

eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 and amendments thereto regarding intergovernmental consultation on Federal programs and activities apply to this program. Those regulations stipulate that Federal agencies shall provide opportunities for consultation by element officials of State and local governments that would provide non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development. The regulations further state that the Federal agencies must communicate with the appropriate State and local officials as early in the program planning cycle as is reasonable feasible to explain specific plans and actions.

Since members of the ASTM, the IEEE, and the DSRC industry participated in establishing the need for the DSRC standards, in defining the requirements for the DSRC standards, and in development and approval of the DSRC standards, it is clear that requirements of the intergovernmental review regulations have been satisfied. In addition, the FHWA and ITS America have made information about the standards program and the standards widely and publicly available. Furthermore, publication of this SNPRM further emphasizes the agency's efforts to coordinate with State and local governments by providing another opportunity to review and comment on our proposal.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in proposed rulemaking are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed regulation does not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no paperwork burden on the States or private entities. The proposal merely sets forth the DSRC interoperability standards for devices that collect the vehicle data that is already being transmitted either electronically, visually, or otherwise. As for the States assuring that vendors of the devices comply with these standards, the FHWA is not imposing any formal certification process on them. The States may accomplish assurances of vendor compliance as part of their usual and customary processes that they would adopt to implement the requirements of any Federal regulation.

United States International Trade Policy

The agency has analyzed the impact of this rulemaking on United States trade in accordance with Executive Order 12661 and finds no significant detrimental impacts on United States international trade policy.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 945

Communications, Highways and roads, Radio, Transportation-intelligent systems.

Authority: 23 U.S.C. #315, and 502 note; sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105–178, 112 Stat. 107, at 457; and 49 CFR 1.48.

Issued on: December 4, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 18

RIN 1024–AC78

Leasing Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend current National Park Service (NPS) regulations concerning the leasing of historic properties within areas of the national park system to encompass additional types of properties as authorized by law and to change in certain respects the procedural requirements for leasing of properties.

DATES: We will accept written comments, suggestions or objections on or before February 12, 2001.

ADDRESSES: Written comments should be sent to Richard Ring, Associate Director, Operations and Education, National Park Service, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, National Park Service Washington, DC 20240 (202/565–1212).

SUPPLEMENTARY INFORMATION: Section 802 of the National Parks Omnibus Management Act, Public Law 105–391, authorized NPS to grant leases for the use of buildings and associated property located within areas of the national park system to persons and governmental entities under certain conditions. This new leasing authority supplements existing NPS leasing authority concerning historic properties set forth in 16 U.S.C. 470h–3 and implemented in 36 CFR Part 18. NPS proposes by amendment of 36 CFR Part 18 to combine into one regulation the leasing authority provided by section 802 of Public Law 105–391 with the leasing authority provided by 16 U.S.C. 470h–3. This will achieve simplification of the NPS historic leasing process as also called for by section 802 of Public Law 105–391 and expand the scope of NPS leasing authority to all eligible properties. NPS also has authority to lease certain property located within units of the national park system under 16 U.S.C. 460l–22(a). This authority is implemented by NPS in 36 CFR Part 17. NPS does not intend to amend 36 CFR

Part 17. When 36 CFR Part 18 is amended as proposed, NPS will have authority to lease certain types of property under 36 CFR Part 17 or 36 CFR Part 18.

Section Content

Section 18.1. Authority and Purposes. Section 18.1 describes the authority for the proposed rule.

Section 18.2. Section 18.2 defines the terms used in the proposed rule.

Section 18.3. Section 18.3 describes the types of property that NPS may lease under this part. In general, this part applies to leases of both historic and non-historic property located within the boundaries of park areas.

Section 18.4. Section 18.4 describes the types of determinations NPS must make before it may lease property under this part. Before leasing property under this part, NPS must determine that the lease: (1) Will not result in degradation of the purposes and values of the park area; (2) will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area; (3) contains such terms and conditions as will assure the leased property will be used for an activity and in a manner that is consistent with the purposes established by law for the park area in which the property is located; (4) is compatible with the programs of the National Park Service; (5) is for rent at least equal to the fair market value rent of the leased property as described in section 18.5; (6) does not authorize activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument; and (7), if the lease is to include historic property, that the lease will adequately insure the preservation of the historic property.

Section 18.5. Section 18.5 describes the rent NPS must receive for property leased under this part. The rent must be at fair market value, determined after taking into account any restrictions NPS may place on the use of the leased property and any requirements for rehabilitation and maintenance of the leased property.

Section 18.6. Section 18.6 describes the types of uses that are permissible for property leased under this part. In general, leased property may be used for any lawful purpose subject to the determinations called for in section 18.4. These uses may include, among others, office or other commercial uses. Innovative uses that are consistent with the requirements of this part are encouraged.

Section 18.7. Section 18.7 describes the procedures for leasing property

through a public bid process. The bid process may only be used if the amount of rent is the sole criterion for award of a lease. The bid process calls for public notice of the lease opportunity, submission of offers on a date certain, and a public bid opening and selection by NPS.

Section 18.8. Section 18.8 describes the procedures for leasing property through a proposal solicitation process. In general, the proposal solicitation process calls for public issuance of a Request for Proposals ("RFP") that describes the leasing opportunity and the criteria for selection. After submission of proposals, NPS will select the best proposal upon application of established selection criteria. These include the compatibility of the proposal to the park area and its visitors, the experience and financial capability of the offeror, and the ability and commitment of the offeror to conduct its activities in an environmentally enhancing manner.

Section 18.9. Section 18.9 permits NPS to lease property to non-profit organizations and governmental units without competitive procedures if NPS determines it is in the public interest to do so.

Section 18.10. Section 18.10 describes the term of leases to be granted under the authority of this part. The term is to be no more than 60 years.

Section 18.11. Section 18.11 describes the general terms and conditions that a lease granted under authority of this part must contain. These include provisions that assure use of the property in a manner consistent with the purposes of the applicable park area, and, if applicable, the preservation of historic property that may be leased.

Section 18.12. Section 18.12 describes a number of specific terms and conditions that a lease granted under the authority of this part must contain. These include a termination for cause provision, a clause requiring the lessee to maintain the leased property, provisions regarding the use of the leased property, and, provisions that state that any improvements a lessee may make may only be undertaken with the approval of NPS.

Section 18.13. Section 18.13 describes the information collection requirements of the proposed rule.

Drafting Information

The primary authors of this rule are the members of a task force comprised of NPS officials involved in the leasing of national park system properties.

Compliance With Laws, Executive Orders and Departmental Policy

Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule within the meaning of Executive Order 12866 because of novel policy issues.

a. This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment or other units of government. The rule imposes no obligations on any entity except for persons that may seek to be awarded an NPS lease. It does not apply to existing NPS leases.

b. This rule will not create inconsistencies with other agencies' actions as it only applies to the National Park Service.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule prescribes procedures for leasing lands of the national park system.

d. This rule raises novel policy issues as it prescribes new procedures for leasing lands of the national park system in accordance with the requirements of section 802 of Public Law 105-319 and 16 U.S.C. 470h-3.

Small Business Regulatory Enforcement Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Fairness Enforcement Act. This rule does not have an annual effect on the economy of \$100 million or more; will not cause a major increase in costs or prices for consumers, individual entities, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of the proposed rule is to establish procedures for the granting of leases of certain property located within areas of the national park system. Potential lessees will only submit lease proposals if the effects are positive.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act as it is not required to be published for comment before adoption by 5 U.S.C. 553 or other law. NPS is soliciting public comment on this proposed rule as a matter of policy. In any event, the Department of the Interior considers that the final rule will not have a significant effect on a substantial number of small entities as

defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). NPS anticipates that less than one hundred leases a year will be awarded under this authority. In addition, the rule is only applicable to prospective lessees. It has no effect on existing NPS leases.

Takings

In accordance with Executive Order 12360, this rule does not have significant takings implications as this rule does not apply to private property. A takings assessment is not required.

Federalism

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no requirements on any governmental entity other than NPS.

Civil Justice Reform (E.O. 12998)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Information Collection

This rule (NPS Leasing Regulations—36 CFR Part 18) requires an information collection from ten or more parties so a submission under the Paperwork Reduction Act is required. An OMB form 83-I has been submitted to the Office of Management and Budget for approval. The information collection requirements of this rule are for the purpose of awarding and administering NPS leases. A federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Six categories of information collection are contained in the rule:

Section 18.7 (Request for Bids); Section 18.8 (Requests for Qualifications/Proposals); Section 18.12(c) (Subletting and Assignment of Leases); Section 18.12 (i)–(j) (Approval of Lessee Construction/Demolition); Section 18.12(l) (Approval of Lessee Encumbrances); and Section 18.12(k) (Amendment of Leases). NPS will use the information collected to make administrative decisions with respect to these six categories. The respondents to these collections will be NPS lessees and prospective NPS lessees. NPS anticipates that there will be a total of approximately six hundred respondents per year with respect to Sections 18.7 and 18.8 and a total of approximately twenty-seven respondents per year with respect to the other information collection categories. NPS estimates that the total annual reporting and recordkeeping burden that will result from these collections of information will be 4392 hours, as set forth in the following chart.

Section	Number of responses	Hours per response	Total hours
Section 18.7	200	1	200
Section 18.8—Complex	20	40	800
Section 18.8—Simple	380	8	3040
Section 18.12(c)—Complex	1	40	40
Section 18.12(c)—Simple	4	8	32
Section 18.12 (i)–(j)—Complex	2	32	64
Section 18.12 (i)–(j)—Simple	8	8	64
Section 18.12(k)	2	4	8
Section 18.12(l)—Complex	2	40	80
Section 18.12(l)—Simple	8	8	64
Total	627	* 7.0	4392

* Average.

Please send comments regarding this burden or estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (with a copy to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240). The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. NPS is soliciting public comments as to: (1) Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have

practical utility; (2) the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate electronic, mechanical, or other forms of information technology.

National Environmental Policy Act

This rule does not constitute a major federal action affecting the quality of the human environment. A detailed statement under the National Environment Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas.

Accordingly, this rule is categorically excluded from procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity?; (3) Does the format of the rule (groupings and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity?; (4) would the rule be easier to understand if it were divided into more but shorter sections?; (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding

the proposed rule?; (6) What else could be done to make the rule easier to understand? Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 36 CFR Part 18

Leasing, National Parks.

In consideration of the forgoing, 36 CFR Part 18 is proposed to be revised to read as follows:

PART 18—LEASING OF PROPERTIES IN PARK AREAS

Sec.

- 18.1 What is the authority and purpose for this part?
- 18.2 What definitions do you need to know to understand this part?
- 18.3 What property may be leased?
- 18.4 What determinations must the Director make before leasing property?
- 18.5 May property be leased without receiving fair market value rent?
- 18.6 Are there limitations on the use of property leased under authority of this part?
- 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?
- 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?
- 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?
- 18.10 How long can the term of a lease be?
- 18.11 What general provisions must a lease contain?
- 18.12 What specific provisions may, must, or must not a lease contain?
- 18.13 Have information collection procedures been followed?

Authority: 16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k), and, 16 U.S.C. 470h–3.

§ 18.1 What is the authority and purpose for this part?

16 U.S.C. 1 *et seq.*, particularly 16 U.S.C. 1a–2(k), and, 16 U.S.C. 470h–3 are the authorities for this part. These authorities allow the Director (or delegated officials) to lease certain federally owned or administered property located within the boundaries of park areas. All leases to be entered into by the Director under these authorities are subject to the requirements of this part.

§ 18.2 What definitions do you need to know to understand this part?

In addition to the definitions contained in 36 CFR part 1, the following definitions apply to this part:

(a) *Associated property* means land and/or structures (e.g., parking lots, retaining walls, walkways,

infrastructure facilities, farm fields) related to a building and its functional use and occupancy.

(b) *Building* means an enclosed structure located within the boundaries of a park area and constructed with walls and a roof to serve a residential, industrial, commercial, agricultural or other human use.

(c) *Commercial use authorization* means a written authorization to provide services to park area visitors issued by the Director pursuant to Section 418 of Public Law 105–391 and implementing regulations.

(d) *Concession contract* has the meaning stated in 36 CFR part 51.

(e) *Fair market value rent* means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased should rent for its highest and best use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Determinations of fair market value rent under this part are subject to the considerations stated in 18.5.

(f) *Historic land* means land located within the boundaries of an historic property.

(g) *Historic property* means buildings and land located within the boundaries of a park area if the buildings and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(h) *Land* means unimproved real property.

(i) *Lease* means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.

(j) *Non-historic building* is a building and its associated property that is located within the boundaries of a park area but is not located within the boundaries of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(k) *Non-historic land* means land located within the boundaries of a park area that is not associated property and is not historic property.

(l) *Park area* means a unit of the national park system.

(m) *Property* means a non-historic building and/or historic property that is located within the boundaries of a park area and is federally owned or administered.

(n) *Request for bids* refers to the lease bid process described in § 18.7.

(o) *Request for proposals* refers to the lease proposal process described in § 18.8.

(p) *Responsive bid or proposal* means a bid or proposal that meet the material requirements of a request for bids or a request for proposals.

§ 18.3 What property may be leased?

(a) *In general.* The Director may lease any property under this part if the Director makes the determinations required by § 18.4.

(b) *Non-historic land.* Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR part 17.

§ 18.4 What determinations must the Director make before leasing property?

Before leasing property in a park area under this part, the Director must determine that: The lease will not result in degradation of the purposes and values of the park area; the lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area; the lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located; the lease is compatible with the programs of the National Park Service; the lease is for rent at least equal to the fair market value rent of the leased property as described in § 18.5; the proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and, if the lease is to include historic property, the lease will adequately insure the preservation of the historic property.

§ 18.5 May property be leased without receiving fair market value rent?

Property may be leased under this part only if the Director ensures that the lease requires payment of rent to the government equal to or higher than the property's fair market value rent. The Director's determination of fair market value rent shall take into account: Any restrictions on the use of the property imposed by the Director that limit the value and/or the highest and best use of the property; and, any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property. The Director may take into account in determining the fair market value of property offered for

lease under § 18.7 the amounts of the bids received in response to the solicitation.

§ 18.6 Are there limitations on the use of property leased under this part?

(a) A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by § 18.4 and the limitations on activities set forth in paragraph (b) of this section.

(b) Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization if the Director determines in accordance with park area planning documents and related guidelines that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

§ 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?

(a) If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If historic property is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b) A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the

amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: "Bid on lease of property of the National Park Service" and shall note the date the bids are to be opened.

(c) Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease. A responsive bid is a bid that meets the material terms and conditions of the request for bids. The Director shall accept no bid in an amount less than the fair market rental value as determined by the Director. If two or more bids are equal, a drawing shall make the lease award by lot limited to the equal responsive bids received.

(d) When a property is to be leased through a request for bids, the bidder that is declared by the Director to be the high bidder shall be bound by his bid and this part to execute the offered lease, unless the bid is rejected. If the declared high bidder fails to enter into the lease for any reason, the Director may choose to enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value). The Director may reject any and all bids in his discretion and resolicit or cancel a lease solicitation under this part at any time without liability to any person.

§ 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?

(a) When the award of a lease is to be based on selection criteria in addition to the amount of the rent, the Director must solicit proposals for the lease through issuance of a public Request for Proposals (RFP).

(b) An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a "short list" of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP. If the Director issues an RFQ, only persons determined as qualified by the Director under the terms of the RFQ shall be eligible to submit a proposal under the related RFP.

(c) The Director must provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in the Commerce Business Daily. The public notice shall contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP (or RFQ where applicable). The RFP (and RFQ where applicable) shall contain appropriate information about the property proposed for lease, including any limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of proposals, terms and conditions of the lease, and the criteria under which the Director will evaluate proposals. The RFP may state the fair market value rent as the minimum acceptable rent if determined by the Director at that time. The RFP (and RFQ where applicable) must allow at least sixty (60) days for submission of proposals (or qualifications under an RFQ) unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

(d) The Director may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that fails to meet the material terms and conditions of the RFP. After the submission of offers and prior to the selection of the best overall proposal, the Director may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted proposals are given an opportunity to amend their proposals. The Director may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

(e)(1) The criteria to be used in selection of the best proposal are:

(i) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;

(ii) The financial capability of the offeror to carry out the terms of the lease;

(iii) The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease;

(iv) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy

conservation, waste reduction, and recycling; and

(v) Any other criteria the RFP may specify.

(2) If the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property shall be an additional selection criterion. If the RFP requires proposals to include the amount of rent offered, the amount of rent offered also shall be an additional selection criterion.

(f) The Director will evaluate all responsive proposals received. The proposal determined by the Director to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease. If two or more responsive proposals are determined by the Director to be substantially equal under the evaluation criteria, the Director shall provide an opportunity for those proposals to be amended by their offerors as necessary for the Director to select the best amended proposal. In such circumstances, the Director will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposals may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain as equal after amendment, the Director will select for negotiation of the lease the otherwise equal proposal that is rated highest with respect to paragraph (e)(1)(iv) of this section, the conduct of activities under the lease in an environmentally enhancing manner.

(g) The Director will provide the offeror that submitted the best overall proposal as determined by the Director a specified period of time to negotiate the final terms of the lease. The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, the Director, in his discretion, may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best proposal, or, cancel the solicitation.

(h) RFPs may state that the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended. The Director may execute a lease only if the Director determines that it requires the lessee to pay at least the fair market value rent of the leased property.

(i) The Director may execute a lease that includes historic property only after complying with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic

Preservation) at an appropriate time during the leasing process.

§ 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?

The Director, except as provided in this section, may not lease property without issuing a request for bids or a request for proposals in compliance with § 18.7 or § 18.8. The Director under this part may enter into leases with non-profit organizations (recognized as such by the Internal Revenue Service) or units of government without complying with § 18.7 or § 18.8 if the Director determines that to do so it is in the best interests of the administration of the park area. All other requirements of this part are applicable to leases entered into or to be entered into under authority of this section. The Director may enter into leases under this part with a term of sixty (60) days or less without complying with § 18.7 or § 18.8 of this part if the Director determines that to do so is in the best interests of the administration of the park area. If historic land is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) before entering into the lease.

§ 18.10 How long can the term of a lease be?

All leases entered into under this part shall have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. No lease shall have a term of more than 60 years. Leases entered under the authority of this section may not be extended.

§ 18.11 What general provisions must a lease contain?

All leases entered into under this part must contain terms and conditions that are determined necessary by the Director to assure use of the leased property in a manner consistent with the purposes of the applicable park area as established by law, and where applicable, to assure the preservation of historic property. In addition, all leases entered into under this part must contain clauses applicable as a matter of law to leases and certain other mandatory provisions set forth in § 18.12.

§ 18.12 What specific provisions may, must, or must not a lease contain?

(a) All leases entered into under this part shall include a termination for cause or default provision.

(b) All leases entered into under this part shall contain appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease.

(c) All leases entered into under this part shall contain appropriate provisions regarding subletting or assignment of the leased property. Subletting and assignment of a lease, if permissible under the terms of the lease, must be subject to the Director's written approval that shall be granted only if the Director determines that the proposed sub-lessee or assignee is financially and managerially capable of carrying out the terms of the lease. Assignment of a lease for the purpose of effectuating an encumbrance to the lease or the leased property is subject to approval pursuant to the requirements of paragraph (l) of this section.

(d) All leases entered into under this part must contain appropriate provisions requiring the lessee to secure and maintain from responsible companies insurance sufficient to indemnify losses connected with or occasioned by the use and activities authorized by the lease. Types and amounts of insurance coverage will be specified in writing and periodically reviewed by the Director.

(e) All leases entered into pursuant to this part, unless the Director determines otherwise in the circumstances of a particular lease, must contain provisions requiring the lessee to obtain from responsible companies casualty insurance (including flood insurance if applicable) in the amount of at least the replacement value of any leased property. In the event of casualty, the lessee shall be required to repair or replace damaged or destroyed property unless otherwise determined by the Director. If the Director does not require the lessee to repair or replace damaged or destroyed property, any insurance proceeds due the lessee shall be remitted to the Director without offset as additional rent payment for the leased property.

(f) All leases entered into pursuant to this part must contain appropriate provisions requiring the lessee to save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, or judgments and expenses resulting from personal injury, death or property damage of any nature arising out of the lessee's activities under the lease, and/or the activities of the lessee's employees, subcontractors, sub-lessees, or agents. No lease entered into this part may contain provisions intended to provide indemnification or other

assurances to the lessee regarding the conduct or activities of the Director concerning the lease or the administration of the applicable park area. Leases may contain appropriate provisions that commit the Director to accept responsibility for tortious actions of government officials to the extent authorized by the Federal Torts Claim Act or as otherwise expressly authorized by law.

(g) All leases entered into under this part shall contain appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee, and, all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities.

(h) All leases entered into under this part shall contain appropriate provisions stating that a lease may not be extended by the Director and that the lessee has no rights of renewal of the lease or rights of any nature to award of a new lease of the leased property upon the expiration of the lease or upon termination of the lease for any reason. Leases entered into under this part are subject to cancellation by the Director in the exercise of the sovereign authority of the United States to the extent provided by applicable law. Unless otherwise authorized by law, the Director may not enter into a lease a lease that contains provisions that provide compensation to the lessee in the event of expiration or termination of the lease for any reason.

(i) Except as provided in this subsection, leases entered into under authority of this part may not contain provisions authorizing the lessee to construct new buildings or structures on leased property. Leases may contain appropriate provisions that authorize the lessee to construct, subject to the prior written approval of the Director, minor additions, buildings or structures determined by the Director to be necessary for support of the authorized activities of the lessee and otherwise to be consistent with the protection and purposes of the park area. Approval by the Director of new construction may only be granted if the Director makes the determinations required by § 18.4.

(j) All leases entered into under this part shall contain appropriate provisions to the requiring that: Any improvements to or demolition of leased property to be made by the lessee may be undertaken only after receipt of written approval from the Director; that any improvements to or demolition of historic property may only be approved if the Director determines that the improvements or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic

Properties (36 CFR Part 68); any improvements made by a lessee shall be the property of the United States; and the lessee has no right of compensation for any real property improvements the lessee may make under the terms of the lease upon lease termination or expiration or otherwise.

(k) All leases entered into under this part shall contain appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property. The types of activities described in a lease may be modified from time to time with the approval of the Director through an amendment to the lease. The Director may approve modified activities only if the determinations required by § 18.4 remain valid under the proposed modified activities and the proposed activities are otherwise determined appropriate by the Director.

(l) Leases entered into under this part may contain provisions authorizing the lessee to pledge or encumber the lease as security, provided that any pledge or encumbrance of the lease and the proposed holder of the pledge or encumbrance must be approved in advance by the Director and that a pledge or encumbrance may only grant the holder the right, in the event of a foreclosure, to assume the responsibilities of the lessee under the lease or to select a new lessee subject to the approval of the Director. Pledges or encumbrances may not grant the holder the right to alter or amend in any manner the terms of the lease.

(m) All leases entered into under this part will contain provisions stating to the effect that fulfillment of any obligations of the government under the lease is subject to the availability of appropriated funds. No lease issued under authority of this part shall entitle the lessee to claim benefits under the Uniform Relocation Assistance Act of 1970 (Pub. L. 91-646). All leases entered into under the authority of this part shall require the lessee to waive any such benefits. All leases entered into under this part shall contain provisions granting the Director and the Comptroller General access to the records of the lessee as necessary for lease administration purposes and/or as provided by applicable law.

§ 18.13 Have information collection procedures been followed?

(a) As required by 5 CFR 1320.8(d)(1), NPS is soliciting public comments as to: Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility; the accuracy of the

bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate electronic, mechanical, or other forms of information technology. A federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) The public reporting burden for the collection of information for the purpose of preparing a bid or proposal in response to a lease solicitation is estimated to average 40 hours per large proposal and 20 hours for small proposals or bids. Please send comments regarding this burden or estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Dated: May 30, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket WA-00-01; FRL-6915-5]

Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM₁₀) Nonattainment Area

AGENCY: Environmental Protection Agency (EPA or we).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the public comment period on EPA's notice of proposed rulemaking "Clean Air Act Reclassification; Wallula, Washington Particulate Matter (PM₁₀) Nonattainment Area," published on November 16, 2000 at 65 FR 69275. The original comment period closed on December 1, 2000. The new comment period will begin today and end on December 27, 2000. EPA is