

# STATE OF ALASKA

SEAN PARNELL, Governor

## CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

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Richard Voss  
Refuge Manager  
Arctic National Wildlife Refuge  
101 12<sup>th</sup> Avenue, Room 236  
Fairbanks, AK 99701-6237

Dear Mr. Voss:

The Citizens' Advisory Commission on Federal Areas recently was provided a copy of a document entitled *Special Use Permit Application Instructions for Commercial Guided Education, Recreation (non-hunting), Sport Fishing and Air Operations within Arctic National Wildlife Refuge*. We understand that this instruction sheet is distributed to individuals or companies to provide guidance in applying for a special use permit authorizing commercial activity on the Arctic National Wildlife Refuge.

The Arctic Refuge instructions are apparently intended to replace the OMB approved instructions for completing the Commercial Activities Special Use Permit Application and Permit Form (FWS Form 3-1383-C) adopted in 2011. The approved instructions are an integral part of that form. Applicants are told in the refuge instruction sheet that "*Supplemental questions and other required items must accompany your application before your application packet will be considered complete and evaluated.*" We object to the use of this in-house instruction sheet and ask that it no longer be distributed and its use discontinued. We explain our reasons below.

The Commission was involved in the review and development of this new Special Use Permit Application and Permit Form. Our primary concern in commenting on the new form was the amount and type of information to be collected during the application process. This was of particular interest since the Alaska specific application form (FWS 3-2001) was being replaced. A number of modifications to the original proposed form were made in response to our comments.

The unauthorized supplemental form instructions and resultant collection of personal and other unnecessary information violate the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521, and the Privacy Act, 5 U.S.C. § 552a since applicants are directed to provide more information and different information than is required by the OMB approved form and instructions.

In addition to our request that use of this refuge generated instruction sheet be discontinued, we also ask that applicants previously provided the supplemental instruction sheet be advised that they are not required to provide any information in excess of that required by the approved instructions in the application form. For application packets already received by the refuge, any supplemental information not required by the approved application form instructions should be removed from the application packet and file.

In response to a comment regarding the proposed information collection requirements, *Supporting Statement A* (OMB Control Number 1018-0102) submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act during the approval process for FWS Form 3-1383, states clearly:

*“The proposed forms ask for information that refuges need to manage the full span of uses that the public may need. The forms also allow refuge manager discretion as to what specific information is required. We can ask for less information than requested on the forms, but cannot ask for more or different information.” (emphasis added.)*

Our comparison of the OMB approved instructions with the refuge generated instructions finds at least 3 instances where the applicant is directed by the refuge instructions to provide information that is not required by the approved instructions. These include requested information in Block 12, Blocks 25a-25b and Block 27a. There is also one instance where the applicant is directed by the refuge instruction to provide information in a different block than the approved instructions.

In the first example, the OMB instructions require the applicant to provide the names and addresses of assistants, subcontractors or subpermittees in Block 12 only if the assistants, subcontractors or subpermittees will be operating on the refuge without the permittee being present. Volunteers, assistants, subcontractors or subpermittees that are accompanied by the permittee are not required to be identified. The refuge instructions fail to make this distinction and require an applicant to list any other business that assists their operation regardless of whether or not the other business actually operates on the refuge or provides assistance when the applicant is not present.

In addition, by requiring recreation guides to name air/water taxi operators they plan to use, the refuge instructions imply that air/water taxi operators are subcontractors, as they clearly are not assistants or subpermittees. In fact, air and water taxi operators are not classified as subcontractors under 50 CFR §36.41(b) which states, in part: *“Subcontracting does not apply to booking services or authorized secondary services provided to clients in support of the permittee’s primary authorized activities (e.g., a guide paying a marine or air taxi operator to transport clients).”*

A second example of where the refuge asks for information beyond that approved by OMB is found in the instructions for Blocks 25a-25b. Here, the refuge instructions are inconsistent with the approved instructions on two points. After directing the applicant to indicate in Block 25a if overnight stays are required, the approved instructions simply require an applicant who answers affirmatively to *“provide the name(s) of any personnel required to stay overnight, if applicable.”*

However, the refuge instructions require the applicant to provide “*the names, addresses and phone numbers of the individuals involved in your operation and the functions they will perform.*” This information is solicited by the refuge even if the applicant indicates that overnight stays on the refuge are not a part of the permitted activity. The refuge is not authorized to require this information. It is intrusive and goes well beyond the purposes stated for the approved information collection

*Supporting Statement A* explains that the reason for asking if overnight stays are required is to:

*“Determine whether or not an activity is compatible with the purpose of the refuge, assess the impact on refuge resources, reduce or eliminate scheduling conflicts, and manage the long- and short-term impact of site usage.”*

Even when overnight stays are a regular part of an operation, the refuge is authorized to request only the name of personnel or employees, not their address and phone number. Additionally, consistent with the information requirements for Block 12, only those personnel or employees who would be operating on the refuge without the permittee being present are required to be identified. Most importantly, if there is no overnight stay, the refuge has no legal authority for requiring the name, much less the address and phone number, of an employee.

The final example of information solicited by the refuge that exceeds its authorization under the OMB instructions relates to Block 27a.

The refuge instructions direct guides accessing the refuge overland via the Dalton Highway to: “*provide description of and specific auto license registration number for your vehicle – or if you contract an auto rental business to assist your operation, list the business in Block 12.*” The approved instructions state that motor vehicle descriptions are only required for a permittee vehicle, and/or if the vehicle will be operated on the refuge without the permittee being present.

*Supporting Statement A* explains that that this information is requested to “*Confirm that specific vehicles are authorized to be in restricted areas.*” Given that there are no roads within the refuge or roads connecting the refuge to the Dalton Highway by which a highway vehicle can enter the refuge, there is no rational justification for the refuge to solicit this information. Also, in the case of a rental vehicle, under the approved information requirements for Block 12, because the vehicle would not be operating within the refuge, applicants are not required to provide the name of the rental company. This requirement is also inconsistent with the regulations in 50 CFR §36.41(b), as the refuge instructions appear to categorize a car rental company as a subcontractor.

The refuge instructions do not provide any explanation of why air and motorboat operators are directed to list aircraft make/model, registration number and color for each aircraft or boat in Block 26 rather than in Block 27a, as the OMB approved instructions require. This appears to constitute an unnecessary and unauthorized modification or misuse of the approved information collection form.

Finally, the first paragraph of the refuge instruction sheet states that upon approval of the application a separate permit will be issued “...*even though FWS Form 3-1383-C implies the application is also the permit.*” In fact, FWS Form 3-1383 does not *imply* that it is also the permit; it states this fact clearly on the form itself. It also is the only special use permit form currently approved by OMB for use by the U.S. Fish and Wildlife Service.

The form plainly states that once it receives refuge approval, a station number, a refuge assigned permit number, is signed by a refuge official, and signed and accepted by the applicant, it becomes a valid permit. Page 4 of the form includes signature blocks for a refuge official and the applicant confirming that the permit is approved and accepted. The permittee is directed to keep a copy of the permit form on-hand so that it may be shown at any time to any refuge staff.

Again explaining the need for the information collection and adoption of the new application forms, *Supporting Statement A* (pg. 2) clearly states: “*The forms will serve as both the application and permit.*” It also states (pg. 3): “*Refuge-specific special conditions may be required. We identify special conditions as an addendum to the permit.*” We find no authority for the refuge to issue a permit on a separate, unapproved form. When determined necessary and properly authorized under the appropriate regulations and statutes, special conditions can be attached to the approved permit form.

We realize that the divergence between the OMB approved form instructions and the refuge instruction may be considered minor or even inconsequential. They are not. The form was developed through a standardized process used by OMB to approve information collection forms. That process involved opportunities for public review and comment, which was not the case with the refuge generated instruction sheet.

As explained in the supporting statement, refuge managers are allowed some discretion as to what specific information is required. We understand the refuge has need of certain types of information in order to make informed decisions when issuing special use permits. However, on those points we have outlined above, the refuge generated instructions exceed the discretionary authority allowed under the approved information collection process. We repeat our request that these unapproved refuge instructions be withdrawn from use.

Sincerely,



Stan Leaphart  
Executive Director

cc: Geoff Haskett- Alaska Regional Director USFWS  
USFWS Information Collection Clearance Officer  
Sue Magee – SOA ANILCA Program Coordinator