

to the Chief Counsel for Advocacy of the Small Business Administration.

#### **X. Submission to Congress and the General Accounting Office**

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 25, 1997.

**Stephen L. Johnson,**

*Acting Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

#### **PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1190 is added to subpart D to read as follows:

**§ 180.1190 Glyphosate Oxidoreductase [GOX or GOXv247] and the genetic material necessary for its production in all plants; exemption from the requirement of a tolerance.**

Glyphosate Oxidoreductase [GOX or GOXv247] and the genetic material necessary for its production in all plants are exempt from the requirement of a tolerance when used as plant-pesticide inert ingredients in all plant RACs. *Genetic material necessary for its production* means the genetic material which comprise genetic material encoding the GOX proteins and their regulatory regions. *Regulatory regions* are the genetic material that control the expression of the genetic material encoding the GOX proteins, such as promoters, terminators, and enhancers.

[FR Doc. 97-26190 Filed 10-7-97; 8:45 am]

BILLING CODE 6560-50-F

## **DEPARTMENT OF THE INTERIOR**

### **Office of the Secretary**

#### **43 CFR Part 36**

**RIN 1093-AA07**

### **Transportation and Utility Systems In and Across, and Access Into, Conservation System Units in Alaska**

**AGENCY:** Office of the Secretary, Interior.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Interior is implementing this final rule to revise and simplify the regulatory definition of the term "economically feasible and prudent alternative route" as used in the review of proposed transportation and utility systems in Alaska under Title XI of the Alaska National Interest Lands Conservation Act (ANILCA).

**DATES:** *Effective date:* This rule becomes effective November 7, 1997.

*Compliance date:* This rule will apply to agency decisionmaking under ANILCA Title XI beginning November 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** David A. Funk, Alaska Field Office, National Park Service, 2525 Gambell Street, Room 107, Anchorage, AK 99503-2892. Phone: (907) 257-2589.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 2, 1980, the Alaska National Interest Lands Conservation Act (ANILCA) was signed into law as Public Law 96-487 (94 Stat. 2371, 16 U.S.C. 3101, *et seq.*). Title XI of ANILCA, which is entitled "Transportation and Utility Systems In and Across, and Access Into, Conservation System Units," established guidelines and procedures for submitting and processing applications for transportation and utility systems (TUS) in Alaska when any portion of the route or the system will be within any conservation system unit, national recreation area, or national conservation area. In addition, Title XI authorizes special access, temporary access, and access to inholdings.

On July 15, 1983, the Department of the Interior (Department) proposed comprehensive regulations to implement ANILCA Title XI on lands in Alaska under the jurisdiction of the National Park Service (NPS), the U.S. Fish and Wildlife Service (FWS), and the Bureau of Land Management (BLM) (48 FR 32506). On September 4, 1986, the Department published final Title XI regulations (51 FR 31619).

In early 1987, the Trustees for Alaska and other groups (Trustees) sued the Department to challenge the Title XI regulations as exceeding the authority granted to the Department by ANILCA. Parties intervening in the case included Arctic Slope Regional Corporation, the Alaska Miners Association, the Alaska Forest Association, and the Resource Development Council for Alaska, Inc. In orders dated April 29, 1991, and March 16, 1993, the U.S. District Court for the District of Alaska granted summary judgment to the Department. The Trustees appealed the lower court's decision to the U.S. Court of Appeals for the Ninth Circuit, which assigned the case to a mediator to explore whether review and possible revision of the Title XI regulations might provide a basis for settlement.

On September 17, 1996, the Department proposed (61 FR 48873) one revision to the 1986 regulations in order to improve the regulations' workability and reduce the opportunities for delays in decisionmaking. The proposal followed substantial review and consultation with interested parties both within and outside the Department. The proposal provided an additional advantage of offering a focus for the consensus necessary to settle the longstanding litigation. The litigation was dismissed on August 30, 1996, subject to reinstatement if the final regulations differed from the proposal.

The Department did not propose any other revisions of the Title XI regulations. Thus, for example, the 1986 regulations implementing the Title XI provisions concerning access to inholdings, special access, and temporary access will remain intact. Also, the Department did not propose any changes to the regulatory provisions governing access to subsistence resources under Title VIII of ANILCA (see 36 CFR 13.46 (NPS) and 50 CFR 36.12 (FWS)). Finally, neither the proposed nor this final rule concerns recognition or management of R.S. 2477 rights-of-way.

#### **Summary of Public Comments**

Six comments were received in response to publication of the proposed rule. None of the responses objected to the proposed revision of 43 CFR 36.2(h).

The Alaska Department of Law stated that the revision would be consistent with the August 30, 1996, Order issued by the United States Court of Appeals for the Ninth Circuit in *Trustees for Alaska v. United States Department of the Interior*, No. 93-35493 (Trustees). The Department of Law added, however, that the State does not necessarily concur with the facts and

interpretations presented in the proposed rule.

The Pacific Legal Foundation, commenting on behalf of several intervenors in Trustees, stated that the revision is neither necessary nor useful. However, the Foundation supports the change in order to settle the litigation.

The comments submitted by the Trustees for Alaska (on behalf of the appellants in the litigation), the Wilderness Society, and the Sierra Club, all support the revision. The Wilderness Society and the Sierra Club also provided comments on other provisions of 43 CFR Part 36 that they believe should be revised. The Department considered these issues while preparing the proposed rule and concluded that no other provisions of part 36 require modification at this time.

Finally, the United States Small Business Administration commented on the lack of support in the proposed rule for the Department's certification that the proposed revision will not have a significant economic effect on a substantial number of small entities. The factual basis for this conclusion is in the nature of the proposed revision. As stated in the background to the proposed rule, the purpose of the revision is to "improve the regulations' workability and reduce the opportunities for delays in decision-making." In essence, the revision will replace an elaborate formula with a simpler and more straightforward definition. Because the revision is for purposes of clarification and its effect is primarily procedural and beneficial, the rule would have no significant economic effect or change on a substantial number of small entities. It follows that the final rule does not require preparation of a regulatory analysis.

## Section-by-Section Analysis

### Section 36.2 Definitions

As a general matter, ANILCA Title XI established the following criteria for approval of a transportation or utility system across a conservation system unit, national conservation area, or national recreation area in Alaska: (1) The proposed transportation or utility system must be "compatible with the purposes for which the unit was established," and (2) there must be no "economically feasible and prudent alternative route for the system." This rulemaking revises the regulatory definition of the term "economically feasible and prudent alternative route" in the second criterion by replacing the complex definition promulgated in 1986

with the simpler definition originally proposed in the 1983 rulemaking.

The revised definition which the Department is adopting is the same as the definition originally proposed in 1983 (48 FR 32506) as follows:

*"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.

This definition in the opinion of the Department is simpler and more straightforward than the elaborate formula which was added in the final 1986 regulations. The revised definition includes the economic considerations mentioned in the legislative history, but avoids the complex and potentially misleading quantitative analysis required by the 1986 definition. The revised definition also avoids the opportunities for delay and controversy inherent in the 1986 definition. Finally, the revised definition will facilitate decisions consistent with the statutory preference for routing a TUS outside a conservation system unit, national recreation area, or national conservation area expressed in ANILCA section 1104(g)(2)(B). A technical correction to this definition replaces the term "alternate route" with the analogous, statutorily used term, "alternative route."

### Drafting Information

The primary authors of this rule are David A. Watts of the Solicitor's Office, Department of the Interior, David A. Funk of the Alaska Regional Office, National Park Service, and Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, DC.

### Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

### Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Department has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a

cost of \$100 million or more in any given year on local, State or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 8-4(2)).

The Department has determined this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act pursuant to 516 DM 2, Appendix 1.5. The action was previously covered by an Environmental Assessment and a Finding of No Significant Impact. None of the exceptions to the categorical exclusions in 516 DM 2, Appendix 2, applies.

### List of Subjects in 43 CFR Part 36

Access, Alaska, Conservation system units, National parks, Rights-of-way, Traffic regulation, Transportation, Utilities, Wildlife refuges.

In consideration of the foregoing, 43 CFR Part 36 is amended as follows:

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

1. The authority citation for part 36 continues to read as follows:

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

2. Section 36.2 is amended by revising paragraph (h) to read as follows:

#### § 36.2 Definitions.

\* \* \* \* \*

(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.

\* \* \* \* \*

Dated: September 22, 1997.

**Donald J. Barry,**  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*

Dated: September 23, 1997.

**Sylvia V. Baca,**  
*Deputy Assistant Secretary for Land and Minerals Management.*  
[FR Doc. 97-26625 Filed 10-7-97; 8:45 am]  
BILLING CODE 4310-70-P