

**§ 35.41**

such claim or statement, the Secretary shall stay the process immediately. The Secretary may order the process resumed only upon receipt of the written authorization of the Attorney General.

**§ 35.41 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Secretary.

(b) No administrative stay is available following a final decision of the Secretary.

**§ 35.42 Judicial review.**

Section 3805 of title 31, U.S. Code, authorizes judicial review by an appropriate U.S. District Court of a final decision of the Secretary imposing penalties or assessments under this part and specifies the procedures for such review.

**§ 35.43 Collection of civil penalties and assessments.**

Sections 3806 and 3808(b) of title 31, U.S. Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

**§ 35.44 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 35.42 or § 35.43, or any amount agreed upon in a compromise or settlement under § 35.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

**§ 35.45 Deposit in Treasury of United States.**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 35.46 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

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(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Secretary has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 35.42 or during the pendency of any action to collect penalties and assessments under § 35.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 35.42 of this part or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Secretary, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Secretary, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

**§ 35.47 Limitations.**

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 35.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 35.10(b) of this part shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

**PART 36—TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS IN ALASKA**

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AUTHORITY: 16 U.S.C. 1, 3, 668dd *et seq.*, and 3101 *et seq.*; 43 U.S.C. 1201.

SOURCE: 51 FR 31629, Sept. 4, 1986, unless otherwise noted.

### § 36.1 Applicability and scope.

(a) The regulations in this part apply to any application for access in the following forms within any conservation system unit (CSU), national recreation area or national conservation area within the State of Alaska which is administered by the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS) or National Park Service (NPS):

(1) A transportation or utility system (TUS) is any portion of the route of the system within any of the aforementioned areas and the system is not one which the Department or agency having jurisdiction over the unit or area is establishing incident to its management of the unit or area;

(2) Access to inholdings within these areas, as well as within public lands administered by the BLM designated as wilderness study areas;

(3) Special access within these areas, as well as within public lands administered by the BLM designated as wilderness study areas;

(4) Temporary access within the aforementioned areas, as well as the National Petroleum Reserve in Alaska and public lands administered by the BLM designated as wilderness study areas or managed to maintain the wilderness character or potential thereof.

(b) Except as specifically provided in this part, applicable law shall apply with respect to the authorization and administration of TUSs.

### § 36.2 Definitions.

As used in this part, the term:

(a) *ANILCA* means the Alaska National Interest Lands Conservation Act (94 Stat. 2371; Pub. L. 96-487).

(b) *Applicable law* means a law or regulation of general applicability, other

than title XI of ANILCA, under which a Federal department or agency has jurisdiction to grant an authorization (including but not limited to, a right-of-way permit, license, lease or certificate) without which a TUS cannot, in whole or in part, be established or operated.

(c) *Applicant* means an individual, partnership, corporation, association or other business entity, and a Federal, State or local government entity including a municipal corporation submitting an application under this part.

(d) *Appropriate Federal agency* means a Federal agency (or the agency official to whom the authority has been delegated) that has jurisdiction to grant any authorization without which a TUS cannot, in whole or in part, be established or operated.

(e) *Area* means a CSU, National Recreation Area, or National Conservation Area in Alaska administered by the NPS, the FWS or the BLM.

(f) *Compatible with the purposes for which the unit was established* means that the system will not significantly interfere with or detract from the purposes for which the area was established.

(g) *Conservation System Unit* (CSU) means any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System or the National Wilderness Preservation System administered by the NPS, the FWS or the BLM.

(h) *Economically feasible and prudent alternative route* means a route either within or outside an area that is based on sound engineering practices and is economically practicable, but does not necessarily mean the least costly alternative route.

(i) *Improved right-of-ways* means routes which are of a permanent nature and would involve substantial alteration of the terrain or vegetation such as grading and graveling of surfaces or other such construction. Trail right-of-ways which are annually or periodically marked, brushed, or broken for off-road vehicles are excluded.

(j) *Incident to its management of the unit or area* means a type of TUS which is used directly or indirectly in support of authorized activities, and which is