

RS 2477

QUESTIONS & ANSWERS

Do these proposed regulations recognize the new State of Alaska administrative procedures for claiming RS 2477 rights-of-way?

No. These regulations establish a uniform Federal procedure. To claim RS 2477 ROWs, the State of Alaska would have to file claims containing the information called for in these proposed regulations. However, in many cases, State procedures will collect similar information and make filing under Federal regulations easier.

How will these proposed regulations affect the State of Alaska's regulations on RS 2477 ROWs?

In 1992, the State of Alaska adopted regulations on RS 2477. Under the State's regulations, the State can certify the validity of RS 2477 ROWs. Because the State has no authority to judge the validity of RS 2477 claims on Federal land, however, State certifications on Federal land have no effect. These regulations will provide a way for the State to submit claims to the BLM, the FWS, or the NPS.

Do these proposed regulations provide for reviewing claims of RS 2477 rights-of-way across Alaska Native lands?

No. These regulations apply only to lands administered by the BLM, FWS, and the NPS. The regulations do not provide for review of claimed RS 2477 ROWs on Alaska Native-owned land or on private or State land. The DOI agency involved will consult with the Bureau of Indian Affairs on any claims filed that purport to cross Native lands.

How will these proposed regulations affect valid RS 2477 ROWs in Alaska National Park units?

These regulations will neither create nor abolish valid RS 2477 rights-of-way. Although RS 2477 rights-of-way may exist in Alaska national park units, none has been legally identified. Any ROWs in NPS units that are determined to be valid are subject to regulation under NPS authorities.

What effect does the recent 9th Circuit Court of Appeals case (Shultz v. Dept. of Army) have on the proposed regulations?

While this proposed rule was in preparation, a panel of the Ninth Circuit Court of Appeals issued a decision in the case of Schultz v. Department of the Army, 92-35197, 92-35580, 1993 U.S.App. Lexis 31037, (9th Cir., Nov. 30, 1993). The panel decision took a somewhat more lenient view of the criteria for establishing a valid RS 2477 right-of-way than does this proposed rule. The Federal Government believes the panel decision is not consistent with Congressional intent or practice under the statute, and the United States is seeking a rehearing of the panel's decision before the full Ninth Circuit Court of Appeals. The Department will, of course, take any final decision in the case into account when issuing a final rule.

Won't these regulations preclude the development of the necessary infrastructure in Alaska that the other 49 States have been allowed?

These regulations do not preclude Alaska's development. Congress has taken action in the Alaska Native Claims Settlement Act (ANCSA), Alaska National Interest Lands Conservation Act (ANILCA), and FLPMA to either provide for reservation of easements (ANCSA 17(b)), for a process for applying for access (Title XI ANILCA), or for granting ROWs (FLPMA Title V). RS 2477, was, after all, repealed 18 years ago. Therefore, it is not reasonable to now derive from the repealed statute an unqualified right to develop new infrastructure outside the requirements of existing law.

How will these regulations take Alaska's special conditions and history into account?

Surface transportation in Alaska has not been developed as it has been in most States due to Alaska's unique history and physical conditions. However, many of the territories and States affected by RS 2477 could cite distinct circumstances. Congress did not authorize special treatment for any State under RS 2477. Therefore, these proposed regulations will apply equally in all States.

Will dogsled routes and other historic trails qualify as valid RS 2477 ROWs?

Two criteria will be important when determining whether such routes created valid RS 2477 rights-of-way. First, a durable, observable, physically modified route must have been intentionally constructed. Second, the highway constructed must have been used for travel between public destinations by vehicles appropriate to the time and terrain.

How will these regulations affect pending quiet title actions by the State of Alaska for possible RS 2477 ROWs?

On December 12, 1993, the State of Alaska notified the Secretary of the Interior of an intent to quiet title to 11 routes claimed to be RS 2477 ROWs. The State can file these actions in court after June 10, 1994. Three of the routes affect national park units. Once the regulations are final, the Department hopes that the State will choose to pursue the administrative process rather than litigate its claims individually.