicted on the map entitled "Concept Plan, Natchez Trace Trails Study" in "The Natchez Trace", a report prepared by the Department of the Interior and dated August 1979. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Department of the Interior, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior.

(13) The Florida National Scenic Trail, a route of approximately thirteen hundred miles extending through the State of Florida as generally depicted in "The Florida Trail", a national scenic trail study draft report prepared by the Department of the Interior and dated February 1980. The report shall be on file and available for public inspection

in the office of the Chief of the Forest Service, Washington, District of Columbia. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Florida Trail except with the consent of the owner thereof. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail, only upon application from the States or local governmental agencies involved, if such segments meet the criteria established in this chapter and are administered by such agencies without expense to the United States. The trail shall be administered by the Secretary of Agriculture.

(14) The Nez Perce National Historic Trail, a route of approximately eleven hundred and seventy miles extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana, as generally depicted in "Nez Perce (Nee-Me-Poo) Trail Study Report" prepared by the Department of Agriculture and dated March 1982. The report shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia. The trail shall be administered by the Secretary of Agriculture. So that significant route segments and sites recognized as associated with the Nez Perce Trail may be distinguished by suitable markers, the Secretary of Agriculture is authorized to accept the donation of suitable markers for placement at appropriate locations. Any such markers associated with the Nez Perce Trail which are to be located on lands administered by any other department or agency of the United States may be placed on such lands only with the concurrence of the head of such department or agency. No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner of the land or interest in land. The authority of the Federal Government to acquire fee title under this paragraph shall be limited to an average of not more than ¼ mile on either side of the trail.

(15) The Santa Fe National Historic Trail, a trail of approximately 950 miles from a point near Old Franklin, Missouri, through Kansas, Oklahoma, and Colorado to Santa Fe, New Mexico, as generally depicted on a map entitled "The Santa Fe Trail" contained in the Final Report of the Secretary of the Interior pursuant to subsection (b) of this section, dated July 1976. The map shall be on file and available for public inspection in the office of the Director of the National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Santa Fe Trail except with the consent of the owner thereof. Before acquiring any easement or entering into any cooperative agreement with a private landowner with respect to the trail, the Secretary shall notify the landowner of the potential liability, if any, for injury to the public resulting from physical conditions which may be on the landowner's land. The United States shall not be held liable by reason of such notice or failure to provide such notice to the landowner. So that significant route segments and sites recognized as associated with the Santa Fe Trail may be distinguished by suitable markers, the Secretary of the Interior is authorized to accept the donation of suitable markers for placement at appropriate locations.

(16)(A) The Trail of Tears National Historic Trail, a trail consisting of water routes and overland routes traveled by the Cherokee Nation during its removal from ancestral lands in the East to Oklahoma during 1838 and 1839, generally located within the corridor described through portions of Georgia, North Carolina, Alabama, Tennessee, Kentucky, Illinois, Missouri, Arkansas, and Oklahoma in the final report of the Secretary of the Interior prepared pursuant to subsection (b) of this section entitled "Trail of Tears" and dated June 1986. Maps depicting the corridor shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Trail of Tears except with the consent of the owner thereof.

(B) In carrying out his responsibilities pursuant to sections 1244(f) and 1246(c) of this title, the Secretary of the Interior shall give careful consideration to the establishment of appropriate interpretive sites for the Trail of Tears in the vicinity of Hopkinsville, Kentucky, Fort Smith, Arkansas, Trail of Tears State Park, Missouri, and Tahlequah, Oklahoma.

(C) In addition to the areas otherwise designated under this paragraph, the following routes and land components by which the Cherokee Nation was removed to Oklahoma are components of the Trail of Tears National Historic Trail, as generally described in the environmentally preferred alternative of the November 2007 Feasibility Study Amendment and Environmental Assessment for Trail of Tears National Historic Trail:

(i) The Benge and Bell routes.

(ii) The land components of the designated water routes in Alabama, Arkansas, Oklahoma, and Tennessee.

(iii) The routes from the collection forts in Alabama, Georgia, North Carolina, and Tennessee to the emigration depots.

(iv) The related campgrounds located along the routes and land components described in clauses (i) through (iii).

(D) The Secretary may accept donations for the Trail from private, nonprofit, or tribal organizations. No lands or interests in lands outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Trail of Tears National Historic Trail except with the consent of the owner thereof.

(17) The Juan Bautista de Anza National Historic Trail, a trail comprising the overland route traveled by Captain Juan Bautista de Anza of Spain during the years 1775 and 1776 from Sonora, Mexico, to the vicinity of San Francisco, California, of approximately 1,200 miles through Arizona and California, as generally described in the report of the Department of the Interior prepared pursuant to subsection (b) entitled "Juan Bautista de Anza National Trail Study, Feasibility Study and Environmental Assessment" and dated August 1986. A map generally depicting the trail shall be on file and available for public inspection in the Office of the Director of the National Park Service, Washington, District of Columbia. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Juan Bautista de Anza National Historic Trail without the consent of the owner thereof. In implementing this paragraph, the Secretary shall encourage volunteer trail groups to participate in the development and maintenance of the trail.

(18) The California National Historic Trail, a route of approximately five thousand seven hundred miles, including all routes and cutoffs, extending from Independence and Saint Joseph, Missouri, and Council Bluffs, Iowa, to various points in California and Oregon, as generally described in the report of the Department of the Interior prepared pursuant to subsection (b) of this section entitled "California and Pony Express Trails, Eligibility/Feasibility Study/ Environmental Assessment" and dated September 1987. A map generally depicting the route shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the United States for the California National Historic Trail except with the consent of the owner thereof.

(19) The Pony Express National Historic Trail, a route of approximately one thousand nine hundred miles, including the original route and subsequent route changes, extending from Saint Joseph, Missouri, to Sacramento, California, as generally described in the report of the Department of the Interior prepared pursuant to subsection (b) of this section entitled "California and Pony Express Trails, Eligibility/Feasibility Study/Environmental Assessment", and dated September 1987. A map generally depicting the route shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered by the Secretary of the Interior. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the United States for the Pony Express National Historic Trail except with the consent of the owner thereof.

(20) The Selma to Montgomery National Historic Trail, consisting of 54 miles of city streets and United States Highway 80 from Brown Chapel A.M.E. Church in Selma to the State Capitol Building in Montgomery, Alabama, traveled by voting rights advocates during March 1965 to dramatize the need for voting rights legislation, as generally described in the report of the Secretary of the Interior prepared pursuant to subsection (b) of this section entitled "Selma to Montgomery" and dated April 1993. Maps depicting the route shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered in accordance with this chapter, including section 1246(h) of this title. The Secretary of the Interior, acting through the National Park Service, which shall be the lead Federal agency, shall cooperate with other Federal, State and local authorities to preserve historic sites along the route, including (but not limited to) the Edmund Pettus Bridge and the Brown Chapel A.M.E. Church.

(21) El Camino Real de Tierra Adentro

(A) El Camino Real de Tierra Adentro (the Royal Road of the Interior) National Historic Trail, a 404 mile long trail from the Rio Grande near El Paso, Texas to San Juan Pueblo, New Mexico, as generally depicted on the maps entitled "United States Route: El Camino Real de Tierra Adentro", contained in the report prepared pursuant to subsection (b) entitled "National Historic Trail Feasibility Study and Environmental Assessment: El Camino Real de Tierra Adentro, Texas-New Mexico", dated March 1997.

(B) Map

A map generally depicting the trail shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior.

(C) Administration

The Trail shall be administered by the Secretary of the Interior.

(D) Land acquisition

No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for El Camino Real de Tierra Adentro except with the consent of the owner thereof.

(E) Volunteer groups; consultation

The Secretary of the Interior shall--

(i) encourage volunteer trail groups to participate in the development and maintenance of the trail; and

(ii) consult with other affected Federal, State, local governmental, and tribal agencies in the administration of the trail.

(F) Coordination of activities

The Secretary of the Interior may coordinate with United States and Mexican public and non- governmental organizations, academic institutions, and, in consultation with the Secretary of State, the government of Mexico and its political subdivisions, for the purpose of exchanging trail information and research, fostering trail preservation and educational programs, providing technical assistance, and working to establish an international historic trail with complementary preservation and education programs in each nation.

(22) Ala Kahakai National Historic Trail

(A) In general

The Ala Kahakai National Historic Trail (the Trail by the Sea), a 175 mile long trail extending from 'Upolu Point on the north tip of Hawaii Island down the west coast of the Island around Ka Lae to the east boundary of Hawai‘i Volcanoes National Park at the ancient shoreline temple known as “Waha'ula”, as generally depicted on the map entitled “Ala Kahakai Trail”, contained in the report prepared pursuant to subsection (b) entitled “Ala Kahakai National Trail Study and Environmental Impact Statement”, dated January 1998.

(B) Map

A map generally depicting the trail shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior.

(C) Administration

The trail shall be administered by the Secretary of the Interior.

(D) Land acquisition

No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the United States for the trail except with the consent of the owner of the land or interest in land.

(E) Public participation; consultation

The Secretary of the Interior shall--

(i) encourage communities and owners of land along the trail, native Hawaiians, and volunteer trail groups to participate in the planning, development, and maintenance of the trail; and

(ii) consult with affected Federal, State, and local agencies, native Hawaiian groups, and landowners in the administration of the trail.

(23) Old Spanish National Historic Trail

(A) In general

The Old Spanish National Historic Trail, an approximately 2,700 mile long trail extending from Santa Fe, New Mexico, to Los Angeles, California, that served as a major trade route between 1829 and 1848, as generally depicted on the maps numbered 1 through 9, as contained in the report entitled "Old Spanish Trail National Historic Trail Feasibility Study", dated July 2001, including the Armijo Route, Northern Route, North Branch, and Mojave Road.

(B) Map

A map generally depicting the trail shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.

(C) Administration

The trail shall be administered by the Secretary of the Interior (referred to in this paragraph as the "Secretary").

(D) Land acquisition

The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

(E) Consultation

The Secretary shall consult with other Federal, State, local, and tribal agencies in the administration of the trail.

(F) Additional routes

The Secretary may designate additional routes to the trail if--

(i) the additional routes were included in the Old Spanish Trail National Historic Trail Feasibility Study, but were not recommended for designation as a national historic trail; and

(ii) the Secretary determines that the additional routes were used for trade and commerce between 1829 and 1848.

(24) El Camino Real de los Tejas National Historic Trail

(A) In general

El Camino Real de los Tejas (the Royal Road to the Tejas) National Historic Trail, a combination of historic routes (including the Old San Antonio Road) totaling approximately 2,580 miles, extending from the Rio Grande near Eagle Pass and Laredo, Texas, to Natchitoches, Louisiana, as generally depicted on the map entitled "El Camino Real de los Tejas" contained in the report entitled "National Historic Trail Feasibility Study and Environmental Assessment: El Camino Real de los Tejas, Texas-Louisiana", dated July 1998.

(B) Map

A map generally depicting the trail shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(C) Administration

(i) The Secretary of the Interior (referred to in this paragraph as "the Secretary") shall administer the trail.

(ii) The Secretary shall administer those portions of the trail on non-Federal land only with the consent of the owner of such land and when such trail portion qualifies for certification as an officially established component of the trail, consistent with section 1242(a)(3) of this title. An owner's approval of a certification agreement shall satisfy the consent requirement. A certification agreement may be terminated at any time.

(iii) The designation of the trail does not authorize any person to enter private property without the consent of the owner.

(D) Consultation

The Secretary shall consult with appropriate State and local agencies in the planning and development of the trail.

(E) Coordination of activities

The Secretary may coordinate with United States and Mexican public and nongovernmental organizations, academic institutions, and, in consultation with the Secretary of State, the Government of Mexico and its political subdivisions, for the purpose of exchanging trail information and research, fostering trail preservation and educational programs, providing technical assistance, and working to establish an international historic trail with complementary preservation and education programs in each nation.

(F) Land acquisition

The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-administered area without the consent of the owner of the land or interest in land.

(25) Captain John Smith Chesapeake National Historic Trail

(A) In general

The Captain John Smith Chesapeake National Historic Trail, a series of water routes extending approximately 3,000 miles along the Chesapeake Bay and the tributaries of the Chesapeake Bay in the States of Virginia, Maryland, and Delaware, and in the District of Columbia, that traces the 1607-1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay, as generally depicted on the map entitled "Captain John Smith Chesapeake National Historic Trail Map MD, VA, DE, and DC", numbered P-16/8000 (CAJO), and dated May 2006.

(B) Map

The map referred to in subparagraph (A) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(C) Administration

The trail shall be administered by the Secretary of the Interior--

(i) in coordination with--

(I) the Chesapeake Bay Gateways and Watertrails Network authorized under the Chesapeake Bay Initiative Act of 1998 (112 Stat. 2961); and

(II) the Chesapeake Bay Program authorized under section 1267 of Title 33; and

(ii) in consultation with--

(I) other Federal, State, tribal, regional, and local agencies; and

(II) the private sector.

(D) Land acquisition

The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

(26) Star-Spangled Banner National Historic Trail

(A) In general

The Star-Spangled Banner National Historic Trail, a trail consisting of water and overland routes totaling approximately 290 miles, extending from Tangier Island, Virginia, through southern Maryland, the District of Columbia, and northern Virginia, in the Chesapeake Bay, Patuxent River, Potomac River, and north to the Patapsco River, and Baltimore, Maryland, commemorating the Chesapeake Campaign of the War of 1812 (including the British invasion of Washington, District of Columbia, and its associated feints, and the Battle of Baltimore in summer 1814), as generally depicted on the map titled "Star-Spangled Banner National Historic Trail", numbered T02/80,000, and dated June 2007.

(B) Map

The map referred to in subparagraph (A) shall be maintained on file and available for public inspection in the appropriate offices of the National Park Service.

(C) Administration

Subject to subparagraph (E)(ii), the trail shall be administered by the Secretary of the Interior.

(D) Land acquisition

No land or interest in land outside the exterior boundaries of any federally administered area may be acquired by the United States for the trail except with the consent of the owner of the land or interest in land.

(E) Public participation

The Secretary of the Interior shall--

(i) encourage communities, owners of land along the trail, and volunteer trail groups to participate in the planning, development, and maintenance of the trail; and

(ii) consult with other affected landowners and Federal, State, and local agencies in the administration of the trail.

(F) Interpretation and assistance

Subject to the availability of appropriations, the Secretary of the Interior may provide, to State and local governments and nonprofit organizations, interpretive programs and services and technical assistance for use in--

(i) carrying out preservation and development of the trail; and

(ii) providing education relating to the War of 1812 along the trail.

(27) Arizona National Scenic Trail

(A) In general

The Arizona National Scenic Trail, extending approximately 807 miles across the State of Arizona from the U.S.-Mexico international border to the Arizona-Utah border, as generally depicted on the map entitled "Arizona National Scenic Trail" and dated December 5, 2007, to be administered by the Secretary of Agriculture, in consultation with the Secretary of the Interior and appropriate State, tribal, and local governmental agencies.

(B) Availability of map

The map shall be on file and available for public inspection in appropriate offices of the Forest Service.

(28) New England National Scenic Trail

The New England National Scenic Trail, a continuous trail extending approximately 220 miles from the border of New Hampshire in the town of Royalston, Massachusetts to Long Island Sound in the town of Guilford, Connecticut, as generally depicted on the map titled "New England National Scenic Trail Proposed Route", numbered T06/80,000, and dated October 2007. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service. The Secretary of the Interior, in consultation with appropriate Federal, State, tribal, regional, and local agencies, and other organizations, shall administer the trail after considering the recommendations of the report titled the "Metacomet Monadnock Mattabesset Trail System National Scenic Trail Feasibility Study and Environmental Assessment", prepared by the National Park Service, and dated Spring 2006. The United States shall not acquire for the trail any land or interest in land without the consent of the owner.

(29) Washington-Rochambeau Revolutionary Route National Historic Trail

(A) In general

The Washington-Rochambeau Revolutionary Route National Historic Trail, a corridor of approximately 600 miles following the route taken by the armies of General George Washington and Count Rochambeau between Newport, Rhode Island, and Yorktown, Virginia, in 1781 and 1782, as generally depicted on the map entitled "WASHINGTON-ROCHAMBEAU REVOLUTIONARY ROUTE NATIONAL HISTORIC TRAIL", numbered T1/80,001, and dated June 2007.

(B) Map

The map referred to in subparagraph (A) shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(C) Administration

The trail shall be administered by the Secretary of the Interior, in consultation with--

(i) other Federal, State, tribal, regional, and local agencies; and

(ii) the private sector.

(D) Land acquisition

The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

(30) Pacific Northwest National Scenic Trail

(A) In general

The Pacific Northwest National Scenic Trail, a trail of approximately 1,200 miles, extending from the Continental Divide in Glacier National Park, Montana, to the Pacific Ocean Coast in Olympic National Park, Washington, following the route depicted on the map entitled "Pacific Northwest National Scenic Trail: Proposed Trail", numbered T12/80,000, and dated February 2008 (referred to in this paragraph as the "map").

(B) Availability of map

The map shall be on file and available for public inspection in the appropriate offices of the Forest Service.

(C) Administration

The Pacific Northwest National Scenic Trail shall be administered by the Secretary of Agriculture.

(D) Land acquisition

The United States shall not acquire for the Pacific Northwest National Scenic Trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

(b) Additional national scenic or national historic trails; feasibility studies; consultations; submission of studies to Congress; scope of studies; qualifications for national historic trail designation

The Secretary of the Interior, through the agency most likely to administer such trail, and the Secretary of Agriculture where lands administered by him are involved, shall make such additional studies as are herein or may hereafter be authorized by the Congress for the purpose of determining the feasibility and desirability of designating other

trails as national scenic or national historic trails. Such studies shall be made in consultation with the heads of other Federal agencies administering lands through which such additional proposed trails would pass and in cooperation with interested interstate, State, and local governmental agencies, public and private organizations, and landowners and land users concerned. The feasibility of designating a trail shall be determined on the basis of an evaluation of whether or not it is physically possible to develop a trail along a route being studied, and whether the development of a trail would be financially feasible. The studies listed in subsection (c) of this section shall be completed and submitted to the Congress, with recommendations as to the suitability of trail designation, not later than three complete fiscal years from the date of enactment of their addition to this subsection, or from November 10, 1978, whichever is later. Such studies, when submitted, shall be printed as a House or Senate document, and shall include, but not be limited to:

(1) the proposed route of such trail (including maps and illustrations);

(2) the areas adjacent to such trails, to be utilized for scenic, historic, natural, cultural, or developmental, purposes;

(3) the characteristics which, in the judgment of the appropriate Secretary, make the proposed trail worthy of designation as a national scenic or national historic trail; and in the case of national historic trails the report shall include the recommendation of the Secretary of the Interior's National Park System Advisory Board as to the national historic significance based on the criteria developed under the Historic Sites Act of 1935 (49 Stat. 666; 16 U.S.C. 461); [1]

(4) the current status of land ownership and current and potential use along the designated route;

(5) the estimated cost of acquisition of lands or interest in lands, if any;

(6) the plans for developing and maintaining the trail and the cost thereof;

(7) the proposed Federal administering agency (which, in the case of a national scenic trail wholly or substantially within a national forest, shall be the Department of Agriculture);

(8) the extent to which a State or its political subdivisions and public and private organizations might reasonably be expected to participate in acquiring the necessary lands and in the administration thereof;

(9) the relative uses of the lands involved, including: the number of anticipated visitor-days for the entire length of, as well as for segments of, such trail; the number of months which such trail, or segments thereof, will be open for recreation purposes; the economic and social benefits which might accrue from alternate land uses; and the estimated man-years of civilian employment and expenditures expected for the purposes of maintenance, supervision, and regulation of such trail;

(10) the anticipated impact of public outdoor recreation use on the preservation of a proposed national historic trail and its related historic and archeological features and settings, including the measures proposed to ensure evaluation and preservation of the values that contribute to their national historic significance; and

(11) to qualify for designation as a national historic trail, a trail must meet all three of the following criteria:

(A) It must be a trail or route established by historic use and must be historically significant as a result of that use. The route need not currently exist as a discernible trail to qualify, but its location must be sufficiently known to permit evaluation of public recreation and historical interest potential. A designated trail should generally accurately follow the historic route, but may deviate somewhat on occasion of necessity to avoid difficult routing through subsequent development, or to provide some route variation offering a more pleasurable recreational experience. Such deviations shall be so noted on site. Trail segments no longer possible to travel by trail due to subsequent development as motorized transportation routes may be designated and marked onsite as segments which link to the historic trail.

(B) It must be of national significance with respect to any of several broad facets of American history, such as trade and commerce, exploration, migration and settlement, or military campaigns. To qualify as nationally significant, historic use of the trail must have had a far-reaching effect on broad patterns of American culture. Trails significant in the history of native Americans may be included.

(C) It must have significant potential for public recreational use or historical interest based on historic interpretation and appreciation. The potential for such use is generally greater along roadless segments developed as historic trails, and at historic sites associated with the trail. The presence of recreation potential not related to historic appreciation is not sufficient justification for designation under this category.

(c) Routes subject to consideration for designation as national scenic trails

The following routes shall be studied in accordance with the objectives outlined in subsection (b) of this section:

(1) Continental Divide Trail, a three-thousand-one-hundred-mile trail extending from near the Mexican border in southwestern New Mexico northward generally along the Continental Divide to the Canadian border in Glacier National Park.

(2) Potomac Heritage Trail, an eight-hundred-and-twenty-five-mile trail extending generally from the mouth of the Potomac River to its sources in Pennsylvania and West Virginia, including the one-hundred-and-seventy-mile Chesapeake and Ohio Canal towpath.

(3) Old Cattle Trails of the Southwest from the vicinity of San Antonio, Texas, approximately eight hundred miles through Oklahoma via Baxter Springs and Chetopa, Kansas, to Fort Scott, Kansas, including the Chisholm Trail, from the vicinity of San Antonio or Cuero, Texas, approximately eight hundred miles north through Oklahoma to Abilene, Kansas.

(4) Lewis and Clark Trail, from Wood River, Illinois, to the Pacific Ocean in Oregon, following both the outbound and inbound routes of the Lewis and Clark Expedition.

(5) Natchez Trace, from Nashville, Tennessee, approximately six hundred miles to Natchez, Mississippi.

(6) North Country Trail, from the Appalachian Trail in Vermont, approximately three thousand two hundred miles through the States of New York, Pennsylvania, Ohio, Michigan, Wisconsin, and Minnesota, to the Lewis and Clark Trail in North Dakota.

(7) Kittanning Trail from Shirleysburg in Huntingdon County to Kittanning, Armstrong County, Pennsylvania.

(8) Oregon Trail, from Independence, Missouri, approximately two thousand miles to near Fort Vancouver, Washington.

(9) Santa Fe Trail, from Independence, Missouri, approximately eight hundred miles to Santa Fe, New Mexico.

(10) Long Trail, extending two hundred and fifty-five miles from the Massachusetts border northward through Vermont to the Canadian border.

(11) Mormon Trail, extending from Nauvoo, Illinois, to Salt Lake City, Utah, through the States of Iowa, Nebraska, and Wyoming.

(12) Gold Rush Trails in Alaska.

(13) Mormon Battalion Trail, extending two thousand miles from Mount Pisgah, Iowa, through Kansas, Colorado, New Mexico, and Arizona to Los Angeles, California.

(14) El Camino Real from St. Augustine to San Mateo, Florida, approximately 20 miles along the southern boundary of the St. Johns River from Fort Caroline National Memorial to the St. Augustine National Park Monument.

(15) Bartram Trail, extending through the States of Georgia, North Carolina, South Carolina, Alabama, Florida, Louisiana, Mississippi, and Tennessee.

(16) Daniel Boone Trail, extending from the vicinity of Statesville, North Carolina, to Fort Boonesborough State Park, Kentucky.

(17) Desert Trail, extending from the Canadian border through parts of Idaho, Washington, Oregon, Nevada, California, and Arizona, to the Mexican border.

(18) Dominguez-Escalante Trail, extending approximately two thousand miles along the route of the 1776 expedition led by Father Francisco Atanasio Dominguez and Father Silvestre Velez de Escalante, originating in Santa Fe, New Mexico; proceeding northwest along the San Juan, Dolores, Gunnison, and White Rivers in Colorado; thence westerly to Utah Lake; thence southward to Arizona and returning to Santa Fe.

(19) Florida Trail, extending north from Everglades National Park, including the Big Cypress Swamp, the Kissimmee Prairie, the Withlacoochee State Forest, Ocala National Forest, Osceola National Forest, and Black Water River State Forest, said completed trail to be approximately one thousand three hundred miles long, of which over four hundred miles of trail have already been built.

(20) Indian Nations Trail, extending from the Red River in Oklahoma approximately two hundred miles northward through the former Indian nations to the Oklahoma-Kansas boundary line.

(21) Nez Perce Trail extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana.

(22) Pacific Northwest Trail, extending approximately one thousand miles from the Continental Divide in Glacier National Park, Montana, to the Pacific Ocean beach of Olympic National Park, Washington, by way of--

(A) Flathead National Forest and Kootenai National Forest in the State of Montana;

(B) Kaniksu National Forest in the State of Idaho; and

(C) Colville National Forest, Okanogan National Forest, Pasayten Wilderness Area, Ross Lake National Recreation Area, North Cascades National Park, Mount Baker, the Skagit River, Deception Pass, Whidbey Island, Olympic National Forest, and Olympic National Park in the State of Washington.

(23) Overmountain Victory Trail, extending from the vicinity of Elizabethton, Tennessee, to Kings Mountain National Military Park, South Carolina.

(24) Juan Bautista de Anza Trail, following the overland route taken by Juan Bautista de Anza in connection with his travels from the United Mexican States to San Francisco, California.

(25) Trail of Tears, including the associated forts and specifically, Fort Mitchell, Alabama, and historic properties, extending from the vicinity of Murphy, North Carolina, through Georgia, Alabama, Tennessee, Kentucky, Illinois, Missouri, and Arkansas, to the vicinity of Tahlequah, Oklahoma.

(26) Illinois Trail, extending from the Lewis and Clark Trail at Wood River, Illinois, to the Chicago Portage National Historic Site, generally following the Illinois River and the Illinois and Michigan Canal.

(27) Jedediah Smith Trail, to include the routes of the explorations led by Jedediah Smith--

(A) during the period 1826-1827, extending from the Idaho-Wyoming border, through the Great Salt Lake, Sevier, Virgin, and Colorado River Valleys, and the Mojave Desert, to the San Gabriel Mission, California; thence through the Tehachapi Mountains, San Joaquin and Stanislaus River Valleys, Ebbetts Pass, Walker River Valley, Bald Mount, Mount Grafton, and Great Salt Lake to Bear Lake, Utah; and

(B) during 1828, extending from the Sacramento and Trinity River Valleys along the Pacific coastline, through the Smith and Willamette River Valleys to the Fort Vancouver National Historic Site, Washington, on the Columbia River.

(28) General Crook Trail, extending from Prescott, Arizona, across the Mogollon Rim to Fort Apache.

(29) Beale Wagon Road, within the Kaibab and Coconino National Forests in Arizona: *Provided,* That such study may be prepared in conjunction with ongoing planning processes for these National Forests to be completed before 1990.

(30) Pony Express Trail, extending from Saint Joseph, Missouri, through Kansas, Nebraska, Colorado, Wyoming, Utah, Nevada, to Sacramento, California, as indicated on a map labeled "Potential Pony Express Trail", dated October 1983 and the California Trail, extending from the vicinity of Omaha, Nebraska, and Saint Joseph, Missouri, to various points in California, as indicated on a map labeled "Potential California Trail" and dated August 1, 1983. Notwithstanding subsection (b) of this section, the study under this paragraph shall be completed and submitted to the Congress no later than the end of two complete fiscal years beginning after August 28, 1984. Such study shall be separated into two portions, one relating to the Pony Express Trail and one relating to the California Trail.

(31) De Soto Trail, the approximate route taken by the expedition of the Spanish explorer Hernando de Soto in 1539, extending through portions of the States of Florida, Georgia, South Carolina, North Carolina, Tennessee, Alabama, Mississippi, to the area of Little Rock, Arkansas, on to Texas and Louisiana, and any other States which may have been crossed by the expedition. The study under this paragraph shall be prepared in accordance with subsection (b) of this section, except that it shall be completed and submitted to the Congress with recommendations as to the trail's suitability for designation not later than one calendar year after December 11, 1987.

(32) Coronado Trail, the approximate route taken by the expedition of the Spanish explorer Francisco Vasquez de Coronado between 1540 and 1542, extending through portions of the States of Arizona, New Mexico, Texas, Oklahoma, and Kansas. The study under this paragraph shall be prepared in accordance with subsection (b) of this section. In conducting the study under this paragraph, the Secretary shall provide for (A) the review of all original Spanish documentation on the Coronado Trail, (B) the continuing search for new primary documentation on the trail, and (C) the examination of all information on the archeological sites along the trail.

(33) The route from Selma to Montgomery, Alabama traveled by people in a march dramatizing the need for voting rights legislation, in March 1965, includes Sylvan South Street, Water Avenue, the Edmund Pettus Bridge, and Highway 80. The study under this paragraph shall be prepared in accordance with subsection (b) of this section, except that it shall be completed and submitted to the Congress with recommendations as to the trail's suitability for designation not later than 1 year after July 3, 1990.

(34) American Discovery Trail, extending from Pt. Reyes, California, across the United States through Nevada, Utah, Colorado, Kansas, Nebraska, Missouri, Iowa, Illinois, Indiana, Ohio, West Virginia, Maryland, and the District of Columbia, to Cape Henlopen State Park, Delaware; to include in the central United States a northern route through Colorado, Nebraska, Iowa, Illinois, and Indiana and a southern route through Colorado, Kansas, Missouri, Illinois, and Indiana.

(35) Ala Kahakai Trail in the State of Hawaii, an ancient Hawaiian trail on the Island of Hawaii extending from the northern tip of the Island of Hawaii approximately 175 miles along the western and southern coasts to the northern boundary of Hawai'i Volcanoes National Park.

(36)(A) El Camino Real de Tierra Adentro, the approximately 1,800 mile route extending from Mexico City, Mexico, across the international border at El Paso, Texas, to Santa Fe, New Mexico.

(B) The study shall--

(i) examine changing routes within the general corridor;

(ii) examine major connecting branch routes; and

(iii) give due consideration to alternative name designations.

(C) The Secretary of the Interior is authorized to work in cooperation with the Government of Mexico (including, but not limited to providing technical assistance) to determine the suitability and feasibility of establishing an international historic route along the El Camino Real de Tierra Adentro.

(37)(A) El Camino Real Para Los Texas, the approximate series of routes from Saltillo, Monclova, and Guerrero, Mexico across Texas through San Antonio and Nacogdoches, to the vicinity of Los Adaes, Louisiana, together with the evolving routes later known as the San Antonio Road.

(B) The study shall--

(i) examine the changing roads within the historic corridor;

(ii) examine the major connecting branch routes;

(iii) determine the individual or combined suitability and feasibility of routes for potential national historic trail designation;

(iv) consider the preservation heritage plan developed by the Texas Department of Transportation entitled "A Texas Legacy: The Old San Antonio Road and the Caminos Reales", dated January, 1991; and

(v) make recommendations concerning the suitability and feasibility of establishing an international historical park where the trail crosses the United States-Mexico border at Maverick County, Texas, and Guerrero, Mexico.

(C) The Secretary of the Interior is authorized to work in cooperation with the government of Mexico (including, but not limited to providing technical assistance) to determine the suitability and feasibility of establishing an international historic trail along the El Camino Real Para Los Texas.

(D) The study shall be undertaken in consultation with the Louisiana Department of Transportation and Development and the Texas Department of Transportation.

(E) The study shall consider alternative name designations for the trail.

(F) The study shall be completed no later than two years after the date funds are made available for the study.

(38) The Old Spanish Trail, beginning in Santa Fe, New Mexico, proceeding through Colorado and Utah, and ending in Los Angeles, California, and the Northern Branch of the Old Spanish Trail, beginning near Espanola, New Mexico, proceeding through Colorado, and ending near Crescent Junction, Utah.

(39) The Great Western Scenic Trail, a system of trails to accommodate a variety of travel users in a corridor of approximately 3,100 miles in length extending from the Arizona-Mexico border to the Idaho-Montana-Canada border, following the approximate route depicted on the map identified as "Great Western Trail Corridor, 1988", which shall be on file and available for public inspection in the Office of the Chief of the Forest Service, United States Department of Agriculture. The trail study shall be conducted by the Secretary of Agriculture, in consultation with the Secretary of the Interior, in accordance with subsection (b) and shall include--

(A) the current status of land ownership and current and potential use along the designated route;

(B) the estimated cost of acquisition of lands or interests in lands, if any; and

(C) an examination of the appropriateness of motorized trail use along the trail.

(40) Star-Spangled Banner National Historic Trail

(A) In general

The Star-Spangled Banner National Historic Trail, tracing the War of 1812 route from the arrival of the British fleet in the Patuxent River in Calvert County and St. Mary's County, Maryland, the landing of the British forces at Benedict, the sinking of the Chesapeake Flotilla at Pig Point, the American defeat at the Battle of Bladensburg, the siege of the Nation's Capital, Washington, District of Columbia (including the burning of the United States Capitol and the White House), the British naval diversions in the upper Chesapeake Bay leading to the Battle of Caulk's Field in Kent County, Maryland, the route of the American troops from Washington through Georgetown, the Maryland Counties of Montgomery, Howard, and Baltimore, and the City of Baltimore, Maryland, to the Battle of North Point, and the ultimate victory of the Americans at Fort McHenry on September 14, 1814.

(B) Affected areas

The trail crosses eight counties within the boundaries of the State of Maryland, the City of Baltimore, Maryland, and Washington, District of Columbia.

(C) Coordination with other Congressionally mandated activities

The study under this paragraph shall be undertaken in coordination with the study authorized under section 603 of the Omnibus Parks and Public Lands Management Act of 1996 (110 Stat. 4172) and the Chesapeake Bay Gateways and Watertrails Network authorized under the Chesapeake Bay Initiative Act of 1998 (112 Stat. 2961). Such coordination shall extend to any research needed to complete the studies and any findings and implementation actions that result from the studies and shall use available resources to the greatest extent possible to avoid unnecessary duplication of effort.

(D) Deadline for study

Not later than 2 years after funds are made available for the study under this paragraph, the study shall be completed and transmitted with final recommendations to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate.

(41) Metacomet-Monadnock-Mattabesett Trail

The Metacomet-Monadnock-Mattabesett Trail, a system of trails and potential trails extending southward approximately 180 miles through western Massachusetts on the Metacomet-Monadnock Trail, across central Connecticut on the Metacomet Trail and the Mattabesett Trail, and ending at Long Island Sound.

(42) The Long Walk Trail, a series of routes which the Navajo and Mescalero Apache Indian tribes were forced to walk beginning in the fall of 1863 as a result of their removal by the United States Government from their ancestral lands, generally located within a corridor extending through portions of Canyon de Chelley, Arizona, and Albuquerque, Canyon Blanco, Anton Chico, Canyon Piedra Pintado, and Fort Sumner, New Mexico.

(43)(A) The Captain John Smith Chesapeake National Historic Watertrail, a series of routes extending approximately 3,000 miles along the Chesapeake Bay and the tributaries of the Chesapeake Bay in the States of Virginia, Maryland, Pennsylvania, and Delaware and the District of Columbia that traces Captain John Smith's voyages charting the land and waterways of the Chesapeake Bay and the tributaries of the Chesapeake Bay.

(B) The study shall be conducted in consultation with Federal, State, regional, and local agencies and representatives of the private sector, including the entities responsible for administering

(i) the Chesapeake Bay Gateways and Watertrails Network authorized under the Chesapeake Bay Initiative Act of 1998 (16 U.S.C. 461 note; title V of Public Law 105-312); and

(ii) the Chesapeake Bay Program authorized under section 1267 of Title 33.

(C) The study shall include an extensive analysis of the potential impacts the designation of the trail as a national historic watertrail is likely to have on land and water, including docks and piers, along the proposed route or bordering the study route that is privately owned at the time the study is conducted.

(44) Chisholm Trail

(A) In general

The Chisholm Trail (also known as the "Abilene Trail"), from the vicinity of San Antonio, Texas, segments from the vicinity of Cuero, Texas, to Ft. Worth, Texas, Duncan, Oklahoma, alternate segments used through Oklahoma, to Enid, Oklahoma, Caldwell, Kansas, Wichita, Kansas, Abilene, Kansas, and commonly used segments running to alternative Kansas destinations.

(B) Requirement

In conducting the study required under this paragraph, the Secretary of the Interior shall identify the point at which the trail originated south of San Antonio, Texas.

(45) Great Western Trail

(A) In general

The Great Western Trail (also known as the "Dodge City Trail"), from the vicinity of San Antonio, Texas, north-by-northwest through the vicinities of Kerrville and Menard, Texas, north-by-northeast through the vicinities of Coleman and Albany, Texas, north through the vicinity of Vernon, Texas, to Doan's Crossing, Texas, northward through or near the vicinities of Altus, Lone Wolf, Canute, Vici, and May, Oklahoma, north through Kansas to Dodge City, and north through Nebraska to Ogallala.

(B) Requirement

In conducting the study required under this paragraph, the Secretary of the Interior shall identify the point at which the trail originated south of San Antonio, Texas.

(d) Trail advisory councils; establishment and termination; term and compensation; membership; chairman

The Secretary charged with the administration of each respective trail shall, within one year of the date of the addition of any national scenic or national historic trail to the System, and within sixty days of November 10, 1978, for the Appalachian and Pacific Crest National Scenic Trails, establish an advisory council for each such trail, each of which councils shall expire ten years from the date of its establishment, except that the Advisory Council established for the Iditarod Historic Trail shall expire twenty years from the date of its establishment. If the appropriate Secretary is unable to establish such an advisory council because of the lack of adequate public interest, the Secretary shall so advise the appropriate committees of the Congress. The appropriate Secretary shall consult with such council from time to time with

respect to matters relating to the trail, including the selection of rights-of-way, standards for the erection and maintenance of markers along the trail, and the administration of the trail. The members of each advisory council, which shall not exceed thirty-five in number, shall serve for a term of two years and without compensation as such, but the Secretary may pay, upon vouchers signed by the chairman of the council, the expenses reasonably incurred by the council and its members in carrying out their responsibilities under this section. Members of each council shall be appointed by the appropriate Secretary as follows:

(1) the head of each Federal department or independent agency administering lands through which the trail route passes, or his designee;

(2) a member appointed to represent each State through which the trail passes, and such appointments shall be made from recommendations of the Governors of such States;

(3) one or more members appointed to represent private organizations, including corporate and individual landowners and land users, which in the opinion of the Secretary, have an established and recognized interest in the trail, and such appointments shall be made from recommendations of the heads of such organizations: *Provided,* That the Appalachian Trail Conference shall be represented by a sufficient number of persons to represent the various sections of the country through which the Appalachian Trail passes; and

(4) the Secretary shall designate one member to be chairman and shall fill vacancies in the same manner as the original appointment.

(e) Comprehensive national scenic trail plan; consultation; submission to Congressional committees

Within two complete fiscal years of the date of enactment of legislation designating a national scenic trail, except for the Continental Divide National Scenic Trail and the North Country National Scenic Trail, as part of the system, and within two complete fiscal years of November 10, 1978, for the Pacific Crest and Appalachian Trails, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, the relevant advisory council established pursuant to subsection (d), and the Appalachian Trail Conference in the case of the Appalachian Trail, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the acquisition, management, development, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved (along with high potential historic sites and high potential route segments in the case of national historic trails), details of anticipated cooperative agreements to be consummated with other entities, and an identified carrying capacity of the trail and a plan for its implementation;

(2) an acquisition or protection plan, by fiscal year, for all lands to be acquired by fee title or lesser interest, along with detailed explanation of anticipated necessary cooperative agreements for any lands not to be acquired; and

(3) general and site-specific development plans including anticipated costs.

(f) Comprehensive national historic trail plan; consultation; submission to Congressional committees

Within two complete fiscal years of the date of enactment of legislation designating a national historic trail or the Continental Divide National Scenic Trail or the North Country National Scenic Trail as part of the system, the responsible Secretary shall, after full consultation with affected Federal land managing agencies, the Governors of the affected States, and the relevant Advisory Council established pursuant to subsection (d) of this section, submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a comprehensive plan for the management, and use of the trail, including but not limited to, the following items:

(1) specific objectives and practices to be observed in the management of the trail, including the identification of all significant natural, historical, and cultural resources to be preserved, details of any anticipated cooperative agreements to be consummated with State and local government agencies or private interests, and for national scenic or national historic trails an identified carrying capacity of the trail and a plan for its implementation;

(2) the process to be followed by the appropriate Secretary to implement the marking requirements established in section 1246(c) of this title;

(3) a protection plan for any high potential historic sites or high potential route segments; and

(4) general and site-specific development plans, including anticipated costs.

(g) Revision of feasibility and suitability studies of existing National historic trails

(1) Definitions

In this subsection:

(A) Route

The term "route" includes a trail segment commonly known as a cutoff.

(B) Shared route

The term "shared route" means a route that was a segment of more than 1 historic trail, including a route shared with an existing national historic trail.

(2) Requirements for revision

(A) In general

The Secretary of the Interior shall revise the feasibility and suitability studies for certain national trails for consideration of possible additions to the trails.

(B) Study requirements and objectives

The study requirements and objectives specified in subsection (b) shall apply to a study required by this subsection.

(C) Completion and submission of study

A study listed in this subsection shall be completed and submitted to Congress not later than 3 complete fiscal years from the date funds are made available for the study.

(3) Oregon National Historic Trail

(A) Study required

The Secretary of the Interior shall undertake a study of the routes of the Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled "Western Emigrant Trails 1830/1870" and dated 1991/1993, and of such other routes of the Oregon Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of 1 or more of the routes as components of the Oregon National Historic Trail.

(B) Covered routes

The routes to be studied under subparagraph (A) shall include the following:

(i) Whitman Mission route.

(ii) Upper Columbia River.

(iii) Cowlitz River route.

(iv) Meek cutoff.

(v) Free Emigrant Road.

(vi) North Alternate Oregon Trail.

(vii) Goodale's cutoff.

(viii) North Side alternate route.

(ix) Cutoff to Barlow road.

(x) Naches Pass Trail.

(4) Pony Express National Historic Trail

The Secretary of the Interior shall undertake a study of the approximately 20-mile southern alternative route of the Pony Express Trail from Wathena, Kansas, to Troy, Kansas, and such other routes of the Pony Express Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of 1 or more of the routes as components of the Pony Express National Historic Trail.

(5) California National Historic Trail

(A) Study required

The Secretary of the Interior shall undertake a study of the Missouri Valley, central, and western routes of the California Trail listed in subparagraph (B) and generally depicted on the map entitled "Western Emigrant Trails 1830/1870" and dated 1991/1993, and of such other and shared Missouri Valley, central, and western routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of 1 or more of the routes as components of the California National Historic Trail.

(B) Covered routes

The routes to be studied under subparagraph (A) shall include the following:

(i) Missouri Valley routes

(I) Blue Mills-Independence Road.

(II) Westport Landing Road.

(III) Westport-Lawrence Road.

(IV) Fort Leavenworth-Blue River route.

(V) Road to Amazonia.

(VI) Union Ferry Route.

(VII) Old Wyoming-Nebraska City cutoff.

(VIII) Lower Plattsmouth Route.

(IX) Lower Bellevue Route.

(X) Woodbury cutoff.

(XI) Blue Ridge cutoff.

(XII) Westport Road.

(XIII) Gum Springs-Fort Leavenworth route.

(XIV) Atchison/Independence Creek routes.

(XV) Fort Leavenworth-Kansas River route.

(XVI) Nebraska City cutoff routes.

(XVII) Minersville-Nebraska City Road.

(XVIII) Upper Plattsmouth route.

(XIX) Upper Bellevue route.

(ii) Central routes

(I) Cherokee Trail, including splits.

(II) Weber Canyon route of Hastings cutoff.

(III) Bishop Creek cutoff.

(IV) McAuley cutoff.

(V) Diamond Springs cutoff.

(VI) Secret Pass.

(VII) Greenhorn cutoff.

(VIII) Central Overland Trail.

(iii) Western routes

(I) Bidwell-Bartleson route.

(II) Georgetown/Dagget Pass Trail.

(III) Big Trees Road.

(IV) Grizzly Flat cutoff.

(V) Nevada City Road.

(VI) Yreka Trail.

(VII) Henness Pass route.

(VIII) Johnson cutoff.

(IX) Luther Pass Trail.

(X) Volcano Road.

(XI) Sacramento-Coloma Wagon Road.

(XII) Burnett cutoff.

(XIII) Placer County Road to Auburn.

(6) Mormon Pioneer National Historic Trail

(A) Study required

The Secretary of the Interior shall undertake a study of the routes of the Mormon Pioneer Trail listed in subparagraph (B) and generally depicted in the map entitled "Western Emigrant Trails 1830/1870" and dated 1991/1993, and of such other routes of the Mormon Pioneer Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of 1 or more of the routes as components of the Mormon Pioneer National Historic Trail.

(B) Covered routes

The routes to be studied under subparagraph (A) shall include the following:

(i) 1846 Subsequent routes A and B (Lucas and Clarke Counties, Iowa).

(ii) 1856-57 Handcart route (Iowa City to Council Bluffs).

(iii) Keokuk route (Iowa).

(iv) 1847 Alternative Elkhorn and Loup River Crossings in Nebraska.

(v) Fort Leavenworth Road; Ox Bow route and alternates in Kansas and Missouri (Oregon and California Trail routes used by Mormon emigrants).

(vi) 1850 Golden Pass Road in Utah.

(7) Shared California and Oregon Trail routes

(A) Study required

The Secretary of the Interior shall undertake a study of the shared routes of the California Trail and Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled "Western Emigrant Trails 1830/1870" and dated 1991/1993, and of such other shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of 1 or more of the routes as shared components of the California National Historic Trail and the Oregon National Historic Trail.

(B) Covered routes

The routes to be studied under subparagraph (A) shall include the following:

(i) St. Joe Road.

(ii) Council Bluffs Road.

(iii) Sublette cutoff.

(iv) Applegate route.

(v) Old Fort Kearny Road (Oxbow Trail).

(vi) Childs cutoff.

(vii) Raft River to Applegate.

CREDIT(S)

(Pub.L. 90-543, § 5, Oct. 2, 1968, 82 Stat. 920; Pub.L. 94-527, Oct. 17, 1976, 90 Stat. 2481; Pub.L. 95-248, § 1(1), (2), Mar. 21, 1978, 92 Stat. 159; Pub.L. 95-625, Title V, § 551(7) to (15), Nov. 10, 1978, 92 Stat. 3512 to 3515; Pub.L. 96-87, Title IV, § 401(m)(1), Oct. 12, 1979, 93 Stat. 666; Pub.L. 96-199, Title I, § 101(b)(1) to (3), Mar. 5, 1980, 94 Stat. 67, 68; Pub.L. 96-344, § 14, Sept. 8, 1980, 94 Stat. 1136; Pub.L. 96-370, § 1(a), Oct. 3, 1980, 94 Stat. 1360; Pub.L. 98-11, Title II, § 205, Mar. 28, 1983, 97 Stat. 43; Pub.L. 98-405, § 1, Aug. 28, 1984, 98 Stat. 1483; Pub.L. 99-445, § 1, Oct. 6, 1986, 100 Stat. 1122; Pub.L. 100-35, § 1(a), May 8, 1987, 101 Stat. 302; Pub.L. 100-187, § 3, Dec. 11, 1987, 101 Stat. 1287; Pub.L. 100-192, § 1, Dec. 16, 1987, 101 Stat. 1309; Pub.L. 100-470, § 4, Oct. 4, 1988, 102 Stat. 2283; Pub.L. 100-559, Title II, § 203, Oct. 28, 1988, 102 Stat. 2797; Pub.L. 101-321, § 3, July 3, 1990, 104 Stat. 293; Pub.L. 101-365, § 2(a), Aug. 15, 1990, 104 Stat. 429; Pub.L. 102-328, § 1, Aug. 3, 1992, 106 Stat. 845; Pub.L. 102-461, Oct. 23, 1992, 106 Stat. 2273; Pub.L. 103-144, § 3, Nov. 17, 1993, 107 Stat. 1494; Pub.L. 103-145, § 3, Nov. 17, 1993, 107 Stat. 1497; Pub.L. 103-437, § 6(d)(38), Nov. 2, 1994, 108 Stat. 4585; Pub.L. 104-333, Div. I, Title IV, §§ 402, 403, Title V, § 501, Nov. 12, 1996, 110 Stat. 4148, 4153; Pub.L. 106-135, § 3, Dec. 7, 1999, 113 Stat. 1686; Pub.L. 106-307, § 3, Oct. 13, 2000, 114 Stat. 1075; Pub.L. 106-509, § 3, Nov. 13, 2000, 114 Stat. 2361; Pub.L. 106-510, § 3(a)(2), Nov. 13, 2000, 114 Stat. 2363; Pub.L. 107-214, § 3, Aug. 21, 2002, 116 Stat. 1053; Pub.L. 107-325, § 2, Dec. 4, 2002, 116 Stat. 2790; Pub.L. 107-338, § 2, Dec. 16, 2002, 116 Stat. 2886; Pub.L. 108-342, § 2, Oct. 18, 2004, 118 Stat. 1370; Pub.L. 108-352, § 14(1), Oct. 21, 2004, 118 Stat. 1397; Pub.L. 109-54, Title I, § 133, Aug. 2, 2005, 119 Stat. 526; Pub.L. 109-378, § 1, Dec. 1, 2006, 120 Stat. 2664; Pub.L. 109-418, § 2, Dec. 19, 2006, 120 Stat. 2882; Pub.L. 110-229, Title III, § 341, May 8, 2008, 122 Stat. 795; Pub.L. 111-11, Title V, §§ 5201, 5202(a), 5204 to 5206, 5301(a), 5302, 5303, Title VII, § 7116(f), Mar. 30, 2009, 123 Stat. 1154, 1158, 1159, 1161, 1164, 1203.)

Notes of Decisions (1)

Footnotes

1 See References in Text note set out under this section.

16 U.S.C.A. § 1244, 16 USCA § 1244

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

United States Code Annotated
Title 16. Conservation
Chapter 27. National Trails System (Refs & Annos)

16 U.S.C.A. § 1245

§ 1245. Connecting or side trails; establishment, designation, and marking as components of national trails system; location

Currentness

Connecting or side trails within park, forest, and other recreation areas administered by the Secretary of the Interior or Secretary of Agriculture may be established, designated, and marked by the appropriate Secretary as components of a national recreation, national scenic or national historic trail. When no Federal land acquisition is involved, connecting or side trails may be located across lands administered by interstate, State, or local governmental agencies with their consent, or, where the appropriate Secretary deems necessary or desirable, on privately owned lands with the consent of the landowner. Applications for approval and designation of connecting and side trails on non-Federal lands shall be submitted to the appropriate Secretary.

CREDIT(S)

(Pub.L. 90-543, § 6, Oct. 2, 1968, 82 Stat. 922; Pub.L. 95-625, Title V, § 551(16), Nov. 10, 1978, 92 Stat. 3515; Pub.L. 98-11, Title II, § 206, Mar. 28, 1983, 97 Stat. 45.)

16 U.S.C.A. § 1245, 16 USCA § 1245
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

United States Code Annotated
Title 16. Conservation
Chapter 27. National Trails System (Refs & Annos)

16 U.S.C.A. § 1246

§ 1246. Administration and development of national trails system

Effective: December 19, 2014
Currentness

(a) Consultation of Secretary with other agencies; transfer of management responsibilities; selection of rights-of-way; criteria for selection; notice; impact upon established uses

(1)(A) The Secretary charged with the overall administration of a trail pursuant to section 1244(a) of this title shall, in administering and managing the trail, consult with the heads of all other affected State and Federal agencies. Nothing contained in this chapter shall be deemed to transfer among Federal agencies any management responsibilities established under any other law for federally administered lands which are components of the National Trails System. Any transfer of management responsibilities may be carried out between the Secretary of the Interior and the Secretary of Agriculture only as provided under subparagraph (B).

(B) The Secretary charged with the overall administration of any trail pursuant to section 1244(a) of this title may transfer management of any specified trail segment of such trail to the other appropriate Secretary pursuant to a joint memorandum of agreement containing such terms and conditions as the Secretaries consider most appropriate to accomplish the purposes of this chapter. During any period in which management responsibilities for any trail segment are transferred under such an agreement, the management of any such segment shall be subject to the laws, rules, and regulations of the Secretary provided with the management authority under the agreement, except to such extent as the agreement may otherwise expressly provide.

(2) Pursuant to section 1244(a) of this title, the appropriate Secretary shall select the rights-of-way for national scenic and national historic trails and shall publish notice of the availability of appropriate maps or descriptions in the Federal Register: *Provided,* That in selecting the rights-of-way full consideration shall be given to minimizing the adverse effects upon the adjacent landowner or user and his operation. Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for that specific area in order to insure continued maximum benefits from the land. The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary. In selecting rights-of-way for trail purposes, the Secretary shall obtain the advice and assistance of the States, local governments, private organizations, and landowners and land users concerned.

(b) Relocation of segment of national, scenic or historic, trail right-of-way; determination of necessity with official having jurisdiction; necessity for Act of Congress

After publication of notice of the availability of appropriate maps or descriptions in the Federal Register, the Secretary charged with the administration of a national scenic or national historic trail may relocate segments of a national scenic or national historic trail right-of-way, with the concurrence of the head of the Federal agency having jurisdiction over the lands involved, upon a determination that: (i) such a relocation is necessary to preserve the purposes for which the trail was established, or (ii) the relocation is necessary to promote a sound land management program in accordance with established multiple-use principles: *Provided,* That a substantial relocation of the rights-of-way for such trail shall be by Act of Congress.

(c) Facilities on national, scenic or historic, trails; permissible activities; use of motorized vehicles; trail markers; establishment of uniform marker; placement of uniform markers; trail interpretation sites

National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this chapter shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided,* That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights: *Provided further,* That private lands included in the national recreation, national scenic, or national historic trails by cooperative agreement of a landowner shall not preclude such owner from using motorized vehicles on or across such trails or adjacent lands from time to time in accordance with regulations to be established by the appropriate Secretary. Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man's nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with the administration of the trail. The Secretary of the Interior and the Secretary of Agriculture, in consultation with appropriate governmental agencies and public and private organizations, shall establish a uniform marker, including thereon an appropriate and distinctive symbol for each national recreation, national scenic, and national historic trail. Where the trails cross lands administered by Federal agencies such markers shall be erected at appropriate points along the trails and maintained by the Federal agency administering the trail in accordance with standards established by the appropriate Secretary and where the trails cross non-Federal lands, in accordance with written cooperative agreements, the appropriate Secretary shall provide such uniform markers to cooperating agencies and shall require such agencies to erect and maintain them in accordance with the standards established. The appropriate Secretary may also provide for trail interpretation sites, which shall be located at historic sites along the route of any national scenic or national historic trail, in order to present information to the public about the trail, at the lowest possible cost, with emphasis on the portion of the trail passing through the State in which the site is located. Wherever possible, the sites shall be maintained by a State agency under a cooperative agreement between the appropriate Secretary and the State agency.

(d) Use and acquisition of lands within exterior boundaries of areas included within right-of-way

Within the exterior boundaries of areas under their administration that are included in the right-of-way selected for a national recreation, national scenic, or national historic trail, the heads of Federal agencies may use lands for trail purposes and may acquire lands or interests in lands by written cooperative agreement, donation, purchase with donated or appropriated funds or exchange.

(e) Right-of-way lands outside exterior boundaries of federally administered areas; cooperative agreements or acquisition; failure to agree or acquire; agreement or acquisition by Secretary concerned; right of first refusal for original owner upon disposal

Where the lands included in a national scenic or national historic trail right-of-way are outside of the exterior boundaries of federally administered areas, the Secretary charged with the administration of such trail shall encourage the States or local governments involved (1) to enter into written cooperative agreements with landowners, private organizations, and individuals to provide the necessary trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the national scenic or national historic trail: *Provided,* That if the State or local governments fail to enter into such written cooperative agreements or to acquire such lands or interests therein after notice of the selection of the right-of-way is published, the appropriate Secretary may (i) enter into such agreements with landowners, States, local governments, private organizations, and individuals for the use of lands for trail purposes, or (ii) acquire private lands or interests therein by donation, purchase with donated or appropriated funds or exchange in accordance with the provisions of subsection (f) of this section: *Provided further,* That the appropriate Secretary may acquire lands or interests therein from local governments or governmental corporations with the consent of such entities. The lands involved in such rights-of-way should be acquired in fee, if other methods of public control are not sufficient to assure their use for the purpose for which they are acquired: *Provided,* That if the Secretary charged with the administration of such trail permanently relocates the right-of-way and disposes of all title or interest in the land, the original owner, or his heirs or assigns, shall be offered, by notice given at the former owner's last known address, the right of first refusal at the fair market price.

(f) Exchange of property within the right-of-way by Secretary of the Interior; property subject to exchange; equalization of value of property; exchange of national forest lands by Secretary of Agriculture; tracts lying outside trail acquisition area

(1) The Secretary of the Interior, in the exercise of his exchange authority, may accept title to any non-Federal property within the right-of-way and in exchange therefor he may convey to the grantor of such property any federally owned property under his jurisdiction which is located in the State wherein such property is located and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require. The Secretary of Agriculture, in the exercise of his exchange authority, may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(2) In acquiring lands or interests therein for a National Scenic or Historic Trail, the appropriate Secretary may, with consent of a landowner, acquire whole tracts notwithstanding that parts of such tracts may lie outside the area of trail acquisition. In furtherance of the purposes of this chapter, lands so acquired outside the area of trail acquisition may be exchanged for any non-Federal lands or interests therein within the trail right-of-way, or disposed of in accordance with such procedures or regulations as the appropriate Secretary shall prescribe, including: (i) provisions for conveyance of such acquired lands or interests therein at not less than fair market value to the highest bidder, and (ii) provisions for allowing the last owners of record a right to purchase said acquired lands or interests therein upon payment or agreement to pay an amount equal to the highest bid price. For lands designated for exchange or disposal, the appropriate Secretary may convey these lands with any reservations or covenants deemed desirable to further the purposes of this chapter. The

proceeds from any disposal shall be credited to the appropriation bearing the costs of land acquisition for the affected trail.

(g) Condemnation proceedings to acquire private lands; limitations; availability of funds for acquisition of lands or interests therein; acquisition of high potential, route segments or historic sites

The appropriate Secretary may utilize condemnation proceedings without the consent of the owner to acquire private lands or interests therein pursuant to this section only in cases where, in his judgment, all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and in such cases he shall acquire only such title as, in his judgment, is reasonably necessary to provide passage across such lands: *Provided,* That condemnation proceedings may not be utilized to acquire fee title or lesser interests to more than an average of one hundred and twenty-five acres per mile. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to appropriations from other sources, be available to Federal departments for the acquisition of lands or interests in lands for the purposes of this chapter. For national historic trails, direct Federal acquisition for trail purposes shall be limited to those areas indicated by the study report or by the comprehensive plan as high potential route segments or high potential historic sites. Except for designated protected components of the trail, no land or site located along a designated national historic trail or along the Continental Divide National Scenic Trail shall be subject to the provisions of section 303 of Title 49 unless such land or site is deemed to be of historical significance under appropriate historical site criteria such as those for the National Register of Historic Places.

(h) Development and maintenance of national, scenic or historic, trails; cooperation with States over portions located outside of federally administered areas; cooperative agreements; participation of volunteers; reservation of right-of-way for trails in conveyances by Secretary of the Interior

(1) The Secretary charged with the administration of a national recreation, national scenic, or national historic trail shall provide for the development and maintenance of such trails within federally administered areas and shall cooperate with and encourage the States to operate, develop, and maintain portions of such trails which are located outside the boundaries of federally administered areas. When deemed to be in the public interest, such Secretary may enter written cooperative agreements with the States or their political subdivisions, landowners, private organizations, or individuals to operate, develop, and maintain any portion of such a trail either within or outside a federally administered area. Such agreements may include provisions for limited financial assistance to encourage participation in the acquisition, protection, operation, development, or maintenance of such trails, provisions providing volunteer in the park or volunteer in the forest status (in accordance with section 102301 of Title 54 and the Volunteers in the Forests Act of 1972) to individuals, private organizations, or landowners participating in such activities, or provisions of both types. The appropriate Secretary shall also initiate consultations with affected States and their political subdivisions to encourage--

(A) the development and implementation by such entities of appropriate measures to protect private landowners from trespass resulting from trail use and from unreasonable personal liability and property damage caused by trail use, and

(B) the development and implementation by such entities of provisions for land practices, compatible with the purposes of this chapter,

for property within or adjacent to trail rights-of-way. After consulting with States and their political subdivisions under the preceding sentence, the Secretary may provide assistance to such entities under appropriate cooperative agreements in the manner provided by this subsection.

(2) Whenever the Secretary of the Interior makes any conveyance of land under any of the public land laws, he may reserve a right-of-way for trails to the extent he deems necessary to carry out the purposes of this chapter.

(i) Regulations; issuance; concurrence and consultation; revision; publication; violations; penalties; utilization of national park or national forest authorities

The appropriate Secretary, with the concurrence of the heads of any other Federal agencies administering lands through which a national recreation, national scenic, or national historic trail passes, and after consultation with the States, local governments, and organizations concerned, may issue regulations, which may be revised from time to time, governing the use, protection, management, development, and administration of trails of the national trails system. In order to maintain good conduct on and along the trails located within federally administered areas and to provide for the proper government and protection of such trails, the Secretary of the Interior and the Secretary of Agriculture shall prescribe and publish such uniform regulations as they deem necessary and any person who violates such regulations shall be guilty of a misdemeanor, and may be punished by a fine of not more than $500, or by imprisonment not exceeding six months, or by both such fine and imprisonment. The Secretary responsible for the administration of any segment of any component of the National Trails System (as determined in a manner consistent with subsection (a)(1) of this section) may also utilize authorities related to units of the national park system or the national forest system, as the case may be, in carrying out his administrative responsibilities for such component.

(j) Types of trail use allowed

Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles. In addition, trail access for handicapped individuals may be provided. The provisions of this subsection shall not supersede any other provisions of this chapter or other Federal laws, or any State or local laws.

(k) Donations or other conveyances of qualified real property interests

For the conservation purpose of preserving or enhancing the recreational, scenic, natural, or historical values of components of the national trails system, and environs thereof as determined by the appropriate Secretary, landowners are authorized to donate or otherwise convey qualified real property interests to qualified organizations consistent with section 170(h)(3) of Title 26, including, but not limited to, right-of-way, open space, scenic, or conservation easements, without regard to any limitation on the nature of the estate or interest otherwise transferable within the jurisdiction where the land is located. The conveyance of any such interest in land in accordance with this subsection shall be deemed to further a Federal conservation policy and yield a significant public benefit for purposes of section 6 of Public Law 96-541.

CREDIT(S)

(Pub.L. 90-543, § 7, Oct. 2, 1968, 82 Stat. 922; Pub.L. 95-248, § 1(3), (4), Mar. 21, 1978, 92 Stat. 160; Pub.L. 95-625, Title V, § 551(17)-(21), Nov. 10, 1978, 92 Stat. 3515, 3516; Pub.L. 96-87, Title IV, § 401(m)(2), (3), Oct. 12, 1979, 93 Stat. 666; Pub.L. 97-449, § 6(b), Jan. 12, 1983, 96 Stat. 2443; Pub.L. 98-11, Title II, § 207, Mar. 28, 1983, 97 Stat. 45; Pub.L. 113-287, § 5(d)(23), Dec. 19, 2014, 128 Stat. 3266.)

Notes of Decisions (4)

16 U.S.C.A. § 1246, 16 USCA § 1246
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

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16 U.S.C.A. § 1247

§ 1247. State and local area recreation and historic trails

Effective: December 19, 2014
Currentness

(a) Secretary of the Interior to encourage States, political subdivisions, and private interests; financial assistance for State and local projects

The Secretary of the Interior is directed to encourage States to consider, in their comprehensive statewide outdoor recreation plans and proposals for financial assistance for State and local projects submitted pursuant to chapter 2003 of Title 54, needs and opportunities for establishing park, forest, and other recreation and historic trails on lands owned or administered by States, and recreation and historic trails on lands in or near urban areas. The Secretary is also directed to encourage States to consider, in their comprehensive statewide historic preservation plans and proposals for financial assistance for State, local, and private projects submitted pursuant to division A of subtitle III of Title 54, needs and opportunities for establishing historic trails. He is further directed, in accordance with the authority contained in chapter 2003 of Title 54) [1] , to encourage States, political subdivisions, and private interests, including nonprofit organizations, to establish such trails.

(b) Secretary of Housing and Urban Development to encourage metropolitan and other urban areas; administrative and financial assistance in connection with recreation and transportation planning; administration of urban open-space program

The Secretary of Housing and Urban Development is directed, in administering the program of comprehensive urban planning and assistance under section 701 of the Housing Act of 1954, to encourage the planning of recreation trails in connection with the recreation and transportation planning for metropolitan and other urban areas. He is further directed, in administering the urban open-space program under title VII of the Housing Act of 1961, to encourage such recreation trails.

(c) Secretary of Agriculture to encourage States, local agencies, and private interests

The Secretary of Agriculture is directed, in accordance with authority vested in him, to encourage States and local agencies and private interests to establish such trails.

(d) Interim use of railroad rights-of-way

The Secretary of Transportation, the Chairman of the Surface Transportation Board, and the Secretary of the Interior, in administering the Railroad Revitalization and Regulatory Reform Act of 1976, shall encourage State and local agencies and private interests to establish appropriate trails using the provisions of such programs. Consistent with the purposes of that Act, and in furtherance of the national policy to preserve established railroad rights-of-way for future reactivation of rail service, to protect rail transportation corridors, and to encourage energy efficient transportation use, in the case of interim use of any established railroad rights-of-way pursuant to donation, transfer, lease, sale, or otherwise in a manner

consistent with this chapter, if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for purposes of any law or rule of law, as an abandonment of the use of such rights-of-way for railroad purposes. If a State, political subdivision, or qualified private organization is prepared to assume full responsibility for management of such rights-of-way and for any legal liability arising out of such transfer or use, and for the payment of any and all taxes that may be levied or assessed against such rights-of-way, then the Board shall impose such terms and conditions as a requirement of any transfer or conveyance for interim use in a manner consistent with this chapter, and shall not permit abandonment or discontinuance inconsistent or disruptive of such use.

(e) Designation and marking of trails; approval of Secretary of the Interior

Such trails may be designated and suitably marked as parts of the nationwide system of trails by the States, their political subdivisions, or other appropriate administering agencies with the approval of the Secretary of the Interior.

CREDIT(S)

(Pub.L. 90-543, § 8, Oct. 2, 1968, 82 Stat. 925; Pub.L. 95-625, Title V, § 551(22), Nov. 10, 1978, 92 Stat. 3516; Pub.L. 98-11, Title II, § 208, Mar. 28, 1983, 97 Stat. 48; Pub.L. 104-88, Title III, § 317(1), Dec. 29, 1995, 109 Stat. 949; Pub.L. 113-287, § 5(d)(24), Dec. 19, 2014, 128 Stat. 3266.)

Notes of Decisions (137)

Footnotes

1 So in original. The closing parenthesis probably should not appear.

16 U.S.C.A. § 1247, 16 USCA § 1247

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

United States Code Annotated
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16 U.S.C.A. § 1248

§ 1248. Easements and rights-of-way

Effective: December 19, 2014
Currentness

(a) Authorization; conditions

The Secretary of the Interior or the Secretary of Agriculture as the case may be, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided,* That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this chapter.

(b) Cooperation of Federal agencies with Secretary of the Interior and Secretary of Agriculture

The Department of Defense, the Department of Transportation, the Surface Transportation Board, the Federal Communications Commission, the Secretary of Energy, and other Federal agencies having jurisdiction or control over or information concerning the use, abandonment, or disposition of roadways, utility rights-of-way, or other properties which may be suitable for the purpose of improving or expanding the national trails system shall cooperate with the Secretary of the Interior and the Secretary of Agriculture in order to assure, to the extent practicable, that any such properties having values suitable for trail purposes may be made available for such use.

(c) Abandoned railroad grants; retention of rights

Commencing October 4, 1988, any and all right, title, interest, and estate of the United States in all rights-of-way of the type described in section 912 of Title 43, shall remain in the United States upon the abandonment or forfeiture of such rights-of-way, or portions thereof, except to the extent that any such right-of-way, or portion thereof, is embraced within a public highway no later than one year after a determination of abandonment or forfeiture, as provided under such section.

(d) Location, incorporation, and management

(1) All rights-of-way, or portions thereof, retained by the United States pursuant to subsection (c) which are located within the boundaries of a conservation system unit or a National Forest shall be added to and incorporated within such unit or National Forest and managed in accordance with applicable provisions of law, including this chapter.

(2) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or a National Forest but adjacent to or contiguous with any portion of the public lands shall be managed pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this section.

(3) All such retained rights-of-way, or portions thereof, which are located outside the boundaries of a conservation system unit or National Forest which the Secretary of the Interior determines suitable for use as a public recreational trail or other recreational purposes shall be managed by the Secretary for such uses, as well as for such other uses as the Secretary determines to be appropriate pursuant to applicable laws, as long as such uses do not preclude trail use.

(e) Release and quitclaim; conditions; sale; proceeds

(1) The Secretary of the Interior is authorized where appropriate to release and quitclaim to a unit of government or to another entity meeting the requirements of this subsection any and all right, title, and interest in the surface estate of any portion of any right-of-way to the extent any such right, title, and interest was retained by the United States pursuant to subsection (c), if such portion is not located within the boundaries of any conservation system unit or National Forest. Such release and quitclaim shall be made only in response to an application therefor by a unit of State or local government or another entity which the Secretary of the Interior determines to be legally and financially qualified to manage the relevant portion for public recreational purposes. Upon receipt of such an application, the Secretary shall publish a notice concerning such application in a newspaper of general circulation in the area where the relevant portion is located. Such release and quitclaim shall be on the following conditions:

(A) If such unit or entity attempts to sell, convey, or otherwise transfer such right, title, or interest or attempts to permit the use of any part of such portion for any purpose incompatible with its use for public recreation, then any and all right, title, and interest released and quitclaimed by the Secretary pursuant to this subsection shall revert to the United States.

(B) Such unit or entity shall assume full responsibility and hold the United States harmless for any legal liability which might arise with respect to the transfer, possession, use, release, or quitclaim of such right-of-way.

(C) Notwithstanding any other provision of law, the United States shall be under no duty to inspect such portion prior to such release and quitclaim, and shall incur no legal liability with respect to any hazard or any unsafe condition existing on such portion at the time of such release and quitclaim.

(2) The Secretary is authorized to sell any portion of a right-of-way retained by the United States pursuant to subsection (c) located outside the boundaries of a conservation system unit or National Forest if any such portion is--

(A) not adjacent to or contiguous with any portion of the public lands; or

(B) determined by the Secretary, pursuant to the disposal criteria established by section 203 of the Federal Land Policy and Management Act of 1976, to be suitable for sale.

Prior to conducting any such sale, the Secretary shall take appropriate steps to afford a unit of State or local government or any other entity an opportunity to seek to obtain such portion pursuant to paragraph (1) of this subsection.

(3) All proceeds from sales of such retained rights of way shall be deposited into the Treasury of the United States and credited to the Land and Water Conservation Fund as provided in section 200302 of Title 54.

(4) The Secretary of the Interior shall annually report to the Congress the total proceeds from sales under paragraph (2) during the preceding fiscal year. Such report shall be included in the President's annual budget submitted to the Congress.

(f) "Conservation system unit" and "public lands" defined

As used in this section--

(1) The term "conservation system unit" has the same meaning given such term in the Alaska National Interest Lands Conservation Act (Public Law 96-487; 94 Stat. 2371 et seq.), except that such term shall also include units outside Alaska.

(2) The term "public lands" has the same meaning given such term in the Federal Land Policy and Management Act of 1976.

CREDIT(S)

(Pub.L. 90-543, § 9, Oct. 2, 1968, 82 Stat. 925; Pub.L. 95-91, Title III, § 301(b), Aug. 4, 1977, 91 Stat. 577; Pub.L. 100-470, § 3, Oct. 4, 1988, 102 Stat. 2281; Pub.L. 104-88, Title III, § 317(2), Dec. 29, 1995, 109 Stat. 949; Pub.L. 113-287, § 5(d)(25), Dec. 19, 2014, 128 Stat. 3266.)

Notes of Decisions (31)

16 U.S.C.A. § 1248, 16 USCA § 1248
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

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16 U.S.C.A. § 1249

§ 1249. Authorization of appropriations

Effective: December 19, 2014
Currentness

(a) Appalachian and Pacific Crest National Scenic Trails

(1) There are hereby authorized to be appropriated for the acquisition of lands or interests in lands not more than $5,000,000 for the Appalachian National Scenic Trail and not more than $500,000 for the Pacific Crest National Scenic Trail. From the appropriations authorized for fiscal year 1979 and succeeding fiscal years pursuant to chapter 2003 of Title 54, not more than the following amounts may be expended for the acquisition of lands and interests in lands authorized to be acquired pursuant to the provisions of this chapter: for the Appalachian National Scenic Trail, not to exceed $30,000,000 for fiscal year 1979, $30,000,000 for fiscal year 1980, and $30,000,000 for fiscal year 1981, except that the difference between the foregoing amounts and the actual appropriations in any one fiscal year shall be available for appropriation in subsequent fiscal years.

(2) It is the express intent of the Congress that the Secretary should substantially complete the land acquisition program necessary to insure the protection of the Appalachian Trail within three complete fiscal years following March 21, 1978.

(b) Land deemed to qualify for funding

For the purposes of Public Law 95-42 (91 Stat. 211), the lands and interests therein acquired pursuant to this section shall be deemed to qualify for funding under the provisions of section 1, clause 2, of said Act.

(c) Authorization of appropriations

(1) In general

Except as otherwise provided in this chapter, there are authorized to be appropriated such sums as are necessary to implement the provisions of this chapter relating to the trails designated by section 1244(a) of this title.

(2) Natchez Trace National Scenic Trail

(A) In general

With respect to the Natchez Trace National Scenic Trail (referred to in this paragraph as the "trail") designated by section 1244(a)(12) of this title--

(i) not more than $500,000 shall be appropriated for the acquisition of land or interests in land for the trail; and

(ii) not more than $2,000,000 shall be appropriated for the development of the trail.

(B) Participation by volunteer trail groups

The administering agency for the trail shall encourage volunteer trail groups to participate in the development of the trail.

CREDIT(S)

(Pub.L. 90-543, § 10, Oct. 2, 1968, 82 Stat. 926; Pub.L. 95-248, § 1(5), Mar. 21, 1978, 92 Stat. 160; Pub.L. 95-625, Title V, § 551(23), Nov. 10, 1978, 92 Stat. 3517; Pub.L. 96-199, Title I, § 101(b)(4), Mar. 5, 1980, 94 Stat. 68; Pub.L. 96-370, § 1(b), Oct. 3, 1980, 94 Stat. 1360; Pub.L. 98-11, Title II, § 209, Mar. 28, 1983, 97 Stat. 48; Pub.L. 100-35, § 1(b), May 8, 1987, 101 Stat. 302; Pub.L. 100-192, § 2, Dec. 16, 1987, 101 Stat. 1309; Pub.L. 101-365, § 2(b), Aug. 15, 1990, 104 Stat. 429; Pub.L. 103-437, § 6(d)(38), Nov. 2, 1994, 108 Stat. 4585; Pub.L. 104-333, Div. I, Title VIII, § 814(d)(1)(J), Nov. 12, 1996, 110 Stat. 4196; Pub.L. 108-352, § 14(2), Oct. 21, 2004, 118 Stat. 1397; Pub.L. 111-11, Title V, § 5301(b), Mar. 30, 2009, 123 Stat. 1161; Pub.L. 113-287, § 5(d)(26), Dec. 19, 2014, 128 Stat. 3266.)

16 U.S.C.A. § 1249, 16 USCA § 1249
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

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16 U.S.C.A. § 1250

§ 1250. Volunteer trails assistance

Effective: December 19, 2014
Currentness

(a) Volunteer planning, development, maintenance, and management of trails

(1) In addition to the cooperative agreement and other authorities contained in this chapter, the Secretary of the Interior, the Secretary of Agriculture, and the head of any Federal agency administering Federal lands, are authorized to encourage volunteers and volunteer organizations to plan, develop, maintain, and manage, where appropriate, trails throughout the Nation.

(2) Wherever appropriate in furtherance of the purposes of this chapter, the Secretaries are authorized and encouraged to utilize section 102301 of Title 54, the Volunteers in the Forests Act of 1972, and 200305 [1] of Title 54 (relating to the development of Statewide Comprehensive Outdoor Recreation Plans).

(b) Scope of volunteer work

Each Secretary or the head of any Federal land managing agency may assist volunteers and volunteer organizations in planning, developing, maintaining, and managing trails. Volunteer work may include, but need not be limited to--

(1) planning, developing, maintaining, or managing (A) trails which are components of the national trails system, or (B) trails which, if so developed and maintained, could qualify for designation as components of the national trails system; or

(2) operating programs to organize and supervise volunteer trail building efforts with respect to the trails referred to in paragraph (1), conducting trail-related research projects, or providing education and training to volunteers on methods of trails planning, construction, and maintenance.

(c) Use of Federal facilities, equipment, tools, and technical assistance

The appropriate Secretary or the head of any Federal land managing agency may utilize and make available Federal facilities, equipment, tools, and technical assistance to volunteers and volunteer organizations, subject to such limitations and restrictions as the appropriate Secretary or the head of any Federal land managing agency deems necessary or desirable.

CREDIT(S)

(Pub.L. 90-543, § 11, as added Pub.L. 98-11, Title II, § 210, Mar. 28, 1983, 97 Stat. 49; amended Pub.L. 113-287, § 5(d)(27), Dec. 19, 2014, 128 Stat. 3267.)

Footnotes

1 So in original. The word "section" probably should precede "200305".

16 U.S.C.A. § 1250, 16 USCA § 1250

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

United States Code Annotated
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16 U.S.C.A. § 1251

§ 1251. Definitions

Effective: December 19, 2014
Currentness

As used in this chapter:

(1) The term "high potential historic sites" means those historic sites related to the route, or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion.

(2) The term "high potential route segments" means those segments of a trail which would afford high quality recreation experience in a portion of the route having greater than average scenic values or affording an opportunity to vicariously share the experience of the original users of a historic route.

(3) The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and any other territory or possession of the United States.

(4) The term "without expense to the United States" means that no funds may be expended by Federal agencies for the development of trail related facilities or for the acquisition of lands or interests in lands outside the exterior boundaries of Federal areas. For the purposes of the preceding sentence, amounts made available to any State or political subdivision under chapter 2003 of Title 54 or any other provision of law shall not be treated as an expense to the United States.

CREDIT(S)

(Pub.L. 90-543, § 12, as added Pub.L. 98-11, Title II, § 210, Mar. 28, 1983, 97 Stat. 50; amended Pub.L. 113-287, § 5(d)(28), Dec. 19, 2014, 128 Stat. 3267.)

16 U.S.C.A. § 1251, 16 USCA § 1251
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

County meets the applicable requirements of the CAA and EPA's 2014 SO_2 Nonattainment Guidance. Thus, EPA is proposing to approve Pennsylvania's attainment plan for the Beaver Area as submitted on September 29, 2017. EPA's analysis for this proposed action is discussed in Section V of this proposed rulemaking. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Final approval of this SIP submittal will remove EPA's duty to promulgate and implement a FIP for this Area.

VII. Incorporation by Reference

In this document, EPA is proposing to include regulatory text in a final rule that includes incorporation by reference. In accordance with requirements of 40 CFR 51.5, EPA is proposing to incorporate by reference the portions of the COAs entered between Pennsylvania and FirstEnergy and Pennsylvania and Jewel included in the PADEP submittal of September 29, 2017 that are not redacted. This includes emission limits and associated compliance parameters, recording-keeping and reporting, and contingency measures. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, concerning the SO_2 attainment plan for the Beaver nonattainment area in Pennsylvania, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 24, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2018–21667 Filed 10–4–18; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1152

[Docket No. EP 749; Docket No. EP 749 (Sub-No. 1)]

National Association of Reversionary Property Owners—Petition for Rulemaking; Limiting Extensions of Trail Use Negotiating Periods

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) grants in part a petition by the National Association of Reversionary Property Owners (NARPO) and opens a proceeding in Docket No. EP 749 (Sub-No. 1) to consider revising regulations related to the National Trails System Act. The Board proposes to modify its regulations to limit the number of 180-day extensions of a trail use negotiating period to a maximum of six extensions, absent extraordinary circumstances.

DATES: Comments are due by November 1, 2018; replies are due by November 21, 2018.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's website at ''*www.stb.gov*'' at the ''E–FILING'' link. Any person submitting a filing in paper format should send an original and 10 paper copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 749 (Sub-No. 1), 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher, (202) 245–0355. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On June 14, 2018, NARPO filed a petition for rulemaking requesting that the Board consider issuing three rules related to 16 U.S.C. 1247(d), the codification of section 8(d) of the National Trails System Act (Trails Act), Public Law 90–543, section 8, 82 Stat. 919 (1968). Specifically, NARPO asks that the Board open a proceeding to consider rules that would: (1) Limit the number of 180-day extensions of a trail use negotiating period to six; (2) require a rail carrier or trail sponsor negotiating an interim trail use agreement to send notice of the issuance of a Certificate of Interim Trail Use (CITU) or Notice of Interim Trail

Use (NITU) [1] to landowners adjacent to the right-of-way covered by the CITU/NITU; and (3) require all entities, including government entities, filing a request for a CITU/NITU, or extension thereof, to pay a filing fee.

On July 5, 2018, the Association of American Railroads (AAR) replied in opposition to the changes proposed in NARPO's petition.[2] Thereafter, late-filed letters in support of NARPO's petition were filed by the Community Council Railroad Committee, Save Taxes & Our Property (STOP), and several individuals. Comments in opposition to the petition were late-filed by the Madison County Mass Transit District (MCMTD), the Iowa Natural Heritage Foundation (INHF), the City of Seattle, Wash. (City of Seattle), and the Rails-To-Trails Conservancy (RTC). RTC also requested a 30-day extension of time to respond to NARPO's petition. In the interest of compiling a complete record, the late-filed pleadings were accepted into the record, but RTC's extension request was denied. *Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking,* EP 749 (STB served Aug. 14, 2018).

The Board has broad discretion when determining whether to initiate a rulemaking. *See, e.g., Defenders of Wildlife* v. *Gutierrez,* 532 F.3d 913, 919 (DC Cir. 2008). After considering the petition for rulemaking and the comments received, the Board will grant NARPO's petition in part and institute a rulemaking proceeding in Docket No. EP 749 (Sub-No. 1) to propose modifications to the Board's rules related to extensions of the trail use negotiating period. The Board will deny NARPO's petition with regard to its other two proposed rules. Because the Board is proposing a rule change in a separate sub-docket, the docket in Docket No. EP 749 will be closed.

Background

The Trails Act was established in 1968 to create a nationwide system of recreational trails. In 1983, Congress added a rail section, codified at 16 U.S.C. 1247(d). This addition to the Trails Act was the ''culmination of congressional efforts to preserve shrinking rail trackage by converting unused rights-of-way to recreational trails.'' *Preseault* v. *ICC,* 494 U.S. 1, 5 (1990). Under the Trails Act, the Board must ''preserve established railroad rights-of-way for future reactivation of rail service'' by prohibiting abandonment where a trail sponsor agrees to assume full managerial, tax, and legal liability for the right-of-way for use in the interim as a trail. 16 U.S.C. 1247(d); *Nat'l Wildlife Fed'n* v. *ICC,* 850 F.2d 694, 699–702 (D.C. Cir. 1988). The statute expressly provides that ''if such interim use is subject to restoration or reconstruction for railroad purposes, such interim use shall not be treated, for [any] purposes . . . as an abandonment. . . .'' Section 1247(d). Instead, the right-of-way is ''rail-banked,'' which means that the railroad is relieved of the current obligation to provide service over the line but that the railroad (or any other approved rail service provider) may reassert control over the right-of-way to restore service on the line in the future. *See Birt* v. *STB,* 90 F.3d 580, 583 (D.C. Cir. 1996); *Iowa Power—Const. Exemption—Council Bluffs, Iowa,* 8 I.C.C.2d 858, 866–67 (1990); 49 CFR 1152.29.[3] If a line is railbanked and designated for trail use, any reversionary interests that adjoining landowners might have under state law upon abandonment are not activated. *Preseault,* 494 U.S. at 8; *Birt,* 90 F.3d at 583.

The Trails Act is invoked when a prospective trail sponsor files a request with the Board to railbank a line that a carrier has proposed to abandon. The trail sponsor's request must include a statement of willingness to assume responsibility for management, legal liability, and payment of taxes, and an acknowledgement that interim trail use is subject to restoration of rail service at any time. 49 CFR 1152.29(a). Pursuant to 49 CFR 1152.29(c)(1) and (d)(1), if the railroad indicates its willingness to negotiate a railbanking/interim trail use agreement for the line, the Board will issue a CITU (in an abandonment application proceeding) or a NITU (in an abandonment exemption proceeding) for the line. The CITU/NITU grants parties a 180-day period (which can be extended by Board order) to negotiate a railbanking agreement. 49 CFR 1152.29(c)(1), (d)(1); *Preseault,* 494 U.S. at 7 n.5; *Birt,* 90 F.3d at 583 (affirming the agency's authority to grant ''reasonable'' extensions of the Trails Act negotiating period). *See also Grantwood Vill.* v. *Missouri Pac. R.R.,* 95 F.3d 654, 659 (8th Cir. 1996) (ICC ''was free to extend [the 180-day CITU/NITU] time period for an agreement'').

If parties reach an agreement during the trail use negotiating period, the CITU/NITU automatically authorizes railbanking/interim trail use. *Preseault,* 494 U.S. at 7 n.5. Without further action from the Board,[4] the trail sponsor may assume management of the right-of-way, subject to the right of a railroad to reassert control of the property for restoration or reconstruction of rail service and the terms of the agreement. 49 CFR 1152.29(c)(2), (d)(2); *Birt,* 90 F.3d at 583. If no railbanking/interim trail use agreement is reached by the expiration of the CITU/NITU 180-day negotiation period (and any extension thereof), the CITU/NITU authorizes the railroad to ''exercise its option to fully abandon'' the line by consummating the abandonment, without further action by the agency, 49 CFR 1152.29(c)(1), (d)(1), provided that there are no unmet conditions imposed on the abandonment authority that must be satisfied prior to consummation. *See Consummation of Rail Line Abans. That Are Subject to Historic Pres. & Other Envtl. Conditions,* EP 678, slip op. at 3–4 (STB served Apr. 23, 2008).

The Board retains jurisdiction over a rail line throughout the CITU/NITU negotiating period, any period of railbanking/interim trail use, and any period during which rail service is restored. Only after a CITU/NITU is no longer in effect and the railroad has lawfully consummated its abandonment authority is the Board's jurisdiction terminated. *See* Section 1247(d); *Hayfield N. R.R.* v. *Chi. & N. W. Transp. Co.,* 467 U.S. 622, 633 (1984). At that

[1] As explained below, the issuance of a CITU/NITU by the Board provides time for the parties to negotiate an interim trail use arrangement. NARPO's proposed rules only refer to NITUs, but, presumably, NARPO intended to propose the same changes to CITU procedures as there are no substantive differences between CITUs (issued in an abandonment application proceeding) and NITUs (issued in an abandonment exemption proceeding).

[2] On July 23, 2018, NARPO filed a reply, which was accepted into the record. *Nat'l Ass'n of Reversionary Prop. Owners—Pet. for Rulemaking,* EP 749, slip op. at 1 n.1 (STB served Aug. 14, 2018).

[3] The Board, and its predecessor, the Interstate Commerce Commission (ICC), has promulgated, modified, and clarified its rules to implement the Trails Act a number of times. *See, e.g., Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702 (STB served Apr. 30, 2012); *Aban. & Discontinuance of Rail Lines & Rail Transp. Under 49 U.S.C. 10903,* 1 S.T.B. 894 (1996); *Policy Statement on Rails to Trails Conversions,* EP 272 (Sub-No. 13B) (ICC served Jan. 29, 1990); *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* 4 I.C.C.2d 152 (1987); *Rail Abans.—Use of Rights-of-Way as Trails,* 2 I.C.C.2d 591 (1986).

[4] The trail sponsor and railroad are required to notify the Board that an agreement has been reached, 49 CFR 1152.29(h), but the Board's overall role under the Trails Act is limited. *Citizens Against Rails-to-Trails* v. *STB,* 267 F.3d 1144, 1151–52 (D.C. Cir. 2001); *Goos* v. *ICC,* 911 F.2d 1283, 1295 (8th Cir. 1990) (agency has ''little, if any, discretion to forestall a voluntary agreement to effect a conversion to trail use''). Once the railroad and trail sponsor have reached a trail use agreement, ''the Board's chief concern . . . is that the statutory railbanking conditions not be compromised and that nothing occur that would preclude a railroad's right to reassert control over the right-of-way at some future time to revive active service.'' *Sunflower Rails-Trails Conservancy, Inc.—Pet. for Declaratory Order—Sale of Railbanked Right-of-Way,* FD 36034, slip. op. at 4 (STB served Feb. 23, 2017).

point, the right-of-way may revert to reversionary landowner interests, if any, pursuant to state law. *Preseault,* 494 U.S. at 5, 8.

NARPO's Petition for Rulemaking and Comments Received

Limiting CITU/NITU Extension Requests. In its petition for rulemaking, NARPO proposes that the Board limit the number of 180-day extensions of a trail use negotiating period to six. (NARPO Pet. 2.) NARPO identifies several proceedings in which the Board extended the 180-day trail use negotiating period for what it terms excessive periods of time (*e.g.,* nearly 10 years). (*Id.* at 2–4.) NARPO argues that the Board must impose a reasonable limit on the number of extensions granted for trail use negotiations. (*Id.* at 4.) NARPO contends that its proposed rule calling for a maximum of six 180-day extensions strikes a reasonable balance between the time legitimately required for trail use negotiations, and the abuse of trail use procedures that results from repeated extensions over a lengthy period of time. (*Id.*)

A few commenters support NARPO's proposal to limit the number of extensions granted during the trail use negotiation period. (*E.g.,* Tomani Comments 1; Rood Comments 1.) Other commenters, however, oppose NARPO's proposal. Some argue that NARPO has failed to justify that its proposed rule is needed or to demonstrate how any of its members might be prejudiced by the extensions. (MCMTD Comments 2; City of Seattle Comments 2–3.) Others contend that the ability to extend the trail use negotiating period is critical as delays may be a result of factors not attributable to the trail sponsor (*e.g.,* proceedings involving an Offer of Financial Assistance, delays resulting from compliance with environmental and historic preservation conditions, and carrier negotiations with salvage operators). (RTC Comments 3; City of Seattle Comments 4.) RTC argues that the Board has held that CITU/NITU extensions should be liberally granted because of the ''strong Congressional policy favoring trails use/railbanking.'' (RTC Comments 3.) RTC also asserts that negotiating a railbanking/interim trail use agreement is a complex undertaking, requiring the potential trail sponsor to assume extensive liabilities and long-term financial responsibilities for the management of the corridor. (RTC Comments 3.) Thus, RTC argues that NARPO's proposed limit of six extensions for NITUs would undermine the implementation and effectiveness of the federal railbanking law. (*Id.*) AAR also opposes NARPO's proposal, arguing (along with RTC) that the Board may evaluate NITU extension requests on a case-by-case basis to determine if they are reasonable. (AAR Comments 4, RTC Comments 4.)

Having considered this aspect of NARPO's petition and the comments filed in this docket, the Board concludes that proposing a rule imposing limits on the availability of extensions is reasonable and warranted. The agency has granted CITU/NITU extensions liberally in the past and, at times, Trails Act negotiations have gone on for many years. The courts have noted that extensions ''ad infinitum'' could have the undesirable effect of ''allowing the railroad to stop service without either relinquishing its rights to the easement or putting the right-of-way to productive use.'' *Birt,* 90 F.3d at 589. While the Trails Act process (which depends on a railroad and a trail sponsor negotiating a voluntary agreement) clearly contemplates that sufficient time is needed to determine if a specific rail corridor can be railbanked, the process must also be concluded after a reasonable period of time and provide administrative finality.[5] By allowing a maximum of six 180-day extensions (absent extraordinary circumstances), the Board could appropriately foster the interests of administrative efficiency and clarity by limiting negotiations to a reasonable period while still ensuring that parties also have the time required to take the many steps that may be part of the process involved in negotiating an agreement.

Notice to Landowners. In its petition, NARPO also proposes that the Board require a rail carrier or trail sponsor to ''send notice'' to adjoining landowners following the issuance of a CITU/NITU. (NARPO Pet. 4.) Reasserting an argument raised in several prior proceedings before the Board and the ICC, NARPO argues that effective notice of a CITU/NITU is essential for property owners to adequately protect their interests. (NARPO Pet. 5; NARPO Reply 6–7.)

NARPO argues that it would no longer be unduly burdensome for railroads or trail sponsors to send individual notice to each adjoining landowner because, according to NARPO, practically every county in the United States now has its property records stored electronically. (NARPO Pet. 5.) NARPO concludes that a rail carrier or trail sponsor could easily search county records, or retain a title company to do so, thereby obtaining the information needed to contact adjoining landowners. (*Id.*) Given the supposed ease of identifying and providing individual notice to property owners, NARPO maintains that **Federal Register** notice and local newspaper publication are no longer sufficient. (*Id.*) Commenters that support NARPO's proposal ask the Board to implement the individual notice requirement and assert that such notice to landowners could be accomplished easily. (*E.g.,* STOP Comments 1.)

Several commenters oppose NARPO's proposal, contending that the agency has already considered and rejected similar proposals by NARPO in the past, and that locating all adjacent landowners would be time-consuming, expensive, and burdensome. (RTC Comments 4; INHF Comments 2; City of Seattle Comments 5.) They further point out that NARPO provides no support for its argument that its proposed notice requirement could be ''easily'' accomplished because many jurisdictions maintain computerized land records. (RTC Comments 4; City of Seattle Comments 5; MCMTD Comments 2.) Some commenters also claim that NARPO's proposed rule would be inconsistent with the Board's limited role in administering the Trails Act, and contrary to the purpose of the Trails Act, which is to encourage and facilitate interim trail use of railroad rights-of-way that would otherwise be abandoned. (AAR Comments 2; INHF Comments 2.) Some commenters further argue that the existing notice procedures are sufficient. (AAR Comments 3; MCMTD Comments 2; City of Seattle Comments 6.)

The Board's regulations at 49 CFR 1105.12 require, in every abandonment exemption case, that the rail carrier certify that it has published a notice in a newspaper of general circulation in each county in which the line is located. *See Nat'l Trails Sys. Act & R.R. Rights-of-Way,* EP 702, slip op. at 7 (STB served Feb. 16, 2011); *see also Citizens Ass'n of Georgetown* v. *FAA,* 896 F.3d 425, 435–36 (D.C. Cir. 2018) (holding Federal Aviation Administration satisfied notice obligation through publication in local newspapers). Such a notice of the proposed abandonment provides information about available reuse alternatives, including trail use and public use, and informs the public how it may participate in the Board proceeding. *See* 49 CFR 1105.12. Moreover, **Federal Register** notice is also provided in every abandonment proceeding. 49 CFR 1152.22(i),

[5] The Board is also aware that courts have held that the timing of a CITU/NITU notice and the length of the negotiation period can potentially have impacts on takings claims proceedings. *See Caldwell* v. *United States,* 391 F.3d 1226, 1233 (Fed. Cir. 2004); *Ladd* v. *United States,* 630 F.3d 1015, 1024–26 (Fed. Cir. 2010).

1152.50(d)(3), 1152.60(a). Courts have repeatedly held that publication in the **Federal Register** is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance. *See Friends of Sierra R.R.* v. *ICC,* 881 F.2d 663, 667–68 (9th Cir. 1989); *Fed. Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 384–85 (1947); *Gov't. of Guam* v. *United States,* 744 F.2d 699, 701 (9th Cir. 1984); *Bennett* v. *Dir., Office of Workers' Comp. Programs,* 717 F.2d 1167, 1169 (7th Cir.1983); *N. Ala. Express, Inc.* v. *United States,* 585 F.2d 783, 787 n. 2 (5th Cir. 1978).

The Board and the ICC previously considered similar notice proposals by NARPO. Both the Board and the ICC declined to adopt such a rule, finding that providing direct notice to adjacent landowners would be time-consuming, burdensome, and unnecessary. *Nat'l Ass'n of Reversionary Prop. Owners* v. *STB,* 158 F.3d 135 (D.C. Cir. 1998); *see Nat'l Trails System Act & R.R. Rights-of-Way,* EP 702, slip op. at 7–8 (STB served Feb. 16, 2011; *Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures,* EP 274 (Sub-No. 13) (ICC served July 28, 1994). The Board finds that NARPO has not provided a sufficient basis for altering the existing notice requirements. A requirement that a rail carrier or trail sponsor identify, locate, and notify all adjacent landowners would be time-consuming and burdensome, even if electronic property records for each parcel located adjacent to the railroad right-of-way are available. Such a burdensome process could result in confusion and significant delay in the interim trail use process due to chain-of-title errors, multiple tenants-in-common, or claims by third parties against particular property owners. Further, NARPO does not support its claim that electronic property records are widely available. Therefore, the Board will not further consider this aspect of NARPO's petition.

Filing Fees for CITU/NITU Extension Requests. NARPO requests that the Board require public entities to pay filing fees for CITU/NITU extensions, as is currently required for non-public entities. (NARPO Pet. 5.) According to NARPO, non-payment of filing fees for CITU/NITU extensions requested by public entities burdens both the Board and non-public entities. (*Id.*) NARPO claims that extensive waivers of filing fees unduly burden Board staff because staff incurs the same labor cost for an extension request filed by a public entity as it would for a non-public entity. (*Id.* at 6.) NARPO also argues that non-public entities are burdened because their filing fees are higher than they would otherwise be to account for the numerous waivers granted for public entities. (*Id.*)

While some commenters support NARPO's proposal to require public entities to submit filing fees for NITU extensions (*e.g.,* Tomani Comments 1; Rood Comments 1), others oppose it. Generally, those opposing commenters contend that, pursuant to 49 CFR 1002.2(e)(1), no other filings submitted to the Board by federal, state, or local entities require fees, and that a NITU extension should be no different. (AAR Comments 4; City of Seattle Comments 7; INHF Comments 2.) The City of Seattle and MCMTD also contend that there is no evidence that the Board raises the price for fee payers due to fee exemptions granted to government entities. (City of Seattle Comments 7; MCMTD Comments 3.) RTC further argues that NARPO has failed to articulate why requiring public agencies to pay fees would in any way protect legitimate interests of adjacent landowners or reversionary interest holders. (RTC Comments 5.) AAR submits similar comments in opposition to NARPO's proposal and states that the Board need not address NARPO's request in a rulemaking as the Board can evaluate each request for a fee waiver on its own merit. (AAR Comments 4–5.) AAR also notes that the Board has concluded that third parties have no standing to challenge the grant or denial of a party's fee waiver request because it has no bearing on the merits of that party's claims and that there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. 9701, which regulates fees collected by government agencies. *See Hartwell First United Methodist Church—Adverse Aban. & Discontinuance—The Great Walton R.R., in Hart Cty., Ga.,* AB 1242 (STB served June 2, 2017) (citing *Byers* v. *Intuit, Inc.,* 564 F. Supp. 2d 385, 414–19 (E.D. Pa. 2008).

The Board finds NARPO's proposal lacks merit. The Board's rules are clear that filing fees are waived for *any* ''application or other proceeding''—including a CITU/NITU extension request—that is filed by a federal government agency, or a state or local government entity. 49 CFR 1002.2(e)(1). NARPO has failed to explain why an exception from this rule of general applicability should be made only in the CITU/NITU context. The Board evaluates each fee waiver request on its own merits and waivers do not affect the level of fees charged to other entities. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.,* 1 I.C.C.2d 60, 64 (1986) (''An agency may impose a reasonable charge on recipients for an amount of work from which they benefit. The fees must be for specific services to specific persons.'').[6] Therefore, the Board will not further consider this aspect of NARPO's petition.

Proposed Rules

For the reasons discussed above, and as set forth below, the Board proposes to limit the number of 180-day extensions of a trail use negotiating period to six, unless the requesting party can demonstrate that extraordinary circumstances justify the grant of a further extension. The Board seeks comments concerning whether capping extensions at a maximum of six, with a very limited opportunity for an additional extension in extraordinary circumstances, strikes an appropriate balance between reasonably limiting the negotiating period and permitting parties enough time to finalize their negotiations.

The Board proposes to make the new rules applicable to both new CITUs/NITUs and cases where the CITU/NITU negotiating period, or any extension thereof, has not yet expired when the rules become effective. For cases where a CITU/NITU has been issued or extended prior to the effective date of the rules—and the CITU/NITU negotiating period, or any extension, has not yet expired—parties (absent a showing of extraordinary circumstances) would be limited to a maximum of six 180-day extensions following the expiration of the initial 180-day negotiation period. For example, in a Trails Act case where two 180-day extensions have already been granted, parties would be limited to requesting a maximum of four more 180-day extensions, absent extraordinary circumstances. In such Trails Act proceedings (including those where extensions might have already have exceeded the maximum limit of six), the Board may more liberally provide additional extensions for extraordinary circumstances.[7] Interested

[6] Courts have recognized that there is no private right of action to enforce the Independent Offices Appropriations Act, 31 U.S.C. 9701, which regulates fees collected by government agencies. *See Hartwell,* AB 1242, slip op. at 1–2 (citing *Byers,* 564 F. Supp. 2d at 414–19). Moreover, the Board has held that third parties have no standing to oppose the grant or denial of a party's fee waiver request, as the fee waiver has no bearing on the merits of the party's underlying application. *Id.* at 2.

[7] Although the proposed rule would apply to new extension requests in proceedings where a current

Continued

persons may comment on the proposed rule by November 1, 2018; replies to comments may be filed by November 21, 2018.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

The Board's proposed changes to its regulations here are intended to improve and expedite its trail use procedures and do not mandate or circumscribe the conduct of small entities. Effective June 30, 2016, for the purpose of RFA analysis for rail carriers subject to our jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting).[8] The changes proposed here are largely procedural and would not have a significant economic impact on the Class III rail carriers to which the RFA applies, as participation in a negotiation under the Trails Act is voluntary for both the railroad and the trail sponsor. Therefore, the Board certifies under 5 U.S.C. 605(b) that these proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The proposed rules, if promulgated, would limit the number of 180-day extensions of a trail use negotiating period to six extensions, absent extraordinary circumstances.

This decision will be served upon the Chief Counsel for Advocacy, Offices of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

It is ordered:

1. The Board proposes to amend its rules as set forth in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. The procedural schedule is established as follows: Comments regarding the proposed rules are due by November 1, 2018; replies are due by November 21, 2018.

3. The Board terminates the proceeding in Docket No. EP 749.

4. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

5. This decision is effective on its service date.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: October 1, 2018.

By the Board, Board Members Begeman and Miller.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1152 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

■ 1. The authority citation for Part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 1301, 1321(a), 10502, 10903–10905, and 11161.

■ 2. Amend § 1152.29 as follows:

■ a. Add the following sentences to the end of paragraph (c)(1): ''Parties may request a Board order to extend the 180-day interim trail use negotiation period. A maximum of six 180-day extensions may be granted. Requests for additional extensions beyond six are not favored and will be granted only if the requestors demonstrate that extraordinary circumstances warrant a further extension.''

■ b. Add the following sentences to the end of (d)(1): ''Parties may request a Board order to extend the 180-day interim trail use negotiation period. A maximum of six 180-day extensions may be granted. Requests for additional extensions beyond six are not favored and will be granted only if the requestors demonstrate that extraordinary circumstances warrant a further extension.''

[FR Doc. 2018–21760 Filed 10–4–18; 8:45 am]

BILLING CODE 4915–01–P

NITU may be expiring, there would be no retroactivity concern because parties have no vested right to a newly requested extension of the negotiating period. *See Empresa Cubana Exportadora de Alimentos y Productos Varios* v. *U.S. Dept. of Treasury,* 638 F.3d 794, 798–800 (D.C. Cir. 2011). Each extension request is considered on its own merits.

[8] Class III carriers have annual operating revenues of $20 million or less in 1991 dollars or $37,108,875 or less when adjusted for inflation using 2017 data. Class II rail carriers have annual operating revenues of less than $250 million or $463,860,933 when adjusted for inflation using 2017 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds on its website. 49 CFR 1201.1–1.

133 S.Ct. 511
Supreme Court of the United States

ARKANSAS GAME AND FISH COMMISSION, Petitioner
v.
UNITED STATES.

No. 11–597.
|
Argued Oct. 3, 2012.
|
Decided Dec. 4, 2012.

Synopsis

Background: Arkansas Game and Fish Commission brought suit alleging that United States had taken its property without just compensation. The United States Court of Federal Claims, Charles F. Lettow, J., 87 Fed.Cl. 594, concluded that United States had taken temporary flowage easement over Commission's property and awarded $5,778,757.90 in damages. United States appealed. The United States Court of Appeals for the Federal Circuit, Dyk, Circuit Judge, 637 F.3d 1366,reversed, and denied rehearing and rehearing en banc, 648 F.3d 1377. Certiorari was granted.

The Supreme Court, Justice Ginsburg, held that government-induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection.

Reversed and remanded.

Justice Kagan took no part in the consideration or decision of the case.

****512** *Syllabus* [*]

Petitioner, Arkansas Game and Fish Commission (Commission), owns and manages ****513** the Dave Donaldson Black River Wildlife Management Area (Management Area or Area), which comprises 23,000 acres along the Black River that are forested with multiple hardwood oak species and serve as a venue for recreation and hunting. In 1948, the U.S. Army Corps of Engineers (Corps) constructed the Clearwater Dam (Dam) upstream from the Management Area and adopted a plan known as the Water Control Manual (Manual), which sets seasonally varying rates for the release of water from the Dam. Periodically from 1993 until 2000, the Corps, at the request of farmers, authorized deviations from the Manual that extended flooding into the Management Area's peak timber growing season. The Commission objected to the deviations on the ground that they adversely impacted the Management Area, and opposed the Corps' proposal to make the temporary deviations part of the Manual's permanent water-release plan. After testing the effect of the deviations, the Corps abandoned the proposed Manual revision and ceased its temporary deviations.

The Commission sued the United States, alleging that the temporary deviations constituted a taking of property that entitled the Commission to compensation. The Commission maintained that the deviations caused sustained flooding during tree-growing season, and that the cumulative impact of the flooding caused the destruction of timber in the Area

and a substantial change in the character of the terrain, necessitating costly reclamation measures. The Court of Federal Claims' judgment in favor of the Commission was reversed by the Federal Circuit. The Court of Appeals acknowledged that temporary government action may give rise to a takings claim if permanent action of the same character would constitute a taking. It held, however, that government-induced flooding can give rise to a taking claim only if the flooding is "permanent or inevitably recurring." The Federal Circuit understood this conclusion to be dictated by *Sanguinetti v. United States,* 264 U.S. 146, 150, 44 S.Ct. 264, 68 L.Ed. 608, and *United States v. Cress,* 243 U.S. 316, 328, 37 S.Ct. 380, 61 L.Ed. 746.

Held : Government-induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection. Pp. 517 – 523.

(a) No magic formula enables a court to judge, in every case, whether a given government interference with property is a taking. This Court has drawn some bright lines, but in the main, takings claims turn on situation-specific factual inquiries. See *Penn Central Transp. Co. v. New York City,* 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631.

As to the question whether temporary flooding can ever give rise to a takings claim, this Court has ruled that government-induced flooding, *Pumpelly v. Green Bay Co.,* 13 Wall. 166, 20 L.Ed. 557, and seasonally recurring flooding, *Cress,* 243 U.S., at 328, 37 S.Ct. 380, can constitute takings. The Court has also ruled that takings temporary in duration can be compensable. *E.g., United States v. Causby,* 328 U.S. 256, 266, 66 S.Ct. 1062, 90 L.Ed. 1206. This Court's precedent thus indicates that government-induced flooding of limited duration may be compensable. None of the Court's decisions authorizes a blanket temporary-flooding exception to the Court's Takings Clause jurisprudence, and the Court declines to create such an exception in this case. Pp. 517 – 520.

****514** (b) In advocating a temporary-flooding exception, the Government relies primarily on *Sanguinetti,* 264 U.S. 146, 44 S.Ct. 264, 68 L.Ed. 608, which held that no taking occurred when a government-constructed canal overflowed onto the claimant's land. In its opinion, the Court summarized prior flooding cases as standing for the proposition that "in order to create an enforceable liability against the Government, it is, at least, necessary that the overflow be the direct result of the structure, and constitute an actual, permanent invasion of the land." *Id.,* at 149, 44 S.Ct. 264. The Government urges the Court to extract from the quoted words a definitive rule that there can be no temporary taking caused by floods. But the Court does not read the passing reference to permanence in *Sanguinetti* as having done so much work. *Sanguinetti* was decided in 1924, well before the World War II-era cases and *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 482 U.S. 304, 107 S.Ct. 2378, 96 L.Ed.2d 250, in which the Court first homed in on the matter of compensation for temporary takings. There is no suggestion in *Sanguinetti* that flooding cases should be set apart from the mine run of takings claims.

The Court thus finds no solid grounding in precedent for setting flooding apart from other government intrusions on property. And the Government has presented no other persuasive reason to do so. Its primary argument is that reversing the Federal Circuit's decision risks disrupting public works dedicated to flood control. While the public interests here are important, they are not categorically different from the interests at stake in myriad other Takings Clause cases in which this Court has rejected similar arguments when deployed to urge blanket exemptions from the Fifth Amendment's instruction.

The Government argues in the alternative that damage to downstream property, however foreseeable, is collateral or incidental; it is not aimed at any particular landowner and therefore is not compensable under the Takings Clause. The Court expresses no opinion on this claim, which was first tendered at oral argument and not aired in the courts below. For the same reason, the Court declines to address the bearing, if any, of Arkansas water-rights law on this case. Pp. 519 – 522.

(c) When regulation or temporary physical invasion by government interferes with private property, time is a factor in determining the existence *vel non* of a compensable taking. See, *e.g., Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 435, n. 12, 102 S.Ct. 3164, 73 L.Ed.2d 868. Also relevant to the takings inquiry is the degree to which the invasion is intended or is the foreseeable result of authorized government action. See, *e.g., John Horstmann Co. v. United States,* 257 U.S. 138, 146, 42 S.Ct. 58, 66 L.Ed. 171. So, too, are the character of the land at issue and the owner's "reasonable investment-backed expectations" regarding the land's use, *Palazzolo v. Rhode Island,* 533 U.S. 606, 618, 121 S.Ct. 2448, 150 L.Ed.2d 592, as well as the severity of the interference, *see*, *e.g., Penn Central,* 438 U.S., at 130–131, 98 S.Ct. 2646. In concluding that the flooding was foreseeable in this case, the Court of Federal Claims noted the Commission's repeated complaints to the Corps about the destructive impact of the successive planned deviations and determined that the interference with the Commission's property was severe. The Government, however, challenged several of the trial court's factfindings, including those relating to causation, foreseeability, substantiality, and the amount of damages. Because the Federal Circuit rested its decision entirely on the temporary duration of the flooding, it did not address those ****515** challenges, which remain open for consideration on remand. Pp. 522 – 523.

637 F.3d 1366, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the case.

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Opinion

Justice GINSBURG delivered the opinion of the Court.

***26** Periodically from 1993 until 2000, the U.S. Army Corps of Engineers (Corps) authorized flooding that extended into the peak growing season for timber on forest land owned and managed by petitioner, Arkansas Game and Fish Commission (Commission). Cumulative in effect, the repeated flooding damaged or destroyed more than 18 million board feet of timber and disrupted the ordinary use and enjoyment of the Commission's property. The Commission sought compensation from the United States pursuant to the Fifth Amendment's instruction: "[N]or shall private property be taken for public use, without just compensation." The question presented is whether a taking may occur, within the meaning of the Takings Clause, when government-induced flood invasions, although repetitive, are temporary.

Ordinarily, this Court's decisions confirm, if government action would qualify as a taking when permanently continued, temporary actions of the same character may also qualify as a taking. In the instant case, the parties and the courts below divided on the appropriate classification of temporary flooding. Reversing the judgment of the Court of ***27** Federal Claims, which awarded compensation to the Commission, the Federal Circuit held, 2 to 1, that compensation

may be sought only when flooding is "a permanent or inevitably recurring condition, rather than an inherently temporary situation." 637 F.3d 1366, 1378 (2011). We disagree and conclude that recurrent floodings, even if of finite duration, are not categorically exempt from Takings Clause liability.

I

A

The Commission owns the Dave Donaldson Black River Wildlife Management Area (Management Area or Area), which comprises 23,000 acres along both banks of the Black River in northeast Arkansas. The Management Area is forested with multiple hardwood timber species that support a variety of wildlife habitats. The Commission operates the Management Area as a wildlife and hunting preserve, ****516** and also uses it as a timber resource, conducting regular harvests of timber as part of its forest-management efforts. Three types of hardwood oak species—nuttall, overcup, and willow—account for 80 percent of the trees in the Management Area. The presence of these hardwood oaks is essential to the Area's character as a habitat for migratory birds and as a venue for recreation and hunting.

The Clearwater Dam (Dam) is located 115 miles upstream from the Management Area. The Corps constructed the Dam in 1948, and shortly thereafter adopted a plan known as the Water Control Manual (Manual) to determine the rates at which water would be released from the Dam. The Manual sets seasonally varying release rates, but permits planned deviations from the prescribed rates for agricultural, recreational, and other purposes.

In 1993, the Corps approved a planned deviation in response to requests from farmers. From September to December 1993, the Corps released water from the Dam at a ***28** slower rate than usual, providing downstream farmers with a longer harvest time. As a result, more water than usual accumulated in Clearwater Lake behind the Dam. To reduce the accumulation, the Corps extended the period in which a high amount of water would be released. The Commission maintained this extension yielded downstream flooding in the Management Area, above historical norms, during the tree-growing season, which runs from April to October. If the Corps had released the water more rapidly in the fall of 1993, in accordance with the Manual and with past practice, there would have been short-term waves of flooding which would have receded quickly. The lower rate of release in the fall, however, extended the period of flooding well into the following spring and summer. While the deviation benefited farmers, it interfered with the Management Area's tree-growing season.

The Corps adopted similar deviations each year from 1994 through 2000. The record indicates that the decision to deviate from the Manual was made independently in each year and that the amount of deviation varied over the span of years. Nevertheless, the result was an unbroken string of annual deviations from the Manual. Each deviation lowered the rate at which water was released during the fall, which necessitated extension of the release period into the following spring and summer. During this span of years the Corps proposed Manual revisions that would have made its temporary deviations part of the permanent water-release plan. On multiple occasions between 1993 and 2000, the Commission objected to the temporary deviations and opposed any permanent revision to the Manual, on the ground that the departures from the traditional water-release plan adversely impacted the Management Area. Ultimately, the Corps tested the effect of the deviations on the Management Area. It thereupon abandoned the proposal to permanently revise the Manual and, in 2001, ceased its temporary deviations.

B

***29** In 2005, the Commission filed the instant lawsuit against the United States, claiming that the temporary deviations from the Manual constituted a taking of property that entitled the Commission to compensation. The Commission maintained that the deviations caused sustained flooding of its land during the tree-growing season. The cumulative impact of this flooding over a six-year period between 1993 and 1999, the Commission alleged, resulted in the destruction of timber in the Management Area and a substantial change in the character of the terrain, ****517** which necessitated costly reclamation measures. Following a trial, the Court of Federal Claims ruled in favor of the Commission and issued an opinion and order containing detailed findings of fact. 87 Fed.Cl. 594 (2009).

The Court of Federal Claims found that the forests in the Management Area were healthy and flourishing before the flooding that occurred in the 1990's, and that the forests had been sustainably managed for decades under the water-release plan contained in the Manual. *Id.,* at 631. It further found that the Commission repeatedly objected to the deviations from the Manual and alerted the Corps to the detrimental effect the longer period of flooding would have on the hardwood timber in the Management Area. *Id.,* at 604.

As found by the Court of Federal Claims, the flooding caused by the deviations contrasted markedly with historical flooding patterns. Between 1949 and 1992, the river level near the Management Area reached six feet an average of 64.7 days per year during the growing season; the number of such days had been even lower on average before the Clearwater Dam was built. Between 1993 and 1999, however, the river reached the same level an average of 91.14 days per year, an increase of more than 40 percent over the historic average. Although the Management Area lies in a floodplain, in no previously recorded time span did comparable flooding patterns occur. *Id.,* at 607–608. Evidence at ***30** trial indicated that half of the nuttall oaks in the Management Area were saturated with water when the river level was at six feet, *id.,* at 608; the evidence further indicated that the saturation of the soil around the trees' root systems could persist for weeks even after the flooding had receded. *Id.,* at 627.

The court concluded that the Corps' deviations caused six consecutive years of substantially increased flooding, which constituted an appropriation of the Commission's property, albeit a temporary rather than a permanent one. Important to this conclusion, the court emphasized the deviations' cumulative effect. The trees were subject to prolonged periods of flooding year after year, which reduced the oxygen level in the soil and considerably weakened the trees' root systems. The repeated annual flooding for six years altered the character of the property to a much greater extent than would have been shown if the harm caused by one year of flooding were simply multiplied by six. When a moderate drought occurred in 1999 and 2000, the trees did not have the root systems necessary to sustain themselves; the result, in the court's words, was "catastrophic mortality." *Id.,* at 632. More than 18 million board feet of timber were destroyed or degraded. *Id.,* at 638–640.

This damage altered the character of the Management Area. The destruction of the trees led to the invasion of undesirable plant species, making natural regeneration of the forests improbable in the absence of reclamation efforts. *Id.,* at 643. To determine the measure of just compensation, the Court of Federal Claims calculated the value of the lost timber and the projected cost of the reclamation and awarded the Commission $5.7 million.

The Federal Circuit reversed. It acknowledged that in general, temporary government action may give rise to a takings claim if permanent action of the same character would constitute a taking. But it held that "cases involving flooding and [flowage] easements are different." ***31** 637 F.3d, at 1374. Government-induced flooding can give rise to a taking claim, the Federal Circuit concluded, only if the flooding is "permanent or inevitably recurring." *Id.,* at 1378. The Court of Appeals ****518** understood this conclusion to be dictated by this Court's decisions in *Sanguinetti v. United States,* 264 U.S. 146, 150, 44 S.Ct. 264, 68 L.Ed. 608 (1924), and *United States v. Cress,* 243 U.S. 316, 328, 37 S.Ct. 380, 61 L.Ed. 746 (1917). We granted certiorari to resolve the question whether government actions that cause repeated floodings must be permanent or inevitably recurring to constitute a taking of property. 566 U.S. ——, 132 S.Ct. 1856, 182 L.Ed.2d 641 (2012).

II

The Takings Clause is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States,* 364 U.S. 40, 49, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960). See also *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 482 U.S. 304, 318–319, 107 S.Ct. 2378, 96 L.Ed.2d 250 (1987); *Penn Central Transp. Co. v. New York City,* 438 U.S. 104, 123–125, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). And "[w]hen the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner." *Tahoe–Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency,* 535 U.S. 302, 322, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002) (citing *United States v. Pewee Coal Co.,* 341 U.S. 114, 115, 71 S.Ct. 670, 95 L.Ed. 809 (1951)). These guides are fundamental in our Takings Clause jurisprudence. We have recognized, however, that no magic formula enables a court to judge, in every case, whether a given government interference with property is a taking. In view of the nearly infinite variety of ways in which government actions or regulations can affect property interests, the Court has recognized few invariable rules in this area.

True, we have drawn some bright lines, notably, the rule that a permanent physical occupation of property authorized by government is a taking. *Loretto v. Teleprompter Manhattan* ***32** *CATV Corp.,* 458 U.S. 419, 426, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982). So, too, is a regulation that permanently requires a property owner to sacrifice all economically beneficial uses of his or her land. *Lucas v. South Carolina Coastal Council,* 505 U.S. 1003, 1019, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992). But aside from the cases attended by rules of this order, most takings claims turn on situation-specific factual inquiries. See *Penn Central,* 438 U.S., at 124, 98 S.Ct. 2646. With this in mind, we turn to the question presented here—whether temporary flooding can ever give rise to a takings claim.

The Court first ruled that government-induced flooding can constitute a taking in *Pumpelly v. Green Bay Co.,* 13 Wall. 166, 20 L.Ed. 557 (1872). The Wisconsin Legislature had authorized the defendant to build a dam which led to the creation of a lake, permanently submerging the plaintiff's land. The defendant argued that the land had not been taken because the government did not exercise the right of eminent domain to acquire title to the affected property. Moreover, the defendant urged, the damage was merely "a consequential result" of the dam's construction near the plaintiff's property. *Id.,* at 177. Rejecting that crabbed reading of the Takings Clause, the Court held that "where real estate is actually invaded by superinduced additions of water, earth, sand, or other material ... so as to effectually destroy or impair its usefulness, it is a taking, within the meaning of the Constitution." *Id.,* at 181.

Following *Pumpelly,* the Court recognized that seasonally recurring flooding ****519** could constitute a taking. *United States v. Cress,* 243 U.S. 316, 37 S.Ct. 380, 61 L.Ed. 746 (1917), involved the Government's construction of a lock and dam, which subjected the plaintiff's land to "intermittent but inevitably recurring overflows." *Id.,* at 328, 37 S.Ct. 380. The Court held that the regularly recurring flooding gave rise to a takings claim no less valid than the claim of an owner whose land was continuously kept under water. *Id.,* at 328–329, 37 S.Ct. 380.

Furthermore, our decisions confirm that takings temporary in duration can be compensable. This principle was ***33** solidly established in the World War II era, when "[c]ondemnation for indefinite periods of occupancy [took hold as] a practical response to the uncertainties of the Government's needs in wartime." *United States v. Westinghouse Elec. & Mfg. Co.,* 339 U.S. 261, 267, 70 S.Ct. 644, 94 L.Ed. 816 (1950). In support of the war effort, the Government took temporary possession of many properties. These exercises of government authority, the Court recognized, qualified as compensable temporary takings. See *Pewee Coal Co.,* 341 U.S. 114, 71 S.Ct. 670, 95 L.Ed. 809; *Kimball Laundry Co. v. United States,* 338 U.S. 1, 69 S.Ct. 1434, 93 L.Ed. 1765 (1949); *United States v. General Motors Corp.,* 323 U.S. 373, 65 S.Ct. 357, 89 L.Ed. 311 (1945). Notably in relation to the question before us, the takings claims approved in these cases were not confined to instances in which the Government took outright physical possession of the property involved. A temporary takings claim could be maintained as well when government action occurring outside the property gave rise

to "a direct and immediate interference with the enjoyment and use of the land." *United States v. Causby,* 328 U.S. 256, 266, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946) (frequent overflights from a nearby airport resulted in a taking, for the flights deprived the property owner of the customary use of his property as a chicken farm); cf. *United States v. Dickinson,* 331 U.S. 745, 751, 67 S.Ct. 1382, 91 L.Ed. 1789 (1947) (flooding of claimant's land was a taking even though claimant successfully "reclaimed most of his land which the Government originally took by flooding").

Ever since, we have rejected the argument that government action must be permanent to qualify as a taking. Once the government's actions have worked a taking of property, "no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." *First English,* 482 U.S., at 321, 107 S.Ct. 2378. See also *Tahoe–Sierra,* 535 U.S., at 337, 122 S.Ct. 1465 ("[W]e do not hold that the temporary nature of a land-use restriction precludes finding that it effects a taking; we simply recognize that it should not be given exclusive significance one way or the other.").

***34** Because government-induced flooding can constitute a taking of property, and because a taking need not be permanent to be compensable, our precedent indicates that government-induced flooding of limited duration may be compensable. No decision of this Court authorizes a blanket temporary-flooding exception to our Takings Clause jurisprudence, and we decline to create such an exception in this case.

III

In advocating a temporary-flooding exception, the Government relies primarily on *Sanguinetti,* 264 U.S. 146, 44 S.Ct. 264, 68 L.Ed. 608. That case involved a canal constructed by the Government connecting a slough and a river. The claimant's land was positioned between the slough and the river above the canal. The year after the canal's construction, a "flood of unprecedented ****520** severity" caused the canal to overflow onto the claimant's land; less severe flooding and overflow occurred in later years. *Id.,* at 147, 44 S.Ct. 264.

The Court held there was no taking on these facts. This outcome rested on settled principles of foreseeability and causation. The Court emphasized that the Government did not intend to flood the land or have "any reason to expect that such [a] result would follow" from construction of the canal. *Id.,* at 148, 44 S.Ct. 264. Moreover, the property was subject to seasonal flooding prior to the construction of the canal, and the landowner failed to show a causal connection between the canal and the increased flooding, which may well have been occasioned by changes in weather patterns. See *id.,* at 149, 44 S.Ct. 264 (characterizing the causal relationship asserted by the landowner as "purely conjectural"). These case-specific features were more than sufficient to dispose of the property owner's claim.

In the course of the *Sanguinetti* decision, however, the Court summarized prior flooding cases as standing for the proposition that "in order to create an enforceable liability against the Government, it is, at least, necessary that the ***35** overflow be the direct result of the structure, and constitute an actual, permanent invasion of the land." *Ibid.* The Government would have us extract from this statement a definitive rule that there can be no temporary taking caused by floods.

We do not read so much into the word "permanent" as it appears in a nondispositive sentence in *Sanguinetti.* That case, we note, was decided in 1924, well before the World War II-era cases and *First English,* in which the Court first homed in on the matter of compensation for temporary takings. That time factor, we think, renders understandable the Court's passing reference to permanence. If the Court indeed meant to express a general limitation on the Takings Clause, that limitation has been superseded by subsequent developments in our jurisprudence.

There is certainly no suggestion in *Sanguinetti* that flooding cases should be set apart from the mine run of takings claims. The sentence in question was composed to summarize the flooding cases the Court had encountered up to that

point, which had unexceptionally involved permanent, rather than temporary, government-induced flooding. 264 U.S., at 149, 44 S.Ct. 264. See *Cress,* 243 U.S., at 328, 37 S.Ct. 380; *United States v. Lynah,* 188 U.S. 445, 469, 23 S.Ct. 349, 47 L.Ed. 539 (1903). But as just explained, no distinction between permanent and temporary flooding was material to the result in *Sanguinetti*. We resist reading a single sentence unnecessary to the decision as having done so much work. In this regard, we recall Chief Justice Marshall's sage observation that "general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision." *Cohens v. Virginia,* 6 Wheat. 264, 399, 5 L.Ed. 257 (1821).

The Government also asserts that the Court in *Loretto* interpreted *Sanguinetti* the same way the Federal Circuit did in this case. That assertion bears careful inspection. A ***36** section of the Court's opinion in *Loretto* discussing permanent physical occupations parenthetically quotes *Sanguinetti* 's statement that flooding is a taking if it constitutes an "actual, permanent invasion of the land." 458 U.S., at 428, 102 S.Ct. 3164. But the first rule of case law as well as statutory interpretation is: Read on. Later in the *Loretto* opinion, the Court clarified that it scarcelyintended ****521** to adopt a "flooding-is-different" rule by the obscure means of quoting parenthetically a fragment from a 1924 opinion. The Court distinguished permanent physical occupations from temporary invasions of property, expressly including flooding cases, and said that "temporary limitations are subject to a more complex balancing process to determine whether they are a taking." *Id.,* at 435, n. 12, 102 S.Ct. 3164.

There is thus no solid grounding in precedent for setting flooding apart from all other government intrusions on property. And the Government has presented no other persuasive reason to do so. Its primary argument is of the in for a penny, in for a pound genre: reversing the decision below, the Government worries, risks disruption of public works dedicated to flood control. "[E]very passing flood attributable to the government's operation of a flood-control project, no matter how brief," the Government hypothesizes, might qualify as a compensable taking. Brief for United States 29. To reject a categorical bar to temporary-flooding takings claims, however, is scarcely to credit all, or even many, such claims. It is of course incumbent on courts to weigh carefully the relevant factors and circumstances in each case, as instructed by our decisions. See *infra,* at 522.

The slippery slope argument, we note, is hardly novel or unique to flooding cases. Time and again in Takings Clause cases, the Court has heard the prophecy that recognizing a just compensation claim would unduly impede the government's ability to act in the public interest. *Causby,* 328 U.S., at 275, 66 S.Ct. 1062 (Black, J., dissenting); *Loretto,* 458 U.S., at 455, 102 S.Ct. 3164 ***37** (Blackmun, J., dissenting). We have rejected this argument when deployed to urge blanket exemptions from the Fifth Amendment's instruction. While we recognize the importance of the public interests the Government advances in this case, we do not see them as categorically different from the interests at stake in myriad other Takings Clause cases. The sky did not fall after *Causby,* and today's modest decision augurs no deluge of takings liability.

Tellingly, the Government qualifies its defense of the Federal Circuit's exclusion of flood invasions from temporary takings analysis. It sensibly acknowledges that a taking might be found where there is a "sufficiently prolonged series of nominally temporary but substantively identical deviations." Brief for United States 21. This concession is in some tension with the categorical rule adopted by the Court of Appeals. Indeed, once it is recognized that at least some repeated nonpermanent flooding can amount to a taking of property, the question presented to us has been essentially answered. Flooding cases, like other takings cases, should be assessed with reference to the "particular circumstances of each case," and not by resorting to blanket exclusionary rules. *United States v. Central Eureka Mining Co.,* 357 U.S. 155, 168, 78 S.Ct. 1097, 2 L.Ed.2d 1228 (1958) (citing *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, 416, 43 S.Ct. 158, 67 L.Ed. 322 (1922)). See *Penn Central,* 438 U.S., at 124, 98 S.Ct. 2646.

At oral argument, the Government tendered a different justification for the Federal Circuit's judgment, one not aired in the courts below, and barely hinted at in the brief the Government filed in this Court: Whether the damage is permanent or temporary, damage to downstream property, however foreseeable, is collateral or incidental; it is not aimed at any

particular landowner and therefore does not qualify as an occupation compensable under the Takings Clause. Tr. of Oral Arg. 30–39; Brief for United States 26–27. "[M]indful that we are a court of review, **522 not of first view," *Cutter v.* *38 *Wilkinson,* 544 U.S. 709, 718, n. 7, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005), we express no opinion on the proposed upstream/downstream distinction and confine our opinion to the issue explored and decided by the Federal Circuit.

For the same reason, we are not equipped to address the bearing, if any, of Arkansas water-rights law on this case.[1] The determination whether a taking has occurred includes consideration of the property owner's distinct investment-backed expectations, a matter often informed by the law in force in the State in which the property is located. *Lucas,* 505 U.S., at 1027–1029, 112 S.Ct. 2886; *Phillips v. Washington Legal Foundation,* 524 U.S. 156, 164, 118 S.Ct. 1925, 141 L.Ed.2d 174 (1998). But Arkansas law was not examined by the Federal Circuit, and therefore is not properly pursued in this Court. Whether arguments for an upstream/downstream distinction and on the relevance of Arkansas law have been preserved and, if so, whether they have merit, are questions appropriately addressed to the Court of Appeals on remand. See *Glover v. United States,* 531 U.S. 198, 205, 121 S.Ct. 696, 148 L.Ed.2d 604 (2001).

IV

We rule today, simply and only, that government-induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection. When regulation or temporary physical invasion by government interferes with private property, our decisions recognize, time is indeed a factor in determining the existence *vel non* of a compensable taking. See *Loretto,* 458 U.S., at 435, n. 12, 102 S.Ct. 3164 (temporary physical invasions should be assessed by case-specific factual inquiry); *Tahoe–Sierra,* 535 U.S., at 342, 122 S.Ct. 1465 (duration of regulatory restriction is a factor for court to consider); *National Bd. of YMCA v. United States,* 395 U.S. 85, 93, 89 S.Ct. 1511, 23 L.Ed.2d 117 (1969) ("temporary, *39 unplanned occupation" of building by troops under exigent circumstances is not a taking).

Also relevant to the takings inquiry is the degree to which the invasion is intended or is the foreseeable result of authorized government action. See *supra,* at 517; *John Horstmann Co. v. United States,* 257 U.S. 138, 146, 42 S.Ct. 58, 66 L.Ed. 171 (1921) (no takings liability when damage caused by government action could not have been foreseen). See also *Ridge Line, Inc. v. United States,* 346 F.3d 1346, 1355–1356 (C.A.Fed.2003); *In re Chicago, Milwaukee, St. Paul & Pacific R. Co.,* 799 F.2d 317, 325–326 (C.A.7 1986). So, too, are the character of the land at issue and the owner's "reasonable investment-backed expectations" regarding the land's use. *Palazzolo v. Rhode Island,* 533 U.S. 606, 618, 121 S.Ct. 2448, 150 L.Ed.2d 592 (2001). For example, the Management Area lies in a floodplain below a dam, and had experienced flooding in the past. But the trial court found the Area had not been exposed to flooding comparable to the 1990's accumulations in any other time span either prior to or after the construction of the Dam. See *supra,* at 516 – 517. Severity of the interference figures in the calculus as well. See *Penn Central,* 438 U.S., at 130–131, 98 S.Ct. 2646; *Portsmouth Harbor Land & Hotel Co. v. United States,* 260 U.S. 327, 329–330, 43 S.Ct. 135, 67 L.Ed. 287 (1922) ("[W]hile a single act may not be enough, a continuance of them in sufficient number and for a sufficient **523 time may prove [a taking]. Every successive trespass adds to the force of the evidence.").

The Court of Federal Claims found that the flooding the Commission assails was foreseeable. In this regard, the court noted the Commission's repeated complaints to the Corps about the destructive impact of the successive planned deviations from the Water Control Manual. Further, the court determined that the interference with the Commission's property was severe: The Commission had been deprived of the customary use of the Management Area as a forest and wildlife preserve, as the bottomland hardwood forest turned, over time, *40 into a "headwater swamp." 87 Fed.Cl., at 610 (internal quotation marks omitted); see *supra,* at 517.[2]

The Government, however, challenged several of the trial court's factfindings, including those relating to causation, foreseeability, substantiality, and the amount of damages. Because the Federal Circuit rested its decision entirely on the

temporary duration of the flooding, it did not address those challenges. As earlier noted, see *supra,* at 521, preserved issues remain open for consideration on remand.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Federal Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice KAGAN took no part in the consideration or decision of this case.

All Citations

568 U.S. 23, 133 S.Ct. 511, 184 L.Ed.2d 417, 75 ERC 1417, 81 USLW 4013, 12 Cal. Daily Op. Serv. 13,267, 2012 Daily Journal D.A.R. 16,233, 23 Fla. L. Weekly Fed. S 534

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 Arkansas water law is barely discussed in the parties' briefs, see Brief for United States 43, but has been urged at length in a brief *amicus curiae* filed by Professors of Law Teaching in the Property Law and Water Rights Fields.

2 The Commission is endeavoring to reclaim the land through a restoration program. The prospect of reclamation, however, does not disqualify a landowner from receipt of just compensation for a taking. *United States v. Dickinson,* 331 U.S. 745, 751, 67 S.Ct. 1382, 91 L.Ed. 1789 (1947).

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part VI. Particular Proceedings
Chapter 161. United States as Party Generally (Refs & Annos)

28 U.S.C.A. § 2412

§ 2412. Costs and fees

Effective: January 4, 2011
Currentness

(a)(1) Except as otherwise specifically provided by statute, a judgment for costs, as enumerated in section 1920 of this title, but not including the fees and expenses of attorneys, may be awarded to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. A judgment for costs when taxed against the United States shall, in an amount established by statute, court rule, or order, be limited to reimbursing in whole or in part the prevailing party for the costs incurred by such party in the litigation.

(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.

(b) Unless expressly prohibited by statute, a court may award reasonable fees and expenses of attorneys, in addition to the costs which may be awarded pursuant to subsection (a), to the prevailing party in any civil action brought by or against the United States or any agency or any official of the United States acting in his or her official capacity in any court having jurisdiction of such action. The United States shall be liable for such fees and expenses to the same extent that any other party would be liable under the common law or under the terms of any statute which specifically provides for such an award.

(c)(1) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for costs pursuant to subsection (a) shall be paid as provided in sections 2414 and 2517 of this title and shall be in addition to any relief provided in the judgment.

(2) Any judgment against the United States or any agency and any official of the United States acting in his or her official capacity for fees and expenses of attorneys pursuant to subsection (b) shall be paid as provided in sections 2414 and 2517 of this title, except that if the basis for the award is a finding that the United States acted in bad faith, then the award shall be paid by any agency found to have acted in bad faith and shall be in addition to any relief provided in the judgment.

(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action,

brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

(B) A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award under this subsection, and the amount sought, including an itemized statement from any attorney or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.

(C) The court, in its discretion, may reduce the amount to be awarded pursuant to this subsection, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy.

(D) If, in a civil action brought by the United States or a proceeding for judicial review of an adversary adjudication described in section 504(a)(4) of title 5, the demand by the United States is substantially in excess of the judgment finally obtained by the United States and is unreasonable when compared with such judgment, under the facts and circumstances of the case, the court shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this subparagraph shall be paid only as a consequence of appropriations provided in advance.

(2) For the purposes of this subsection--

(A) "fees and other expenses" includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case, and reasonable attorney fees (The amount of fees awarded under this subsection shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States; and (ii) attorney fees shall not be awarded in excess of $125 per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.);

(B) "party" means (i) an individual whose net worth did not exceed $2,000,000 at the time the civil action was filed, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the civil action was filed, and which had not more than 500 employees at the time the civil action was filed; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association or for purposes of subsection (d)(1)(D), a small entity as defined in section 601 of title 5;

(C) "United States" includes any agency and any official of the United States acting in his or her official capacity;

(D) "position of the United States" means, in addition to the position taken by the United States in the civil action, the action or failure to act by the agency upon which the civil action is based; except that fees and expenses may not be awarded to a party for any portion of the litigation in which the party has unreasonably protracted the proceedings;

(E) "civil action brought by or against the United States" includes an appeal by a party, other than the United States, from a decision of a contracting officer rendered pursuant to a disputes clause in a contract with the Government or pursuant to chapter 71 of title 41;

(F) "court" includes the United States Court of Federal Claims and the United States Court of Appeals for Veterans Claims;

(G) "final judgment" means a judgment that is final and not appealable, and includes an order of settlement;

(H) "prevailing party", in the case of eminent domain proceedings, means a party who obtains a final judgment (other than by settlement), exclusive of interest, the amount of which is at least as close to the highest valuation of the property involved that is attested to at trial on behalf of the property owner as it is to the highest valuation of the property involved that is attested to at trial on behalf of the Government; and

(I) "demand" means the express demand of the United States which led to the adversary adjudication, but shall not include a recitation of the maximum statutory penalty (i) in the complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(3) In awarding fees and other expenses under this subsection to a prevailing party in any action for judicial review of an adversary adjudication, as defined in subsection (b)(1)(C) of section 504 of title 5, United States Code, or an adversary adjudication subject to chapter 71 of title 41, the court shall include in that award fees and other expenses to the same extent authorized in subsection (a) of such section, unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The provisions of this section shall not apply to any costs, fees, and other expenses in connection with any proceeding to which section 7430 of the Internal Revenue Code of 1986 applies (determined without regard to subsections (b) and (f) of such section). Nothing in the preceding sentence shall prevent the awarding under subsection (a) of section 2412 of title 28, United States Code, of costs enumerated in section 1920 of such title (as in effect on October 1, 1981).

(f) If the United States appeals an award of costs or fees and other expenses made against the United States under this section and the award is affirmed in whole or in part, interest shall be paid on the amount of the award as affirmed. Such

interest shall be computed at the rate determined under section 1961(a) of this title, and shall run from the date of the award through the day before the date of the mandate of affirmance.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 973; Pub.L. 89-507, § 1, July 18, 1966, 80 Stat. 308; Pub.L. 96-481, Title II, § 204(a), (c), Oct. 21, 1980, 94 Stat. 2327, 2329; Pub.L. 97-248, Title II, § 292(c), Sept. 3, 1982, 96 Stat. 574; Pub.L. 99-80, §§ 2, 6(a), (b)(2), Aug. 5, 1985, 99 Stat. 184, 186; Pub.L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub.L. 102-572, Title III, § 301(a), Title V, §§ 502(b), 506(a), Title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4511-4513, 4516; Pub.L. 104-66, Title I, § 1091(b), Dec. 21, 1995, 109 Stat. 722; Pub.L. 104-121, Title II, § 232, Mar. 29, 1996, 110 Stat. 863; Pub.L. 105-368, Title V, § 512(b)(1)(B), Nov. 11, 1998, 112 Stat. 3342; Pub.L. 111-350, § 5(g)(9), Jan. 4, 2011, 124 Stat. 3848.)

Notes of Decisions (3115)

28 U.S.C.A. § 2412, 28 USCA § 2412
Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253 and 115-261. Title 26 current through P.L. 115-269.

End of Document

United States Code Annotated
Title 29. Labor
Chapter 8. Fair Labor Standards (Refs & Annos)

29 U.S.C.A. § 216

§ 216. Penalties

Effective: March 23, 2018
Currentness

(a) Fines and imprisonment

Any person who willfully violates any of the provisions of section 215 of this title shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. Any employer who violates section 203(m)(2)(B) of this title shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and in an additional equal amount as liquidated damages. An action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

(c) Payment of wages and compensation; waiver of claims; actions by the Secretary; limitation of actions

The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or section 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) to bring an action by or on behalf of any employee to recover the liability specified in the first sentence of such subsection and of any employee to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b), unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 6(a) of the Portal-to-Portal Act of 1947, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action. The authority and requirements described in this subsection shall apply with respect to a violation of section 203(m)(2)(B) of this title, as appropriate, and the employer shall be liable for the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer, and an additional equal amount as liquidated damages.

(d) Savings provisions

In any action or proceeding commenced prior to, on, or after August 8, 1956, no employer shall be subject to any liability or punishment under this chapter or the Portal-to-Portal Act of 1947 on account of his failure to comply with any provision or provisions of this chapter or such Act (1) with respect to work heretofore or hereafter performed in a workplace to which the exemption in section 213(f) of this title is applicable, (2) with respect to work performed in Guam, the Canal Zone or Wake Island before the effective date of this amendment of subsection (d), or (3) with respect to work performed in a possession named in section 206(a)(3) of this title at any time prior to the establishment by the Secretary, as provided therein, of a minimum wage rate applicable to such work.

(e) Civil penalties for child labor violations

(1)(A) Any person who violates the provisions of sections [1] 212 or 213(c) of this title, relating to child labor, or any regulation issued pursuant to such sections, shall be subject to a civil penalty not to exceed--

(i) $11,000 for each employee who was the subject of such a violation; or

(ii) $50,000 with regard to each such violation that causes the death or serious injury of any employee under the age of 18 years, which penalty may be doubled where the violation is a repeated or willful violation.

(B) For purposes of subparagraph (A), the term "serious injury" means--

(i) permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(ii) permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or

(iii) permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

(2) Any person who repeatedly or willfully violates section 206 or 207 of this title, relating to wages, shall be subject to a civil penalty not to exceed $1,100 for each such violation. Any person who violates section 203(m)(2)(B) of this title shall be subject to a civil penalty not to exceed $1,100 for each such violation, as the Secretary determines appropriate, in addition to being liable to the employee or employees affected for all tips unlawfully kept, and an additional equal amount as liquidated damages, as described in subsection (b).

(3) In determining the amount of any penalty under this subsection, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of any penalty under this subsection, when finally determined, may be--

(A) deducted from any sums owing by the United States to the person charged;

(B) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(C) ordered by the court, in an action brought for a violation of section 215(a)(4) of this title or a repeated or willful violation of section 215(a)(2) of this title, to be paid to the Secretary.

(4) Any administrative determination by the Secretary of the amount of any penalty under this subsection shall be final, unless within 15 days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5 and regulations to be promulgated by the Secretary.

(5) Except for civil penalties collected for violations of section 212 of this title, sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provision of section 9a of this title. Civil penalties collected for violations of section 212 of this title shall be deposited in the general fund of the Treasury.

CREDIT(S)

(June 25, 1938, c. 676, § 16, 52 Stat. 1069; May 14, 1947, c. 52, § 5(a), 61 Stat. 87; Oct. 26, 1949, c. 736, § 14, 63 Stat. 919; 1950 Reorg. Plan No. 6, §§ 1, 2, 15 F.R. 3174, 64 Stat. 1263; Aug. 8, 1956, c. 1035, § 4, 70 Stat. 1118; Pub.L. 85-231, § 1(2), Aug. 30, 1957, 71 Stat. 514; Pub.L. 87-30, § 12(a), May 5, 1961, 75 Stat. 74; Pub.L. 89-601, Title VI, § 601(a), Sept. 23, 1966, 80 Stat. 844; Pub.L. 93-259, §§ 6(d)(1), 25(c), 26, Apr. 8, 1974, 88 Stat. 61, 72, 73; Pub.L. 95-151, § 10, Nov. 1, 1977, 91 Stat. 1252; Pub.L. 101-157, § 9, Nov. 17, 1989, 103 Stat. 945; Pub.L. 101-508, Title III, § 3103, Nov. 5, 1990, 104 Stat. 1388-29; Pub.L. 104-174, § 2, Aug. 6, 1996, 110 Stat. 1554; Pub.L. 110-233, Title III, § 302(a), May 21, 2008, 122 Stat. 920; Pub.L. 115-141, Div. S, Title XII, § 1201(b), Mar. 23, 2018, 132 Stat. 1148.)

VALIDITY OF SUBSEC. (B)

<The United States Supreme Court, in Alden v. Maine, 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636, June 23, 1999, found that the powers delegated to Congress under Article I of the Constitution did not include the power to subject nonconsenting states to private suits for damages in state courts, as authorized by subsec. (b) of this section.>

<The United States Supreme Court has held that the ADEA did not validly abrogate states' Eleventh Amendment immunity from suit by private individuals; although ADEA contained clear statement of Congress' intent to abrogate states' immunity, the abrogation exceeded Congress' authority under enforcement clause of Fourteenth Amendment. Kimel v. Florida Bd. of Regents, U.S.Fla.2000, 528 U.S. 62, 120 S.Ct. 631, 145 L.Ed.2d 522. >

Notes of Decisions (4937)

Footnotes

1 So in original. Probably should be “section”.

29 U.S.C.A. § 216, 29 USCA § 216

Current through P.L. 115-231. Also includes P.L. 115-233 to 115-253, 115-255 to 115-266, 115-268, and 115-269. Title 26 current through P.L. 115-270.