

prejudice and under honorable conditions may apply for reappointment as Reserve commissioned officers. Reserve Airmen on EAD as a result of an honor suspension from the Air Force Academy Cadet Wing must reapply for admission under this category.

A2.2.6.1. Reserve category applicants must complete AF Form 1786 and submit it to their organization commander. The organization commander processes the application.

A2.2.6.2. A Reserve applicant is not placed on active duty for the purpose of processing him or her for a nomination or appointment to the Air Force Academy.

A2.3. Superintendent Competitive Category. The Superintendent may nominate up to fifty eligible applicants who have not secured a nomination to USAFA from any other nominating authority. USAFA will select highly qualified applicants in order-of-merit from the nationwide applicant pool of qualified alternates to fill the class.

A2.4. Foreign Students Competitive Category. 10 U.S.C. 9344 authorizes USAFA to provide instruction for as many as 40 foreign students at any one time. Foreign citizens must apply to their government. USAFA coordinates with US Embassies to ensure compliance with all admission and appointment requirements. HQ USAFA/RRA coordinates with HQ USAF, Department of Defense and State Department before forwarding nomination invitations to each country. The application must describe the applicant's background and must be received by USAFA by December 31 before their desired summer admission. Applicants in these categories must meet the eligibility and admissions requirements established for all Academy candidates except for US citizenship. They must be able to read, write, and speak English proficiently in a college environment.

Attachment 3 to Part 901—Nomination Methods

Note: This attachment provides information on the different methods to nominate candidates for appointment to the Academy.

A3.1. Nomination methods to fill quota vacancies in the Vice-Presidential, congressional, and U.S. Possessions Categories follow:

A3.1.1. The Principal Numbered-Alternate Method. The nominating authority indicates his or her personal preference by designating a principal nominee and numbering up to nine alternate nominees in order of preference. HQ USAFA/RRS must offer the appointment to the first fully qualified nominee. The order of preference must be honored; however, HQ USAFA/RRS may offer appointments in any sequence.

A3.1.2. The Principal Competitive-Alternate Method. The nominating authority designates his or her principal nominee and up to nine other nominees. HQ USAFA/RRS evaluates and ranks nominees by order-of-merit. If the principal nominee is fully qualified, HQ USAFA/RRS will offer this individual the appointment; otherwise, HQ USAFA/RRS will offer the appointment to the fully qualified alternate nominee ranked the highest.

A3.1.3. The Competitive Method. At the request of the nominating authority, the HQ USAFA/RRS evaluates the records of all the nominees, ranks them in order of merit, and offers the appointment to the highest ranked nominee.

Attachment 4 to Part 901—Appointment Vacancy Selection

Note: This attachment provides instructions for charging appointments to the appropriate nominating source.

A4.1. HQ USAFA/RRS charges appointees on behalf of the Secretary of the Air Force. HQ USAFA/RRA will audit all charges. Selection of the charged cadets from the nominees for each vacancy is accomplished as follows:

A4.1.1. Principal Nominee, Numbered-Alternate Method. If the Principal Nominee has accepted appointment, he or she is charged against their nominating source vacancy. Otherwise the highest ranked alternate accepting an appointment is charged. In instances where a candidate received principal nominations from two different congressional sources, the principal is normally charged to the Member of Congress who submitted the nomination first.

A4.1.2. Principal Nominee, Competitive-Alternate Method. If the Principal nominee has accepted appointment, he or she is charged against the nominating source vacancy. HQ USAFA/RRS evaluates alternates and ranks according to merit. If the Principal does not meet admission criteria, the highest ranking alternate accepting an appointment is charged.

A4.1.3. Competitive Nominee Method. HQ USAFA/RRS evaluates the group of competitive nominees, ranks according to merit, and charges the highest-ranked nominee accepting an appointment.

A4.1.4. Multiple Congressional Nominations. For candidates receiving numerous nominations, HQ USAFA/RRS normally charges the candidate to the congressional source. When a candidate is nominated by several congressional sources, HQ USAFA/RRS charges the candidate to the slate of the congressional member where the candidate ranks the highest, unless the candidate is the principal nominee or a numbered alternate.

A4.1.5. Other Sources of Nomination. HQ USAFA/RRS charges all other candidates not nominated by congressional, Vice-Presidential, or U.S. Possessions to that nominating source (Presidential, AFJROTC, AFROTC, CODDV, Medal of Honor, etc.).

A4.1.6. Qualified Alternates. To bring the Cadet Wing up to strength, the qualified alternates appointed according to § 901.2 (c)(2) are charged to the Secretary of the Air Force. Those candidates having congressional, Vice-Presidential, or U.S. Possessions nominations appear as a qualified alternate for that nominating source.

A4.1.7. Multiple Congressional and Other Sources of Nomination. For appointees who have multiple nominations, HQ USAFA/RRS determines the appointment category to which they are charged. Normally a cadet with both congressional and noncongressional nominations is charged to

a congressional authority. HQ USAFA/RRS notifies HQ USAFA/RRA, of these assignments. HQ USAFA/RRA audits and verifies the charges, then notifies the Vice-President, nominating authorities in the Congress, and US Possessions of their charged appointees and other nominees who win appointments.

Attachment 5 to Part 901—Appointee Obligations

Note: This attachment provides the Oath of Allegiance which each Academy appointee must take as an obligation of service.

"I (name), having been appointed an Air Force cadet in the United States Air Force, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of which I am about to enter. So Help Me God."

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 14

RIN 1024-AC01

General Provisions and Rights-of-Way

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises existing regulations relating to the issuance of right-of-way permits across National Park Service (NPS) lands. The NPS has been using interim regulations since 1980. Those interim regulations have become dated and are in need of revision. This rulemaking is a complete revision of the interim regulations. It will provide a process for the review, consideration and approval, or denial, of requests for rights-of-way across all areas of the National Park System.

DATES: Written comments will be accepted through January 30, 1998.

ADDRESSES: Mail comments to the National Park Service, Ranger Activities Division, MS 650 (ROW), P.O. Box 37127, Washington, D.C. 20013-7127.

FOR FURTHER INFORMATION CONTACT: Dick S. Young, Colonial National Historical Park, P.O. Box 210, Yorktown, VA 23690. Telephone (804) 898-7846.

SUPPLEMENTARY INFORMATION:**Background**

The NPS is proposing to revise the existing regulations relating to the issuance of right-of-way permits across NPS lands found at 36 CFR 14. The NPS is currently using interim rules that were published in the **Federal Register** on July 11, 1980 (45 FR 47092) to allow telecommunication and other utility rights-of-way across NPS lands. Prior to that date, rights-of-ways across public lands, including areas of the National Park System, were administered under regulations promulgated by the Bureau of Land Management (BLM), found at 43 CFR part 2800. The passage, in 1976, of the Federal Land Policy and Management Act (43 U.S.C. 1761 *et seq.*, 90 Stat. 2743) required the revision of those regulations by the BLM. Regulations promulgated by the BLM in 1980 (45 FR 44518) deleted all references to the NPS.

In response, the NPS adopted, without substantive revision, those provisions found at 43 CFR part 2800 that applied to areas under the management and control of the NPS. These were promulgated as interim regulations on July 11, 1980 (45 FR 47092). This proposed regulation is the first revision of those interim regulations.

The period between 1980 and 1996 has seen many legislative and policy changes regarding right-of-way management. New language in the annual budget legislation, now codified at 16 U.S.C. 3a, has altered the way the NPS looks at fees and the recovery of costs. The intervening years have also allowed the NPS to accumulate experience with rights-of-way and other permitting instruments. While the interim regulations were satisfactory for parts of the process, there are many gaps and several deficiencies and inequities, all demanding the promulgation of new regulations. The regulations contained in this proposed rulemaking will correct the inefficiencies and provide necessary changes.

Key Issues

The NPS is proposing to update and revise right-of-way regulations that will provide a uniform process for the review, consideration and approval or denial of requests for rights-of-way across all areas of the National Park System. These regulations will establish procedures for the permitting of rights-of-way that are authorized at the discretion of the Secretary of the Interior and for rights-of-way authorized by individual park legislation. The regulations do not apply to those uses

that are subject to or arise from property rights, such as easements.

These proposed regulations ensure compliance with the right-of-way authorities found in 16 U.S.C. 5, 79 and 23 U.S.C. 317. They reflect the Congressional mandate that activities inconsistent with national park values and purposes will not be authorized in areas of the National Park System, "except as may have been or shall be directly and specifically provided by Congress." See section 101(b) of the Act of March 27, 1978 (16 U.S.C. 1a-1, 92 Stat. 166). They also ensure compliance with applicable provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) and the National Environmental Policy Act of 1969 (43 U.S.C. 4321-4370).

These proposed regulations do not grant an interest greater than a permit revocable at the discretion of the Authorized Officer. The interim regulations state that the regulations do not give the holder any estate of any kind in fee in the lands of the United States. However, confusion over the nature of the privilege permitted by the regulations has arisen by the use of regulatory language normally associated with the transfer of property rights, terms such as "grant", "easement" and "license." These proposed regulations clarify that the permit issued by the NPS will not be construed as a grant of permanent interest in the real property of the United States.

In granting the discretionary uses the NPS, as an agency of the Federal government, must also follow the directive of Congress to recover all costs associated with providing benefits or services not accruing to the public at large (31 U.S.C. 9701). Accordingly, the fees authorized by the regulations have been adjusted to be comparable with prevailing industry standards and to better reflect the actual costs incurred by the NPS in issuing permits.

Rights-of-way for highways are part of the Federal Aid Highway System. Section 107(d) of Title 23 provides for transfer of lands or interest in lands to appropriate jurisdictions. Requests for such transfer of interest are subject to the provisions of 23 U.S.C. 317. The NPS and the Federal Highway Administration (FHA) have determined that such transfer should be accomplished through a highway easement deed. Highway easement deeds provide for reversion to the NPS of lands or interest in lands when such use is no longer required for highway purposes.

Section-by-Section Analysis

As currently codified in Title 36, part 14 consists of six subparts, labeled A-F. These proposed regulations revise and reorganize these subparts. A detailed discussion of these proposed revisions is presented below.

*Subpart A—Right-of-Way Permits—General***Section 14.1 Purpose**

This is a new section to clarify the purpose of the regulations of this part. It emphasizes that an applicant for a right-of-way permit must demonstrate that there is no feasible and prudent alternative to the proposed right-of-way. Also, the NPS will only permit those uses that will not be in derogation of the values and purposes for which the various areas have been established, except as may have been or will be directly and specifically provided by Congress.

Section 14.2 Applicability and Scope

This section replaces existing § 14.1, and addresses the following main topics as follows:

1. Park lands and waters subject to regulations. Proposed paragraph (a) will require a permit for rights-of-way over Federally owned lands and waters within the exterior boundaries of park areas. The authority to permit rights-of-way on lands and waters within the boundaries of a unit is provided for in the general legislation governing the management and preservation of the National Park System. (See 16 U.S.C. 1-3)

2. Regulations do not apply to NPS owned or operated rights-of-way. Proposed paragraph (b) clarifies that the regulations of this part do not apply to rights-of-way owned, controlled or operated by the NPS.

3. Requirements for no alternatives, derogation and statutory standards. Proposed paragraph (c) clarifies this part as applying only to those permits where there is no prudent or feasible alternate route outside the park, that the use will not be in derogation of park resources and values, and all applicable statutory standards are met.

4. Regulations of oil and gas pipelines. Proposed paragraph (d) clarifies that operations in connection with the exploration, development, production and transportation of non-Federal oil and gas within park units must continue to comply with regulations at 36 CFR part 9, Subpart B. Such activities, including transportation, do not invoke the 36 CFR part 14 regulations. This is due to the fact that owners of the non-Federal

oil and gas possess a vested property right interest that can only be extinguished through acquisition. Paragraph (d) also clarifies that the construction, operation and maintenance of new and existing petroleum product pipelines in park units that originate and terminate outside such units will comply with the requirements of 36 CFR part 9, Subpart B. If authorized by a park unit's enabling statute or other authority, a right-of-way permit may be issued following the procedures in the 36 CFR part 14 regulations.

5. Proposed paragraph (e) clarifies that applicants for access to Federal and non-Federal minerals and leases outside park boundaries must continue to comply with regulations at 36 CFR part 9.

6. Prohibitions of rights-of-way in wilderness areas. Proposed paragraph (f) clarifies that no rights-of-way will be permitted within NPS areas proposed for or designated as wilderness under the Wilderness Act of September 3, 1964 (78 Stat 890; 16 U.S.C. 1131-1136).

7. Regulations in NPS units in Alaska. Proposed paragraph (g) clarifies that applications for transportation and utility system corridors in Alaska, pursuant to Title 11 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA; 16 U.S.C. 3101 *et seq.*) must meet the requirements of regulations at 43 CFR part 36.

8. Approval of the Regional Director. Proposed paragraph (h) clarifies that new applications for rights-of-way over, under or through the lands and waters subject to NPS regulations must be submitted to the Authorized Officer and approved by the appropriate Regional Director of the NPS or a designee.

Section 14.3 Definitions

This section replaces existing § 14.2. The NPS proposes new definitions to clarify existing or proposed procedures within these regulations. Specific changes to existing definitions or definitions for newly proposed terms are discussed in detail below.

The NPS proposes to add a definition for *applicant*, to include any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations, submitting an application under this part.

A new definition of *construction* is added to include all temporary or permanent work done under the authority of a right-of-way permit from initiation until completion of the necessary activities to establish the use for which the permit is issued.

The NPS proposes to change the context of the phrase *right-of-way* by changing the definition to mean the Federally owned land authorized to be used or occupied under a right-of-way permit.

The new term *right-of-way* permit is defined as an authorizing document that, without conveying any title interest, provides permission to occupy and use Federal lands and waters within the NPS boundary under certain terms and conditions and for specified purposes that is revocable, terminable and unassignable.

Proposed for deletion from this part is the definition of *Secretary, Director, Regional Director, Superintendent and Park*, all of which are defined at § 1.4. Also proposed for deletion is *Project*, presently defined at § 14.2(f).

Section 14.4 Information Collection

This new section has been included to comply with the Paperwork Reduction Act of 1995.

The information collection requirements contained in § 14.21 of this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507, *et seq.*, and assigned approval number 1004-0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

Subpart B—Terms and Conditions of Right-of-Way Permit

This Subpart replaces existing Subpart B, "Nature of Interest."

Section 14.10 Purpose

This Subpart describes the nature and limitations of the nonexclusive right-of-way permit to be granted.

Section 14.11 Nature of Right-of-Way Permit

This section replaces and expands existing § 14.6. Paragraph (a) emphasizes that the right-of-way permit does not grant a permanent interest in the premises nor should it be deemed as an abandonment by the United States. Further, the section clarifies the point that the permittee does not gain any estate in fee in the lands or any right whatever to take from Service lands any mineral, consolidated material, earth, stone or wood for construction or other purposes not specifically authorized. In addition, the terms "easement" and

"license" have been removed here and throughout this part to avoid confusion.

Paragraph (b) has been added clarifying that an approved right-of-way permit will be limited to the specific use described in the permit and will not be construed to include the right of the permittee to authorize any other use within the right-of-way unless authorized in writing by the Authorized Officer. Furthermore, right-of-way permits may not be transferred or assigned to other parties without written permission from the Authorized Officer.

Paragraph (c) has been added to allow that additional right-of-way permits may be issued by the NPS within previously permitted rights-of-way. The holders of such permits do not have the right to impose charges for additional users of such rights-of-way.

Paragraphs (d) and (e) describes the maximum widths and expiration dates for right-of-way permits.

Section 14.12 Unauthorized Occupancy

This section replaces existing § 14.8. The text has been modified for clarification and simplification. Occupying or using Federal lands within a park area for constructing, maintaining, operating or removing any utility, highway or other facility, except where specifically authorized by permit according to this part, is prohibited and subject to the penalties established in § 1.3. By making § 14.12 subject to the penalties found at 36 CFR 1.3, § 1.3 will be amended to add part 14.

Section 14.13 Terms and Conditions

This section replaces and significantly reorganizes existing § 14.9. References to waiving requirements are deleted. The NPS proposes the addition and deletion of terms and conditions for clarity and resource protection purposes. These revisions are broadly summarized in the following chart:

Existing Old Section, 36 CFR	Proposed New Section, 36 CFR
§ 14.9(b),(c),(e) & (i)	§ 14.15
(d)	§ 14.13(a)(9)
(f)	§ 14.13(c)(d)(e)
(g)	Partly deleted, & § 14.13(c)
(h)	§ 14.13(a)(5)
(j)	Deleted
(k)	§ 14.13(a)(10)
(l)	§ 14.11; § 14.27
(m)	§ 14.13(i)

Paragraph (a) provides that right-of-way permits are subject to such relevant terms, conditions and additional special stipulations as may be required by the Authorized Officer. New subparagraphs 1 to 14 further specify the types of

requirements to be addressed in the terms and conditions of right-of-way permits, allow the Authorized Officer or a designee to enter and inspect the property and require reimbursement of costs and payment of all fees.

Paragraph (a) reinforces the requirement to comply with State and Federal requirements for public health and safety, environmental protection and siting, construction, operation and maintenance. When State standards are more stringent than the Federal standards, the State standards must be met. To protect archeological, paleontological and historical resources, a requirement is added that activities must be stopped and the Superintendent immediately notified upon discovery of such resources. All artifacts unearthed or discovered are the property of the United States and will be accessioned by the NPS according to the standards of the automated National Catalog System before relinquishing them to the United States.

Paragraph (a) also requires compliance with the specifications pertaining to restoration and rehabilitation of resources as listed in proposed § 14.15. The requirement is added to notify the Authorized Officer in writing not less than 10 working days prior to the start of construction, maintenance or repair on park lands. All work on park lands will be completed in accordance with the terms of the permit, as determined by the Authorized Officer or his representative.

New paragraph (b) establishes that a bond or other security may be required by the Authorized Officer.

Proposed paragraph (c) replaces in part existing paragraph (f) and requires the permittee to notify and compensate the United States for all damages caused to Federal lands or resources by the permittee. It also requires compensation by the permittee for injury, loss or damage arising from the occupancy or use of lands under the permit, including costs of fire suppression or clean up of petroleum or other product spills.

Paragraph (d) expands on existing paragraph (f) in a savings clause to hold the United States free from all liabilities and claims for damages.

New paragraph (e) requires the Authorized Officer to include a strict liability condition in new permits and specify maximum limitation on liability commensurate with the foreseeable risk or hazard associated with the use.

New paragraph (f) makes State and local governments liable to the extent of their laws, or to require at a minimum the repair of any damages or restitution in full.

New paragraph (g) deals with hazardous materials and toxic substances by restricting the use, generation or storage on the right-of-way; requires additional approval before any such use, generation or storage; requires immediate reporting of any leak, spill or release of such substances; requires the applicant to produce and submit to the Authorized Officer a completed emergency action plan.

New paragraph (h) replaces and revises existing paragraph (m) to indicate the authority of the United States to modify or discontinue any permit if it conflicts with authorized use and occupancy of lands under the management authority of the United States.

New paragraph (i) excludes members of or delegates to Congress or Resident Commissioners to any share or part of a right-of-way permit issued under this part.

New paragraph (j) states that failure to comply with the requirements of the permit may lead to its cancellation.

Section 14.14 Additional Terms and Conditions Specific to Electrical Transmission and Communication Lines

This is a new section that revises, simplifies and replaces existing Subpart E—Power Transmission Lines, General; Subpart F—Principles and Procedures, Power Transmission Lines; Subpart G—Radio and Television Sites; and Subpart H—Telephone and Telegraph Lines. Some of these terms and conditions have been moved to the general terms and conditions section at § 14.13. Other sections have been deleted because they are no longer applicable.

It is felt that § 14.13 adequately addresses the criteria that should be applied to any right-of-way permit, regardless of type. The authority for electrical and communication rights-of-way is the same as for other rights-of-way. Existing subparts E through H are repetitive and, except for the few specifics in this new § 14.14 applicable to communication and power lines, have been deleted.

Section 14.15 Rehabilitation and Revegetation Requirements

This new section consolidates existing requirements and establishes new requirements for the rehabilitation and revegetation of rights-of-way during various stages of construction, operation, maintenance and termination. Existing § 14.9 (b), (c), (e) and (i) are incorporated in this new section.

The rehabilitation and revegetation work must be conducted according to adopted NPS policies, guidelines, park

standards and applicable vegetation management plans. The permit will be conditioned to require restoration, revegetation and curtailment of erosion of the surface of the land during construction and completion of construction. The permit will also be conditioned to minimize damage and aesthetic values and fish and wildlife habitat and otherwise protect the environment. Further, this section places restrictions on the cutting of vegetation and requires reimbursement to the park of market value for trees cut.

At the termination and rehabilitation stage of the proposed use, the permittee is required to participate in a pretermination conference with the Authorized Officer. Rehabilitation activities must restore natural resources to their pre-disturbance condition to the satisfaction of the Authorized Officer. The Authorized Officer may require rehabilitation and revegetation of the right-of-way to other than the original condition in previously disturbed areas if consistent with the management zones and park purposes prescribed in the park's enabling legislation and General Management Plan. If agreement cannot be reached between the Authorized Office and the permittee, the permittee may appeal the decision of the Authorized Officer following procedures found in § 14.31.

A bond, which is a permit requirement, will not be returned to the permittee until the Authorized Officer conducts a final inspection to determine that all work has been satisfactorily completed and that the revegetation of the site is properly established and self-generating. Failure to do so may result in forfeiture of all or part of the bond. The bond in this instance may be utilized to rehabilitate the site. The bond will never be deposited to the U.S. Treasury as miscellaneous receipts.

Subpart C—Procedures

Section 14.20 Preapplication

This section is renamed Preapplication. Information is given regarding the steps to be followed when seeking a right-of-way over, across or through lands and waters within the boundary of an area of the National Park System. The purpose of this section is to make the proponent aware of the application procedures and probable time requirements, clearances, other permits and licenses required for the use, environmental and management concerns, cost reimbursement, fees and bonding requirements, and special conditions applicable to the area.

Section 14.21 Application Filing

This section revises and expands existing 36 CFR 14.21 and includes existing 36 CFR 14.24, 14.25 and 14.28. Paragraph (a) indicates that the application is to be filed with the Authorized Officer and lists the basic information needed for evaluating the application. The information requested in subparagraphs 1 through 9 is needed in order for the Authorized Officer to determine the impacts of the proposed activity on park resources and to insure that the activity would not conflict with any Federal or State law.

Paragraph (b) requires applicants for rights-of-way to demonstrate their legally recognized right to utilize, transport, store or convey water.

Paragraph (c) replaces existing 36 CFR 14.25(a) regarding map and document requirements to accompany a right-of-way application.

Section 14.22 Timely Construction, Nonconstruction and Nonuse.

This section revises existing 36 CFR 14.29. The major revision places the emphasis on initiating work within two years instead of completing work within two years. Proof of construction completion is still required, with certain extensions possible. Completion of construction dates will be stipulated in the permit.

Section 14.23 Deviation From Approved Right-of-Way

This section replaces existing 36 CFR 14.31, and provides that no deviation from the approved right-of-way can be initiated by the permittee without approval from the Authorized Officer.

Section 14.24 Immediate Suspension of Activities.

This new section provides the Authorized Officer with the authority to issue immediately a temporary suspension of activities order within a permitted right-of-way to protect park resources, public health or safety or the environment. This may be done without an administrative hearing and may be conducted orally. The suspension order may be issued to the permittee or a contractor or subcontractor, or to any representative, agent or employee of the permittee. Activity must be suspended at once upon the issuance of such an order.

The order will remain in effect until it is lifted by the Authorized Officer in writing. By written request, the permittee may request that the suspension be lifted, providing reasons for the request. The Authorized Officer will act upon the permittee's request

within five working days of the date the request is filed.

Section 14.25 Cancellation of Permit

This section replaces and revises existing 36 CFR 14.32 and 14.33. It addresses the causes that may result in the cancellation of a permit, rather than the temporary suspension of § 14.24. These include failing to comply with applicable laws and regulations, terms, conditions or stipulations of the permit; or abandoning the right-of-way as described in proposed § 14.22(b).

Before revoking a right-of-way permit pursuant to this section, the Authorized Officer will give the permittee written notice that such action is being contemplated and the reasons therefore and will allow the permittee an opportunity to comply with the terms of the permit.

Section 14.26 Disposition of Personal Property and Improvements Upon Termination of Rights-of-Way.

This section revises and replaces existing § 14.38. All references to monies due the United States and references to six-month limitations for removing property and improvements are deleted. The permittee is now provided with a reasonable amount of time for removal activities after termination, revocation or cancellation of a right-of-way permit. This section also reaffirms the responsibility of the permittee to restore the site to a condition satisfactory to the Authorized Officer. Further, if the permittee fails to remove such improvements or personal property within a reasonable time, as determined by the Authorized Officer, the improvements and personal property will become the property of the United States. However, the permittee will remain liable for all costs of removal of the improvements of personal property and for rehabilitation and revegetation of the right-of-way.

Section 14.27 Amendments

This section clarifies that a right-of-way permit may be amended any time by making a written request. If the amendment is approved, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations to reflect subsequent conditions, requirements or changes in market value.

Section 14.28 Renewal of Right-of-Way Permits

This section clarifies that a right-of-way permit may be renewed if authorized by law, if it is being used for authorized purposes and if it is consistent with the provisions of this

part. In making such a renewal, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations, to reflect any subsequent conditions, requirements or changes in the market values imposed by Federal and State laws, regulations, and other management plans or land uses.

Section 14.29 Change in Administrative Jurisdiction Over Lands

This section revises existing 36 CFR 14.34. It clarifies that the NPS will not cancel an existing right-of-way permit on Federal lands transferred from the jurisdiction of another Federal agency to the jurisdiction of the NPS; provided, however, that the use does not change from that permitted at the time of the issuance of the original permit.

If a right-of-way permit transferred from another Federal agency to the jurisdiction of the NPS expires, and if the NPS has decided to renew the right-of-way, it must be renewed in accordance with these regulations. The permittee may make a new application for such authorized use as described in this part.

Section 14.30 Transfer of Right-of-Way Permit

This section replaces existing 36 CFR 14.35, 14.36 and 14.37. Any proposed transfer to another party of any right-of-way permit must be filed in accordance with § 14.21. Further, no transfer will be recognized and no further construction or uses permitted, unless and until the transfer is first approved by the Authorized Officer. The transferee must agree to comply with and to be bound by the terms and conditions of the right-of-way permit. All applications for transfer approval must be accompanied by an application fee in accordance with § 14.42(a) and an administrative processing fee in accordance with § 14.42(b).

Section 14.31 Appeal

This is a new section explaining the requirements and process associated with appeals.

Subpart D—Fees and Charges

Section 14.40 Purpose

All references to fees and charges are consolidated under this new Subpart. It places all information regarding fees together in a single, prominent location rather than being scattered throughout the text of the regulations. The numbering sequence and section names are changed from the existing regulations. There are two basic purposes for the four fees and payments delineated in this section. The fees

identified in paragraphs (a), (b) and (c) provide for the reimbursement of costs incurred by the United States in issuing the permit and monitoring the operation of the right-of-way. Paragraph (d) requires a fee, equal to fair market value, for use and occupancy of NPS lands.

The linear and nonlinear fee schedules for reimbursement of costs and monitoring of costs found in existing 36 CFR 14.22 are deleted.

Section 14.41 Exemptions

All references to exemptions from fees are consolidated in this subsection.

Exemptions apply:

(a) To Federal agencies or where the use is for the sole and exclusive use and benefit of the NPS;

(b) To use and occupancy fees only, to State and local governments or agencies or instrumentalities thereof where the use is for governmental purposes (consistent with OMB Circular A-25) and for electric or telephone facilities financed pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 31). The proposed rule revises existing 36 CFR 14.22 by now requiring reimbursement of costs from these entities.

(c) To situations where the use of Federal lands is needed for highway purposes under 23 U.S.C. 317;

(d) When Federal law prohibits such fees.

Section 14.42 Reimbursement of Costs

This section reorganizes and replaces existing § 14.22 and retains its title. The reorganization is summarized in the following chart:

<i>Existing Old Section, 36 CFR</i>	<i>Proposed New Section, 36 CFR</i>
14.22(a)(1)	14.42(b)(1)
14.22(a)(2)	14.41
14.22(a)(3)	14.42(a)
14.22(a)(4)	14.42(b)(2)
14.22(a)(5)	14.42(b)(3)
14.22(a)(6)	14.42(b)(5)
14.22(a)(7)	14.42(b)(4)
14.22(a)(8)	14.42(b)(6)
14.22(a)(9)	Deleted
14.22(a)(10)	14.42(b)(7)
14.22(a)(11)	14.42(b)(8)
14.22(a)(12)	14.13
14.22(a)(13)	14.42(b)(9)
14.22(a)(14)	14.42(b)(10)
14.22(a)(15)	Deleted
14.22(b)(1)-(4)	14.42(c)(1),(2)

Paragraph (a) establishes a one-time non-refundable application payment of \$100 rather than a variable payment based on mileage as in existing 36 CFR 14.22.

Paragraph (b)(1) revises existing § 14.22(a)(1) to add additional requirements that must be complied with by the NPS and makes the applicant responsible for costs associated with such compliance.

Paragraph (b)(2) establishes procedures for estimating costs and payment procedures. A clarification is made that the "processing payment" is based on an estimate of cost. It may be required in advance and later refunded or adjusted, based on an accounting of actual costs.

Paragraph (b)(3) requires applicants to pay additional amounts if estimated costs to the United States are exceeded.

Paragraphs (b)(4), (5) and (6) address costs to be borne by the applicant upon withdrawal of an application before completion of the approval process or upon permit denial. Any costs paid to the United States that exceed actual costs will be refunded by the Authorized Officer or future billings will be credited.

Paragraph (b)(7) requires all applicants for a permit determined by the Authorized Officer to be in competition with each other to reimburse the United States according to this section, except that costs not readily attributable to only one applicant will be borne by all applicants equally.

Paragraph (b)(8) allows the Authorized Officer to require security for costs in the section.

Paragraph (b)(9) requires that each party in a joint application for a permit be jointly and severally liable for costs under this section.

When more than one noncompeting application is received for a right-of-way permit found by the Authorized Officer to be for a common right-of-way system, paragraph (b)(10) makes each applicant jointly liable for costs according to this section.

New paragraph (c) addresses fees for inspection and monitoring, replacing existing 36 CFR 14.22(b)(1)-(b)(4). As mentioned above for proposed § 14.40, the linear and nonlinear fee schedules for reimbursement of costs and monitoring of costs in existing 36 CFR 14.22 are proposed for deletion. It has been found that often the tables caused an automatic charging of the minimums expressed in the tables without a thorough analysis of true expenditures of Government funds. Therefore, this paragraph requires the reimbursement of all costs incurred by the NPS or its agents in the processing and monitoring of a right-of-way permit. This change simplifies the discussion of monitoring and inspection fees.

Section 14.43 Fee for Use and Occupancy

This section revises existing 36 CFR 14.26 by stating the method for calculation of the charge for use and occupancy will be the fair market value,

including but not limited to an appraisal. This section also amends the requirement for payment by stating that in situations where a lump sum payment is required by the Authorized Officer, the full sum must be submitted within 60 days of the issuance of the permit.

Fees for use and occupancy will be paid beyond termination or cancellation of the permit until equipment removal and site rehabilitation are completed in accordance to Subpart B.

The minimum charge policy for use and occupancy of lands and waters is also amended to be not less than \$100 per year for any right-of-way permit issued.

Paragraph (e) revises existing 36 CFR 14.26(d) to clarify that if a charge required by this section is not paid when due, and such default will continue for 60 days after notice, action may be taken to cancel the permit. After default has occurred, any structures or personal property will be considered abandoned.

Paragraph (f) provides for the review of and adjustment of charges at intervals not less than five years.

Subpart E—Highway Easement Deeds

This Subpart replaces existing part 14, Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System). The title has been simplified to better describe the subject covered and to reinforce that rights-of-way interest for highways is conveyed through highway easement deeds.

Section 14.50 Rights-of-Way for Highway Purposes

This section revises and replaces existing 36 CFR 14.50. Paragraph (a) clarifies that right-of-way requests for highways over lands or interests in lands under the jurisdiction of the NPS may only be considered if the Secretary of Transportation, acting under the provisions of 23 U.S.C. 138, determines that there is no feasible and prudent alternative to the use of such land, and that any action will include all possible planning to minimize adverse impacts to NPS lands and resources.

Paragraph (b) sets up the procedures to be followed between the Secretary of Transportation and the Secretary of the Interior if the Secretary of Transportation determines that there is no feasible and prudent alternative for the use, and either no adverse impacts will occur, or such adverse impacts that might occur have been planned for. The Secretary of the Interior has four months to approve any deeded interest transfer.

Paragraph (c) outlines what the Secretary of Transportation will then do

when both Secretaries for Transportation and Interior agree on the request. When both Secretaries approve the request, the Secretary of Transportation will make the arrangements necessary to convey to the State or other person requesting such use, adequate rights-of-way and control of access thereto. The right-of-way interest will be conveyed through a highway easement deed.

The Secretary of the Interior does not possess the authority to issue rights-of-way for roads in parks under 36 CFR part 5 or 79. The only authority for granting such rights-of-way for roads is at 23 U.S.C. 317. Under 23 U.S.C. 317 authority, rights-of-way may be granted for highway purposes only for Federal aid primary or Federal aid secondary road networks, and for the Interstate and Defense Highway Systems.

Section (c) also deletes existing 36 CFR 14.50(b)(2) and 14.51 regarding no intent to vest in a State a right of appropriation of an interest in land, contrary to the discretion of the Secretary.

Section 14.51 Additional Rights-of-Way within Highway Rights-of-Way

This section revises existing 36 CFR 14.59, requiring a separate permit for any additional rights-of-way to be authorized within the same right-of-way, but not for highway purposes. Any relocation or change of any additional right-of-way made necessary by the highway will be accomplished at no expense to the United States.

Section 14.52 Termination of Highway Use

This section revises existing 36 CFR 14.52. When the lands are no longer needed, the control of the lands will revert to the NPS. Upon notification, the Secretary of the Interior will immediately notify the Secretary of Transportation and take the necessary action to revoke and abandon the highway easement deed and re-vest the NPS with clear and exclusive title of the unencumbered land.

Subpart F—[Reserved]

This Subpart is reserved for future terms and conditions governing the operation of valid R.S. 2477 highways across NPS areas.

Organizational Summary

The NPS has prepared the following organizational summary and distribution table to assist in the location and analysis of the proposed revisions to 36 CFR part 14:

Numbering

<i>Existing Old Section, 36 CFR</i>	<i>Proposed New Section, 36 CFR</i>
14.1	14.2
14.2	14.3
14.5	Deleted
14.6	14.11
14.7	Deleted
14.8	14.13
14.9	14.13, 14.15, 14.27
14.10	14.2
14.20	14.20
14.21	14.21
14.22	14.41, 14.42
14.23	Deleted
14.24	14.21
14.25	14.21
14.26	14.40, 14.43
14.27	Deleted
14.28	14.21
14.29	14.22
14.30	14.22
14.31	14.23
14.32	Deleted
14.33	14.25
14.34	14.30
14.35	14.31
14.36	14.31
14.37	14.31
14.38	14.27
14.50	14.50
14.51	Deleted
14.52	14.52
14.53	Deleted
14.54	Deleted
14.55	Deleted
14.56	Deleted
14.57	Deleted
14.58	14.14
14.59	14.51
14.60	Deleted
14.61	Deleted
14.70	Deleted
14.71	Deleted
14.75	Deleted
14.76	14.15
14.77	Deleted
14.78	Deleted
14.90	Deleted
14.91	Deleted
14.95	Deleted
14.96	Deleted

New Sections

14.1
14.4
14.10
14.15
14.24
14.28
14.29
14.40
14.42

Drafting Information: The primary authors of this proposed rule are Pat Bentley, Northeast Region, NPS, Philadelphia, PA; Jenness Coffey, Division of Wildlife and Vegetation, Washington, D.C.; Tony Sisto, Superintendent, Fort Vancouver, WA; Rick Wagner, Columbia Cascades Land Resources Program Office, Seattle, WA; Dick Young, Special Park Use Coordinator, Colonial National Historical Park, VA; and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon a thorough analysis of the comments.

Paperwork Reduction Act

The collection of information as described in § 14.21 of this proposed rule has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned approval number 1004-0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

The public reporting burden for the collection of information in § 14.21 is estimated to average from 2–20 hours per response depending on the size of right-of-way applied for, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Specifically, the NPS needs the following information to issue a permit:

1. Name, address and telephone number of the company requesting a right-of-way permit.
2. Contact person representing the company.
3. Type of right-of-way permit requested.
4. Rehabilitation and revegetation requirements, if required.
5. Environmental assessment, if required.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Docket No. 1024-AC01, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1004-0060), Washington, D.C. 20503.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget review 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 overall economic effects of this rulemaking will be negligible. The updated fee schedules are consistent with fair business practices, are minor and are present to allow the recovery of costs by individual parks. There are no expected increases in costs of prices for consumers, the Federal government or geographic regions, and only minor increases for individual industries, State or local governments and agencies.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed 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 NPS has determined that this proposed rule will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses that might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects**36 CFR Part 14**

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 14

Electric power, Highways and roads, Public lands—rights-of-way.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 460 1-6a(e), 469(k); D.C. Code 8-137, 40-721 (1981).

2. Section 1.3 is amended by revising paragraph (a), to read as follows:

§ 1.3 Penalties.

(a) A person convicted of violating a provision of the regulations contained in parts 1 through 7 and 12 through 14 of this chapter, within a park area not covered in paragraph (b) or (c) of this section, shall be punished by a fine as provided by law, or by imprisonment not exceeding 6 months, or both, and shall be adjudged to pay all costs of the proceedings.

* * * * *

3. 36 CFR part 14 is revised to read as follows:

PART 14—RIGHTS-OF-WAY**Subpart A—Right-of-Way Permits: General**

Sec.

- 14.1 Purpose.
- 14.2 Applicability and scope.
- 14.3 Definitions.
- 14.4 Information collection.

Subpart B—Terms and Conditions of Right-of-Way Permit

- 14.10 Purpose.
- 14.11 Nature of right-of-way permit.
- 14.12 Unauthorized occupancy.
- 14.13 Terms and conditions.
- 14.14 Additional terms and conditions specific to electrical transmission and communication lines.
- 14.15 Rehabilitation and revegetation requirements.

Subpart C—Procedures

- 14.20 Preapplication.
- 14.21 Application filing.
- 14.22 Timely construction, nonconstruction and nonuse.
- 14.23 Deviation from approved right-of-way.
- 14.24 Immediate suspension of activities.
- 14.25 Cancellation of permit.
- 14.26 Disposition of personal property and improvements upon termination of right-of-way permit.
- 14.27 Amendments.
- 14.28 Renewal of a right-of-way permit.
- 14.29 Change in administrative jurisdiction over lands.
- 14.30 Transfer of right-of-way permit.
- 14.31 Appeal.

Subpart D—Fees and Charges

- 14.40 Purpose.
- 14.41 Exemptions.
- 14.42 Reimbursement of costs.
- 14.43 Fee for use and occupancy.

Subpart E—Highway Easement Deeds

- 14.50 Rights-of-way for highway purposes.
- 14.51 Additional uses within highway rights-of-way.
- 14.52 Termination of highway use.

Authority: 16 U.S.C. 5, 79; 23 U.S.C. 317.

Subpart A—Right-of-Way Permits: General**§ 14.1 Purpose.**

The purpose of the regulations in this part is to:

(a) Prescribe the procedures by which an applicant may apply for a right-of-way permit and the terms and conditions under which the National Park Service may authorize and permit a right-of-way within a park area.

(b) Regulate, control and direct all authorized activities pursuant to a right-of-way permit or other legal instrument, to ensure that there is no feasible and prudent alternative to the proposed right-of-way and such activities are not exercised in derogation of the values and purposes for which the various park areas have been established, except as may have been or will be directly and specifically provided by Congress.

§ 14.2 Applicability and scope.

(a) The regulations contained in this part apply to authorized rights-of-way activities occurring upon, under, over, across or through federally owned lands or waters administered by the National Park Service within the exterior boundaries of park areas.

(b) The regulations contained in this part do not apply to right-of-way construction, operation and maintenance when said rights-of-way are owned, controlled or operated by the National Park Service.

(c) Unless otherwise provided for in law, permits issued pursuant to this part will only be for those rights-of-way permits where:

(1) There is no prudent or feasible alternative for the right-of-way outside the boundaries of a park area; and

(2) The use will not be in derogation of park resources and values and other applicable statutory standards authorizing rights-of-way permits are met.

(d) The regulations in this part do not apply to operations in connection with the exploration, development, production and transportation of non-Federally owned oil and gas originating in units of the National Park System.

Such operations are subject to regulations found at 36 CFR part 9, subpart B. The construction, operation and maintenance of rights-of-way for new and existing transpark petroleum product pipelines occupying park lands that originate and terminate outside a park unit, must comply with the requirements of 36 CFR part 9, subpart B. Where issuance of a right-of-way permit is specifically authorized by a park unit's enabling statute or other authority, such right-of-way must also comply with the procedures set forth in this part.

(e) The regulations in this part do not apply to applicants seeking access to Federal mineral leases or non-Federal minerals outside park boundaries. Those applicants must meet the requirements of 36 CFR part 9.

(f) No new right-of-way permit will be issued for activities within park areas on lands or waters proposed for or designated as wilderness under the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

(g) Applications for transportation and utility system corridors in Alaska pursuant to Title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3161 *et seq.*) must be made under regulations at 43 CFR part 36.

(h) Applications for a right-of-way permit for a park area will be submitted to the Authorized Officer for the park area. Pursuant to any statute applicable to lands and waters administered by the National Park Service and pursuant to the regulations in this part, right-of-way permits are subject to the approval of the Director. The Director may delegate this approval authority in writing.

§ 14.3 Definitions.

The following definitions apply to this part:

Applicant means any individual; any partnership, corporation, association or other business entity; and any Federal, State or local governmental entity, including a municipal corporation, submitting an application under this part.

Authorized Officer means a park area superintendent or a delegate appointed in writing by the superintendent.

Construction means any work, whether permanent or temporary in nature, under the authority of a right-of-way permit from initiation until completion of the necessary activities to establish the use for which the permit is issued.

Right-of-way means the land or water area in a park area authorized to be used or occupied under a right-of-way permit.

Right-of-way permit is an authorizing document that, without conveying any title interest, provides permission to occupy and use lands or waters within a park area under certain terms and conditions and for specified purposes, which is nonexclusive, revocable, terminable and unassignable.

§ 14.4 Information collection.

(a) The information collection requirements contained in § 14.21 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*, and assigned approval number 1004–0060. The information being collected is necessary to enable the Superintendent to issue right-of-way permits. The public is being asked to provide this information in order for the park to determine whether a permit should be issued, to track the number of permits issued and to whom they are issued. These permits are required by 16 U.S.C. 5 and 79, and by 23 U.S.C. 317.

(b) The NPS needs the following information to issue a permit:

- (1) Name, address and telephone number of the company requesting a right-of-way permit.
- (2) Contact person representing the company.
- (3) Type of right-of-way permit requested.
- (4) Rehabilitation and revegetation requirements, if required.
- (5) Environmental assessment, if required.

(c) The public reporting burden for the collection of information in § 14.21 is estimated to average from 2–20 hours per response depending on the size of right-of-way applied for, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Officer, Docket No. 1024-AC01, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior (1004–0060), Washington, D.C. 20503.

Subpart B—Terms and Conditions of Right-of-Way Permit

§ 14.10 Purpose.

The purpose of this subpart is to describe the nature, limitations and the

terms and conditions of a right-of-way permit issued in accordance with this part. This subpart does not apply to highway easement deeds that are addressed in subpart E of this part.

§ 14.11 Nature of right-of-way permit.

(a) A right-of-way permit is not a grant of permanent interest, an abandonment of use and occupancy of the premises by the United States or a waiver of any regulatory authority of the United States. The use permitted will not be greater than a right-of-way permit revocable at the discretion of the Authorized Officer, unless otherwise specifically authorized by statute. The permitted use does not give the permittee an estate in fee, limited estate, interest in the land or any right to take from a park area any mineral, consolidated material, earth, wood or stone for construction or other purposes not specifically permitted.

(b) A right-of-way permit will only be for the specifically described use approved in writing by the Regional Director. A right-of-way permit may not be transferred or assigned to another party except as otherwise provided in this part.

(c) A right-of-way permit does not limit the authority of the Regional Director to approve additional right-of-way permits within or adjacent to the permitted right-of-way, nor does it authorize a permittee to impose charges for the additional use of the right-of-way made subject to such right-of-way permits.

(d) The width or area of a right-of-way under this part is determined by the Authorized Officer and will not be greater than that required for the permitted use, nor exceed that authorized by law.

(e) A right-of-way permit will not be issued for a period longer than ten years, unless otherwise specified in the permit criteria.

§ 14.12 Unauthorized occupancy.

Occupying or using Federal lands within a park area for constructing, maintaining, operating or removing any utility, highway or other facility, except where specifically authorized by permit according to this part, is prohibited and subject to the penalties established in 36 CFR 1.3.

§ 14.13 Terms and conditions.

(a) The Authorized Officer will include in a right-of-way permit terms and conditions pertaining to the extent, duration, location, construction, operation, maintenance and termination of activities authorized by the permit and additional stipulations to include,

but not be limited to, requirements for the permittee to:

(1) Comply with State and Federal laws and regulations applicable to the park area and the authorized use for which the right-of-way permit is issued.

(2) Ensure that construction or other activities concerning right-of-way permits will not violate applicable air and water quality standards or other standards established by or pursuant to applicable Federal or State law and regulations or Executive Order.

(3) Ensure compliance with applicable State standards for public health and safety, environmental protection and siting, construction, operation and maintenance when those standards are more stringent than applicable Federal standards.

(4) Ensure that the facilities and appurtenances constructed on the prescribed right-of-way are maintained and operated consistent with the purposes of the permit.

(5) Comply with other applicable statutes and regulations with respect to the occupancy and use of a park area as may be found by the Authorized Officer to be necessary as a condition to the approval of the right-of-way permit to render its use compatible with the public interest.

(6) Halt any activities and immediately notify the Authorized Officer upon discovery of archeological, paleontological or historical resources. The permittee must submit to the Authorized Officer a written report of any findings during the construction phase, and otherwise comply with the requirements of the National Historic Preservation Act, the Archeological Resources Protection Act and the Native American Graves Protection and Repatriation Act. All artifacts unearthed or discovered are the property of the United States and must be accessioned by the permittee according to the standards of the automated National Catalog System before relinquishing same to the United States.

(7) Comply with the specifications as listed in § 14.15 concerning restoration and rehabilitation of National Park System resources.

(8) Notify the Authorized Officer, in writing, no fewer than ten working days before the start of construction and initiate construction within two years of the date of permit approval.

(9) Initiate construction within two years of the date of permit approval, or some other time acceptable to the authorizing official, and establish a reasonable time for the disposition of personal property upon cancellation or termination of a right-of-way permit pursuant to § 14.26.

(10) Establish fire prevention systems and ensure initial suppression capability for wildland and structural fires on or near the park area to be occupied under the right-of-way permit. This may include sprinkler systems for structures and/or agreements with local fire agencies.

(11) Ensure nondiscrimination in the construction, operation and maintenance of the authorized use. The permittee will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and will require an identical provision to be included in all authorized subcontracts.

(12) Operate and maintain safe practices during the construction, operation and maintenance of the authorized use and ensure occupational safety and the public health are not jeopardized.

(13) Ensure that the Authorized Officer has access to the area and facilities at any time without restriction.

(14) Agree to reimburse all costs to the government and to pay all fees according to subpart D of this part.

(b) A bond or other security satisfactory to the Authorized Officer may be required to secure the obligations imposed by the permit and applicable laws and regulations.

(c) A permittee will promptly notify the Authorized Officer of, and compensate the United States for, the full value of all injury, loss or damages to the lands and resources, or other property of the United States caused by the permittee, its contractors, agents or employees, as determined by the Authorized Officer, and will be responsible for costs incurred by the National Park Service that result from any fire suppression activities or cleanup of petroleum product or hazardous waste spills caused by the permittee.

(d) Upon accepting a right-of-way permit, a permittee agrees that such permit is issued upon the express condition that the United States, its agents and employees, will be free from all liabilities and claims for damages and/or suits for, or because of any injury or death to any person or property, whether to the person or property of the permittee, its agents or employees, or third parties, from any cause during the term of this permit occasioned by any occupancy or use of the permitted right-of-way, or any activity carried on by the permittee in connection therewith; and that the permittee agrees to indemnify, defend, save and hold harmless the United States, its agents and employees, from all liabilities, charges, expenses and costs because of or by reason of any

such injuries, deaths, liabilities, claims, suits or losses however occurring, or damages growing out of the same.

(e) The Authorized Officer will include a condition imposing strict liability and specifying a maximum limitation on liability that, in the judgement of the Authorized Officer, is commensurate with the foreseeable risk or hazards associated with the permittee's use of park land.

(f) A permittee that is a State or local government or agency or instrumentality thereof, will be liable to the fullest extent its laws allow at the time the right-of-way permit is issued. When the power to assume liability is limited by law, the permittee will be required to repair damages or make restitution to the fullest extent of its powers at the time any damage or injury occurs.

(g) Hazardous materials and toxic substances; emergency action plan requirements. (1) The permittee will not use, generate or store on the right-of-way any toxic substance as defined by the Toxic Substances Control Act of 1976 (15 U.S.C. 2601-1692), or hazardous substance or hazardous waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601-9675), or the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6992k), except as provided in the permit.

(2) The permittee must request written approval from the Authorized Officer before the use, generation or storage of any toxic or hazardous substance or hazardous waste.

(3) The permittee must immediately notify the Authorized Officer of any leak, spill or release of such substances, in addition to any other reports as required under Federal and State law.

(4) The applicant or permittee must show to the satisfaction of the Authorized Officer that an emergency action plan, including plans for containment and cleanup of any spills, and any other conditions required by law, has been completed before the use, generation or storage of any toxic or hazardous substance or hazardous waste.

(h) A right-of-way permit may be subject to modification, adaptation or cancellation, without liability or expense to the United States, if the Authorized Officer determines such action to be necessary to avoid conflict with the uses for which the park area was established.

(i) No member of or delegate to Congress or Resident Commissioner will be admitted to any share or part of a right-of-way permit or to any benefit

that may arise from it, but this provision will not apply to this permit if made with a corporation for its general benefit.

(j) Failure to comply with any of the requirements of the permit may lead to cancellation of the permit by the Authorized Officer.

§ 14.14 Additional terms and conditions specific to electrical transmission and communication lines.

For an electrical transmission or communication line, a permittee will comply with the following terms and conditions in addition to those in § 14.13:

(a) The permittee will protect all surrounding communication and electrical transmission lines from contact, and all highways and railroads from obstruction, and maintain all transmission lines in such manner as not to menace life or property, in accordance with the National Electric Safety Code, which is available from: National Fire Protection Association, 1 Batterymarch park, Quincy MA 02269-9101. Telephone 617-770-3000.

(b) The permittee is responsible for avoiding, and liable to the extent of law for causing, any inductive or conductive interference between any transmission line or other works constructed, operated or maintained on the right-of-way, and any radio installation, telephone line or other communication facilities.

§ 14.15 Rehabilitation and revegetation requirements.

The permittee will rehabilitate and restore those areas disturbed through construction and/or maintenance activities authorized by the right-of-way permit to the satisfaction of the Authorized Officer. If the right-of-way is to be constructed in a disturbed area, then the Authorized Officer may require further rehabilitation and revegetation of the right-of-way in compliance with the parks enabling legislation and General Master Plan.

(a) The permittee will clear and keep cleared, as necessary, the lands within the right-of-way to the extent and manner directed by the Authorized Officer, and to dispose of all vegetative and other material cut, uprooted or otherwise accumulated during the construction and maintenance activities in an agreed upon manner.

(b) The permittee will not cut, destroy, or remove timber without first obtaining written permission from the Authorized Officer. The permittee will reimburse the United States for the market value of merchantable timber or other resources removed.

(c) The permittee will repair, rebuild or replace in kind any roads, fences and trails destroyed or damaged by construction activities, and to provide and maintain suitable crossings for all roads and trails that intersect the works authorized by the right-of-way permit.

(d) The permittee will meet additional standards as agreed upon by the permittee and the authorized officer.

(e) Bonding. The Authorized Officer may require the permittee to furnish an acceptable security by bond, guaranty, cash, certificate of deposit or other means for the costs of rehabilitation and revegetation. The Authorized Officer will not release the bond or security until a final inspection is conducted to determine that all rehabilitation requirements have been satisfactorily completed and that the revegetation of the right-of-way is properly established and self-generating. Failure to rehabilitate the site will result in the forfeiture of all or part of the bond. The bond in this instance will be utilized to rehabilitate the site. The bond will never be deposited to the U.S. Treasury as miscellaneous receipts.

(f) Termination. (1) Prior to termination of the right-of-way permit and implementation of rehabilitation and revegetation, the permittee will consult with the Authorized Officer to insure that the permittee fully understands and will comply with the agreed upon rehabilitation and revegetation measures as described in the permit.

(2) Failure of the permittee to initiate or complete rehabilitation within the time limits and to the standards imposed by this section will be grounds for forfeiture of all or so much of the bond or security as the Authorized Officer determines is necessary to achieve successful rehabilitation.

(3) Should the permittee disagree with the decision of the Authorized Officer, the permittee may follow the appeal process found in § 14.31.

Subpart C—Procedures

§ 14.20 Preapplication.

The applicant should contact the National Park Service office responsible for management of the park area before applying for a right-of-way permit. Information concerning application procedures, time requirements, clearances, other permits and licenses that may be required for the use, environmental and management concerns, cost reimbursement, fees and bonding requirements, and any other conditions applicable to the area will be provided.

§ 14.21 Application filing.

(a) Applications for a right-of-way permit must be filed with the Authorized Officer for that area. An application will comply with § 14.42, and will also include, but not be limited to, the following information:

(1) Name and address of the applicant and the applicant's authorized agent, if applicable.

(2) A description of the proposed use.

(3) A survey map or drawing acceptable to the Authorized Officer showing limits of the proposed use area as specified in paragraph (c) of this section.

(4) A statement of the possible environmental, social and economic impacts of the proposal and its alternatives.

(5) A statement describing possible impacts of the proposal and its alternatives on any known cultural, historic and archeological resources.

(6) A description of the alternatives, routes and modes considered by the applicant when developing the proposal, including alternate routes not using the park area and a written statement of why the route through the park area is otherwise necessary.

(7) Proof of the possession of or application for any Federal, State or other licenses, permits or other evidence of compliance for the proposed use.

(8) Certification that the applicant is a citizen of the United States, or in the case of a partnership, association or corporation, as being subject to the laws of any State or the United States and that the information submitted is correct to the best of the applicant's knowledge.

(9) Proposed beginning and completion dates for the proposed use.

(b) Evidence of right to use water. If the proposed use involves the storage, diversion or conveyance of water, the applicant will file a statement of the proper State official, or other appropriate evidence, showing a legally recognized right to utilize, transport, divert and/or store water. Where the State requires an applicant to obtain a right-of-way permit as a prerequisite to the issuance of evidence of a water right, a right-of-way permit may be issued conditioned upon the subsequent filing within a specified time of the required evidence of rights to use, transport, divert and/or store water from the State official. The right-of-way permit will terminate at the expiration of such specified period if the evidence is not produced.

(c) Maps. An applicant must submit with the permit application three copies of drawings and maps that are sufficiently accurate, to the satisfaction of the Authorized Officer, so that the

right-of-way may be precisely located on the ground by any competent engineer or land surveyor, and, at a minimum:

(1) Show the park boundaries and prominent features in the vicinity of the requested use.

(2) Have an exactly located and described point of beginning and ending to locate accurately where the proposed use enters and exits the park area and to show also any prominent or significant park features the proposed use will pass, go through, under or over.

(3) Be of a scale appropriate to the proposed use, but large enough to show detail, with the scale(s) shown on the face of the drawing.

(4) Present the proposed use in strips using match lines rather than reduce the map scale, if the length of the proposed use is such that it cannot be shown as one continuous line on a standard engineering drawing.

§ 14.22 Timely construction, nonconstruction and nonuse.

(a) Unless otherwise provided by law, or otherwise specified in the permit, construction must begin within two years of the date the right-of-way permit is issued.

(b) Failure of the permittee to use or occupy the right-of-way for the purpose for which the permit was issued for any continuous two-year period will constitute a presumption of abandonment.

(c) The Authorized Officer will consider applications for an extension of the beginning date for construction or right-of-way rehabilitation upon receipt of the following:

(1) A request from the permittee 90 days before the termination of the two-year period under paragraph (a) of this section;

(2) A statement justifying the need for the extension including, but not limited to, the permittee's demonstrated intention to accomplish the permitted work, meet construction schedules and initiate rehabilitation efforts; and

(3) Documentation of evidence of extenuating circumstances beyond the control of the permittee that require the extension.

(d) Failure of the permittee to comply with the requirements of this section will result in cancellation of the permit.

(e) Completion of construction. (1) Construction must be completed within the period set forth in the permit.

(2) Within 90 days after completion of construction, or after all restoration, rehabilitation and revegetation requirements have been satisfied, whichever is later, the permittee will notify the Authorized Officer of completion and show, to the satisfaction

of the Authorized Officer, that all applicable permit criteria have been met.

§ 14.23 Deviation from approved right-of-way.

No deviation from the location of an approved right-of-way will be initiated by the permittee without the prior written approval of the Authorized Officer. The Authorized Officer may require the filing of a new application in accordance with § 14.21 where, in the Authorized Officer's judgment, a deviation significantly changes the intent or purposes of the original right-of-way, or that has the potential to cause greater or substantially different impacts to park resources than the original approved use.

§ 14.24 Immediate suspension of activities.

(a) If the Authorized Officer determines that an immediate temporary suspension of activities within a permitted right-of-way is necessary to protect park resources, public health or safety, or the environment, the Authorized Officer may promptly suspend such permitted activities as deemed appropriate.

(b) The Authorized Officer may issue an immediate temporary suspension order orally, to be followed in writing, at the site of the activity to the permittee or a contractor or subcontractor of the permittee, or to any representative, agent or employee of the permittee. Any oral order will be followed with a written order.

(c) Upon the issuance of a suspension order, the permittee or on-site agent-in-charge must suspend all activity associated with the suspension order. An order of immediate suspension of activities will remain in effect until the Authorized Officer issues a written order permitting resumption of activities.

(d) Any time after an order of immediate suspension has been issued, the permittee may file a request with the Authorized Officer for permission to resume activities. The request will be in writing and will contain a statement of the facts supporting the request for resumption.

(e) The Authorized Officer will grant or deny the permittee's request to resume activities within five working days of the date the permittee's request is filed.

(f) The United States will not be liable for any claims arising from the immediate temporary suspension of the permittee's use.

§ 14.25 Cancellation of permit.

(a) The Authorized Officer may cancel a right-of-way permit upon a determination that the permittee has failed to comply with applicable laws, regulations or Executive Orders, or any special terms, conditions or stipulations of the right-of-way permit, or has abandoned the right-of-way as described in § 14.22.

(b) Before canceling a right-of-way permit pursuant to paragraph (a) of this section, the Authorized Officer will give the permittee written notice that such action is being considered and the reasons therefore, and will establish in such notice a deadline for the permittee to comply with the terms of the permit.

(c) No right-of-way permit will be canceled except on the issuance of a specific written order of cancellation by the Authorized Officer.

(d) No administrative proceeding will be required in those cases where the permit terminates under the terms specified within the permit.

§ 14.26 Disposition of personal property and improvements upon termination of right-of-way permit.

After termination of a right-of-way permit, the permittee will, unless otherwise directed in writing by the Authorized Officer, remove improvements or personal property and restore the site to a condition satisfactory to the Authorized Officer. If the permittee fails to remove such improvements or personal property, all improvements and personal property will become the property of the United States, but the permittee will nevertheless remain liable for all costs of removal of the improvements of personal property and for rehabilitation and revegetation of the right-of-way.

§ 14.27 Amendments.

(a) A right-of-way permit may be amended any time, either at the discretion of the Authorized Officer, or upon a written filing by the permittee requesting amendment of the permit. Such amendments shall be accomplished with the written and signed agreement of both parties.

(b) In making such amendments, the Authorized Officer may modify the terms, conditions or fees and charges of the permit, and impose new stipulations to reflect any changes in conditions, requirements or market values.

(c) The filing of a new application pursuant to § 14.21 may be required if the Authorized Officer determines that the requested amendments require significant deviation from the approved right-of-way permit.

§ 14.28 Renewal of a right-of-way permit.

(a) Upon written request to the Authorized Officer by the permittee, and within the six months before the stated date of expiration, the Authorized Officer may approve the renewal of any existing right-of-way permit in accordance with the provisions of this section and any other applicable laws and regulations in effect at the time of renewal, so long as the activity or facility will continue to be used for the purposes authorized.

(b) Before renewal, the Authorized Officer may modify the terms, conditions, land use fees and charges, and special stipulations of the permit to reflect any changed conditions, requirements, land uses, market values or Federal and State laws, Federal Executive Orders, regulations or management plans.

§ 14.29 Change in administrative jurisdiction over lands.

(a) Except as otherwise provided for by law, a change in the administrative jurisdiction over the lands and waters from another Federal agency to the National Park Service will not cause an existing right-of-way permit, grant or other authorizing instrument to be canceled, if there is no change in the approved use.

(b) The holder of the permit, grant or other authorizing instrument must comply with all additional laws, executive orders and regulations applicable to the park area.

(c) When a right-of-way permit, grant or other authorizing instrument transferred from another Federal agency to the jurisdiction of the NPS expires, the holder of the permit, grant or authorizing instrument may apply for a right-of-way permit pursuant to this part, to the Authorized Officer to continue the use of the right-of-way. The renewal procedures of § 14.28 are not applicable to this section.

§ 14.30 Transfer of right-of-way permit.

(a) A proposal by the permittee to transfer any right-of-way permit to another party, in whole or in part, will be made in accordance with applicable provisions of § 14.21, as determined by the Authorized Officer.

(b) No transfer of a permit will be recognized, and no construction or uses allowed, until the transfer is first approved in writing by the Authorized Officer. Such transfer must be filed in accordance with applicable regulations at the time of transfer and must be supported by the stipulation that the transfer applicant agrees to comply with, and to be bound by, the terms and conditions of the right-of-way permit.

(c) All filings for transfer approval made pursuant to this section must be accompanied by an application fee in accordance with § 14.42(a) and an administrative processing fee in accordance with § 14.42(b).

§ 14.31 Appeal

Should the permittee disagree with a decision of the Authorized Officer in connection with the regulations in this part, the permittee may file a written statement to that effect with the Authorized Officer. The written statement will detail the reason(s) why the decision is contrary to, or in conflict with the facts, the law, these regulations, or is otherwise in error. No appeal will be considered unless it is filed with the Authorized Officer within thirty (30) days after the date of notification to the permittee of the action or decision. Upon receipt of such written statement, the Authorized Officer shall promptly review the action or decision and either reverse the original decision or prepare a separate statement, explaining that decision and the reasons, and forward the statement and record of appeal to the Regional Director of the geographic area in which the Authorized Office is located, for review and decision.

Subpart D—Fees and Charges**§ 14.40 Purpose.**

The purpose of this subpart is to delineate and establish procedures for the payments of the unique fees and charges associated with a right-of-way permit. Payments are required pursuant to this subpart for the following categories:

- (a) An application processing payment;
- (b) A reimbursement for administrative and other appropriate costs incurred by the National Park Service;
- (c) An annual payment for monitoring and inspection; and
- (d) A fee for the use and occupancy of a park area at fair market value.

§ 14.41 Exemptions.

The regulations of this subpart do not apply to the following:

- (a) Federal agencies, or where the right-of-way is for the sole and exclusive use and benefit of the National Park Service.
- (b) For § 14.43 only, State and local governments or agencies or instrumentalities thereof, including counties, parishes, boroughs and other taxing districts, where the use is exclusively for respective governmental purposes and for electric or telephone

facilities financed pursuant to the Rural Electrification Act of 1936 (7 U.S.C. 31). Provided, however, that if an applicant derives revenue from charges levied on customers for services as would a profit making corporation or business, the applicant is not exempt from charges under this subpart.

(c) When Federal law specifically prohibits the charging of fees, or specifically establishes a different fee schedule, rate, structure or other procedure.

§ 14.42 Reimbursement of costs.

(a) Application payment. An applicant for a right-of-way permit must submit with each application a one-time payment of \$100 to cover initial processing costs.

(b) Administrative processing. (1) An applicant for a right-of-way permit will reimburse the United States for administrative and other appropriate costs incurred by the National Park Service in processing the application.

(2) When an application is received, the Authorized Officer will provide the applicant an estimate, based upon the best available information, of costs expected to be incurred by the United States in processing the application. When the estimated costs exceed \$2,500, the Authorized Officer will either require the applicant to remit the full payment of the estimated costs before processing the application, or require a bond or other security pursuant to paragraph (b)(8) of this section. Such payments may be subsequently refunded or adjusted as provided by paragraph (b)(6) of this section.

(3) Before the issuance of a right-of-way permit, the applicant will be required to pay any additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (b)(1) and (2) of this section.

(4) An applicant who withdraws an application for a permit before a decision is reached on the issuance of the permit is responsible for costs incurred by the United States in processing such application up to the date upon which the Authorized Officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement by the applicant of such incurred costs will be due within 30 days of receipt of notice of the amount due.

(5) An applicant whose application is denied is nevertheless responsible for paying the application and administrative costs incurred by the

National Park Service in processing the application. Additional costs that have not been paid in accordance with paragraphs (b)(1), (2) and (3) of this section, are also due within 90 days of receipt of notice from the National Park Service of the amount due.

(6) If payment exceeds the actual costs incurred pursuant to paragraphs (b)(2) and (3) of this section, the National Park Service will refund the amount under the authority of 43 U.S.C. 1374, or may adjust future billings to credit the applicant's account for overpayment. Neither an applicant nor a permittee may adjust any billing by the National Park Service without prior written approval.

(7) When two or more applications for a right-of-way permit are filed that the Authorized Officer determines to be in competition, each applicant will reimburse the National Park Service according to paragraphs (b)(1) through (6) of this section, except that costs not readily attributable to only one of the applications, such as costs for an environmental impact statement, will be paid by each applicant in equal shares.

(8) The Authorized Officer may require an applicant to furnish security of an acceptable amount by bond, guaranty, cash, book entry deposits or other means, for costs under paragraphs (b)(1) through (7) of this section. The Authorized Officer may require such additional security or substitution of security as the Authorized Officer deems appropriate.

(9) When more than one person, partnership, corporation, association or other entity apply together for a right-of-way permit, each such applicant will be jointly and severally liable for costs under paragraphs (b)(1) through (6) of this section.

(10) When two or more noncompeting applications for right-of-way permits are received for what, in the judgment of the Authorized Officer, is a common right-of-way system, all applicants will be jointly and severally liable for costs under paragraphs (b)(1) through (6) of this section for the entire system, subject however, to the provisions of paragraphs (b)(8) and (9) of this section.

(c) Monitoring and inspection. (1) The permittee will make in advance an annual payment as determined by the Authorized Officer, to the National Park Service for monitoring and inspection of the right-of-way. Such payment will be sufficient to cover all costs by the National Park Service or its agents for monitoring the construction, operation, maintenance and termination of all right-of-way activities and facilities, and for the protection of surrounding lands.

(2) Within 30 days of receipt of a bill from the National Park Service for the estimated annual monitoring and inspection costs for the upcoming year, the permittee will remit such estimated payment to the National Park Service.

(3) In any year, if annual costs to the National Park Service exceed the estimate because of unforeseen circumstances, the permittee will be responsible for paying all such additional costs either as a one-time payment or as an adjustment of the next annual monitoring charge.

§ 14.43 Fee for use and occupancy.

(a) Once an application has been approved, payment in advance is required before the issuance of a right-of-way permit for the use and occupancy of lands and waters under the administration of the National Park Service. The charge for use and occupancy of lands and waters authorized by a right-of-way permit issued under this part will be the fair market value of the right-of-way as determined by the Authorized Officer using sound business management principles, including but not limited to an appraisal.

(b) Periodic or lump-sum payments may be required at the discretion of the Authorized Officer and as indicated in the terms and conditions of the permit.

(c) Upon the relinquishment or termination of a permit before the expiration of its term, annual fees must continue to be made under this section until completion of equipment removal and rehabilitation of the right-of-way pursuant to subpart B of this part.

(d) The charge for use and occupancy of lands and waters under the regulations of this part will not be less than \$100.00 per year for any right-of-way permit issued.

(e) If a charge required by this section is not paid when due, and such default will continue for 60 days after notice, the Authorized Officer may cancel the permit. Upon cancellation, any structures or personal property remaining on the right-of-way will be considered abandoned and be disposed of according to § 14.26, unless written permission to remove has been granted by the Authorized Officer.

(f) At any time not less than five years after either the issuance of the permit or the last revision of charges thereunder, the Authorized Officer, after reasonable notice to the permittee, may review such existing charges and impose such new charges determined pursuant to paragraph (a) of this section, commencing with the following charge year.

Subpart E—Highway Easements Deeds

§ 14.50 Rights-of-way for highway purposes.

(a) Whenever a State highway department requests a right-of-way from the Secretary of Transportation for purposes of a highway that is part of the Federal aid primary or Federal aid secondary system, or is part of the National System of Interstate or Defense Highways, pursuant to Title 23, United States Code, over lands or interests in lands under the jurisdiction of the National Park Service, the Secretary of Transportation, acting under the provisions of 23 U.S.C. 138, must first determine that:

(1) There is no feasible and prudent alternative to the use of such land; and

(2) Such a program includes all possible planning to minimize adverse impacts to National Park Service lands and resources resulting from such use.

(b) Should the Secretary of Transportation, in consultation with the Secretary of the Interior, determine that there is no feasible and prudent alternative to the use, and that either no adverse impacts will occur, or such adverse impacts that might occur will be mitigated to the satisfaction of the National Park Service, then the Secretary of Transportation, acting pursuant to 23 U.S.C. 317(b), may file notice with the Secretary of the Interior. The Secretary of the Interior then has four months to review and certify to the Federal Highway Administration approval of such transfer of land and, if the request is approved, establish such conditions as determined necessary to protect the park area.

(c) If both the Secretary of Transportation and the Secretary of the Interior approve the request, the Secretary of Transportation will then arrange to convey to the State highway department, adequate rights-of-way and control of access thereto. Such right-of-way interest will be conveyed through a highway easement deed containing terms and conditions satisfactory to the Secretary of the Interior for the protection of park values and resources and in accordance to the purposes for which the park area was established.

§ 14.51 Additional uses within highway rights-of-way.

(a) Separate application by the State highway department or any other applicant must be made to the Authorized Officer to obtain authorization to use the park area for other purposes within such highway right-of-way. An applicant for an additional right-of-way permit must first obtain a written statement from the

State highway department indicating its approval and any stipulations it considers desirable for the additional right-of-way.

(b) Future relocation or change of the additional right-of-way made necessary by the State highway use will be accomplished at the expense of the additional right-of-way permittee.

§ 14.52 Termination of highway use

(a) If at any time the need for any such lands or materials for highway purposes pursuant to a highway easement deed will no longer exist, notice of the fact will be given by the State highway department to the Secretary of Transportation and such lands or materials will revert to the control of the Secretary of the Interior.

(b) Upon receipt of such notice, the Secretary of Transportation will immediately notify the Secretary of the Interior and take steps as necessary to revoke and abandon the highway easement deed and revert the Secretary of the Interior with clear and exclusive title of unencumbered land.

Dated: November 13, 1996.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

Note: This document was received at the Office of the **Federal Register** on November 24, 1997.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 253

[Docket No. 96-6 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is submitting for public comment additional settlement proposals for the adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license and proposed regulations for implementing these rates.

DATES: Comments and Notices of Intent to Participate are due by December 29, 1997. If comments and Notices of Intent to Participate are not received by this date, the proposed terms and rates shall become effective on January 1, 1998.

ADDRESSES: If sent by mail, an original and five copies of comments, and Notices of Intent to Participate, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of comments, and Notices of Intent to Participate, should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM-407, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707-8380. Telefax: (202) 707-8366.

SUPPLEMENTARY INFORMATION:

I. Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of published nondramatic musical works and published pictorial, graphic, and sculptural works in connection with noncommercial broadcasting. Terms and rates for this compulsory license, applicable to parties who are not subject to privately negotiated licenses, are published in 37 CFR part 253 and are subject to adjustment at five year intervals. 17 U.S.C. 118(c). The last adjustment of the terms and rates for the section 118 license occurred in 1992, making 1997 a window year for the adjustment of these terms and rates. 57 FR 60954 (December 22, 1992).

Section 118(b) provides that any copyright owner and any public broadcasting entity may negotiate the rates and terms for the compulsory license, or in the absence of a negotiated license,

The Librarian of Congress shall, pursuant to Chapter 8, convene a copyright arbitration royalty panel to determine and publish in the **Federal Register** a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress * * *

Interested parties who submit proposals for adjusting the terms and rates for the section 118 license directly to the Librarian of Congress may petition the Librarian to submit these proposals to a public notice and comment proceeding, whereby copyright owners and users that would

be affected by the proposals are given the opportunity to challenge them. 37 CFR 251.63. Any party who objects to the proposed terms and rates must submit, in turn, its challenges by a date certain, and must be entitled to participate in the CARP proceeding adjusting the section 118 terms and rates. If no challenges are received, or if challenges are received by an interested party who will not participate in a CARP proceeding, the Librarian may adopt the terms and rates of the proposals.

Accordingly, interested copyright owners and users of these works may file either a voluntary agreement or a joint proposal outlining the adjustments to the terms and rates for the section 118 license; or in the case of unaffiliated copyright owners,¹ the users may submit their proposals for the adjustment of the terms and rates of the section 118 license directly to the Librarian of Congress. See 62 FR 51619 (October 2, 1997). A joint proposal differs significantly from a voluntary settlement. The parties to a voluntary agreement represent all persons who would be affected by the agreement and the parties have the authority to bind their members. In a joint proposal, the parties to the agreement do not represent all persons who would be affected by the agreement, or if they do, at least one of the parties does not have the authority to bind its members.

II. This Proceeding

A. The Interested Parties

Seven parties filed notices of intent to participate with the Copyright Office in a proceeding to adjust the terms and rates of the section 118 license. Two additional parties, The American Council on Education and The National Federation of Community Broadcasters, participated in the negotiations of the joint proposals which certain parties filed with the Office on October 1, 1997. The following parties represent users of copyrighted works in this proceeding:

Public Broadcasting Services (PBS)—a non-profit membership corporation which, among other things, represents the interests of its member noncommercial, educational broadcasting stations in rate setting and royalty distribution proceedings in the United States, Canada, and in Europe.

National Public Radio (NPR)—a non-profit membership organization dedicated to the development of a

¹ An unaffiliated copyright owner is one whose interests are not represented by a performing rights society, or by any other organization participating in the proceeding.