

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1 and 14

[NPS–WASO–PPFL–36986; PPWOPFLLO; PPMPSPD1Y.YM0000]

RIN 1024–AE75

Rights of Way

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to revise regulations governing the application, processing, and issuance of right-of-way (ROW) permits for lands and waters administered by the NPS. A ROW permit authorizes the use of such lands and waters for the operation and maintenance of infrastructure associated with utilities such as fiber, water lines, power lines, and cellular antennas. The proposed changes would align NPS processes more closely with those of other Department of the Interior (DOI) bureaus by allowing for a pre-application meeting, identifying a common standard application form, and broadening methods the NPS can use to determine fair market value. The proposed rule would clarify the process for permitting construction related to a ROW permit, make updates that reflect current technology and standard practices, and integrate applicable laws that have been implemented since the regulations were first promulgated in 1980.

DATES: Comments on the proposed rule must be received by 11:59 p.m. ET August 9, 2024.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**.

Therefore, comments should be submitted to OMB (see “Information Collection” section below under **ADDRESSES**) by August 9, 2024.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE75, by either of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail to:* Kevin McKay, Branch Chief, Realty Management, National Park Service, WASO Land Resources Division, Park Planning, Facilities and Lands, 1849 C Street NW, 2nd Floor (MIB 2340), Washington, DC 20240.

- *Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. Comments delivered on external electronic storage devices (flash drives, compact discs, etc.) will not be accepted. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN (1024–AE75) for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

- *Docket:* For access to the docket to read comments received, go to <https://www.regulations.gov> and search for “1024–AE75.”

FOR FURTHER INFORMATION CONTACT: Kevin McKay, Branch Chief, Realty Management, National Park Service, Land Resources Division. Phone: (720) 576–0656; email: Kevin_McKay@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on [Regulations.gov](https://www.regulations.gov) in the docket for this rulemaking.

SUPPLEMENTARY INFORMATION:

Background

Legal Authority for ROWs

The National Park System includes any area of land or water administered by the NPS. 54 U.S.C. 100501. The mission of the NPS is to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment of this and future generations. 54 U.S.C. 100101. Since it was created in 1916, the National Park System has expanded to 428 units covering more than 85 million acres in all 50 states, the District of Columbia, and U.S. territories. A general statutory authority, codified at 54 U.S.C. 100902, allows the Secretary of the Interior, acting through the NPS, to issue ROW permits for public utilities and communication facilities within System units. Specifically, this authority authorizes the NPS to issue ROW permits for:

- electrical plants, poles, and lines for the generation, transmission, and distribution of electrical power;
- telephone and telegraph purposes;
- canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits and water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses;
- poles and lines for communication purposes; and
- radio, television, and other forms of communication transmitting, relay, and receiving structures and facilities.

The NPS may not issue a ROW permit for any purpose that is not identified in 54 U.S.C. 100902, unless the NPS is separately authorized to do so by law, such as through legislation specific to a System unit. In limited circumstances such as where authorized by legislation specific to a System unit, or where exclusively serving NPS facilities or authorized concessioner facilities, the NPS may issue ROW permits to utilities for the operation and maintenance of petroleum product pipelines.

Under the general authority in 54 U.S.C. 100902, a ROW shall be allowed within a National Park System unit only on the approval of the Secretary, acting through the NPS. The NPS may issue a ROW permit only on a finding that the ROW is not incompatible with the public interest. The statute establishes

duration and size limits for ROWs and authorizes the NPS to revoke ROWs. The Secretary, acting through the NPS, is authorized to implement the statute through regulations.

Before 1980, the NPS managed ROW permits under Bureau of Land

Management (BLM) regulations at 43 CFR 2800. Those regulations no longer applied to System units after BLM revised them in 1980. That same year, the NPS promulgated its own regulations (45 FR 47092) that matched the provisions of 43 CFR 2800, with

some editorial changes. The NPS regulations are codified at 36 CFR part 14 and have not been revised since, except for minor changes in 1995 (60 FR 55791) and 2018 (83 FR 2069). The NPS regulations are organized into eight subparts, with an Appendix, as follows:

Subpart of 36 CFR part 14	Sections
Subpart A—Rights-of-Way: General	14.1–14.2
Subpart B—Nature of Interest	14.5–14.10
Subpart C—Procedures	14.20–14.38
Subpart D—Under Title 23, U.S.C. (Interstate and Defense Highway System)	14.50–14.61
Subpart E—Power Transmission Lines, General	14.70–14.71
Subpart F—Principles and Procedures, Power Transmission Lines	14.75–14.78
Subpart G—Radio and Television Sites	14.90–14.91
Subpart H—Telephone and Telegraph Lines	14.95–14.96
Appendix A to Part 14	N/A

NPS Administration of ROWs

The NPS’s authority to grant ROWs within System units is discretionary provided the allowed use is not incompatible with the public interest. When the NPS evaluates a request for a ROW permit, it considers whether the use will be consistent with applicable laws and policies that govern the administration of the System. Applicable laws include, but are not limited to, the NPS Organic Act and the National Historic Preservation Act (NPHA). Applicable policies include, but are not limited to, 2006 NPS Management Policies, Reference Manual 53B: Rights of Way, and guidance and planning documents for particular System units. ROW infrastructure proposed by permit applicants is not always compatible with the purposes for which the National Park System or the particular System unit was established, or with the protection of the resources and values of the System unit where it would be located. The NPS, to the greatest extent possible, seeks to minimize impacts to resources, visitors, and employees from the construction, installation, maintenance and operation of infrastructure in System units. For this reason, it only issues ROW permits when there is no practicable alternative to the use of lands and waters within a System unit.

After this evaluation process, the NPS may determine that the proposed use is not appropriate in the System unit and location requested and deny the request. When they are approved, ROW permits most commonly allow for the operation and maintenance of common utilities such as fiber, water, and power lines, as well as cellular antennas and associated equipment such as cell towers. The NPS issues ROW permits to Federal, State, and local governments, Tribes, citizens, and organizations of the United States,

including corporations, associations, partnerships, and non-profit organizations. Power companies and broadband providers (including cellular companies) regularly request ROW permits from the NPS. Unlike a deeded easement or fee simple ownership, a ROW permit does not convey or imply any property interest in the lands and waters subject to the ROW. Permittees may use a ROW permit only for the allowed uses and subject to permit terms and conditions that protect System unit resources, values, and visitors.

Summary of the Proposed Rule

The NPS explains each of the proposed changes to NPS regulations below. In addition to the changes described in more detail below, the rule would simplify how the regulations are organized by replacing the eight existing subparts with sections that have clear and concise titles addressing ROW permitting for all types of use and infrastructure. Sections 14.5, 14.20, 14.27, 14.32, 14.35, 14.53, 14.75, and 14.77 of the existing regulations have no content. The rule would replace § 14.5 and remove the rest. The rule would remove Appendix A because the forms in this Appendix are outdated and no longer used by the NPS. The rule would remove an authority citation to 23 U.S.C. 317 from part 14. This authority addresses highway easement deeds, which are not authorized through ROW permits.

Many of the proposed changes would remove or update outdated provisions to reflect current policies and practices. The changes in this rule would improve ROW permitting processes and align them more closely with those of other DOI bureaus, to the extent practicable and consistent with applicable law. This rule would improve the NPS’s ability to

protect resources and values, public health and safety, and visitor experience from potential impacts from the use of lands and waters within System units under a ROW permit, including from the operation and maintenance of infrastructure. The revised regulations would be easier for prospective and current permittees to find and understand, which would improve the effectiveness of NPS ROW program. The NPS welcomes public comment and looks forward to receiving meaningful input on the changes proposed by this rule.

Section-by-Section Analysis of the Proposed Changes

§ 14.1 Purpose and Scope

Proposed regulation	Existing regulations
14.1 Purpose and scope.	14.1 Applicability.
N/A	1.2 Applicability and scope.

Existing regulations in § 14.1 state that the regulations in part 14 apply to all Federally owned or controlled lands administered by the NPS. This provision is unnecessary because the applicability and scope of NPS regulations in Title 36, Chapter I of the Code of Federal Regulations (36 CFR), which includes part 14, are defined in 36 CFR 1.2. This section states in paragraph (a)(1) that the regulations apply to all persons entering, using, visiting, or otherwise within the boundaries of federally owned lands and waters administered by the NPS.

New paragraph (a) in § 14.1 would state that regulations in part 14 establish procedures an entity must follow when applying for a ROW permit and provisions under which the NPS may authorize a ROW within a National Park System unit. New paragraph (b) would state that the regulations in part 14

ensure that the use of lands and waters, and operation and maintenance of infrastructure under a ROW permit will be (1) consistent with applicable statutory authorities, including the NPS Organic Act; (2) protect lands, waters, and resources of the System; and (3) protect visitor uses and experiences, as well as promote the health and safety of the public and NPS employees and volunteers.

The NPS proposes to revise 36 CFR 1.2(b) and (d) to add references to part 14. This would clarify that, under paragraph (b), the regulations in part 14 generally do not apply on non-federally owned lands and waters or on Indian tribal trust lands located within System boundaries; and that, under paragraph (d), the regulations in Part 14 do not prohibit administrative activities conducted by the NPS or its agents. These changes would reflect current NPS practice and would have no impact on the NPS’s administration of ROWs in System units.

§ 14.2 Definitions for This Part

Proposed regulation	Existing regulations
14.2 Definitions for this part.	<ul style="list-style-type: none"> • 36 CFR 14.2 Definitions. • 36 CFR 14.6 In form of easement, license, or permit.

This rule would revise § 14.2 of the existing regulations, which defines terms used in part 14. The rule would remove the definition of “Superintendent” because it is already defined in 36 CFR 1.4. The rule would remove the definition of “Park” because it is superfluous with the definitions of “park area” and “National Park System” in 36 CFR 1.4. The rule would remove the definitions of “Authorized Officer,” “Construction work,” “Director,” and “Secretary” because those terms would not be used in the revised regulations. The rule would remove the definition of “Project” because that term would no longer be used the way it is currently defined. Removing unnecessary defined terms would make the regulations more concise. The rule would replace the term “right-of-way” with a new term “right-of-way permit” that is more specific and clearer about what may be authorized, as explained below. The NPS proposes to define nine new terms in § 14.2, which are explained below. Revised § 14.2 would list defined terms in alphabetical order without paragraph designations.

New Definitions

The NPS proposes to add the term “Applicant” to mean an entity that has applied for a special use permit for

construction of infrastructure or a ROW permit for operation or maintenance of infrastructure. Adding this term would allow the NPS to distinguish applicants from permittees, who have been issued valid permits, in the regulations.

The NPS proposes to add the term “Co-location” to mean the placement of infrastructure on or in existing authorized infrastructure owned or controlled by another or within an area authorized for use by another. This common industry practice is important for applicants to consider when designing infrastructure proposals and for the NPS to consider when assessing potential impacts to resources, values, and visitors.

The NPS proposes to add the term “Entity” to mean a party including, but not limited to, Federal, State, and local governments, Tribes, citizens, and organizations of the United States, including corporations, associations, partnerships, and non-profit organizations.

The NPS proposes to add the term “Infrastructure” to mean equipment, facilities, installations, or uses that the NPS may authorize under a ROW permit pursuant to statutory authority, with specific reference to 54 U.S.C. 100902.

The NPS proposes to add the term “Operation and maintenance” to mean the use of infrastructure, the means of access, and associated service on a routine and on-going basis to ensure good order, safe conditions, and timely repair, all as specifically authorized in a ROW permit.

The NPS proposes to add the term “Permitted area” to mean the area authorized for construction under a special use permit, and use of lands and waters, and operation and maintenance of infrastructure under a ROW permit, including routes and means of access through a System unit.

The NPS proposes to add the term “Permittee” to mean an entity that holds a valid special use permit for construction or ROW permit for use of lands and waters, and operation and maintenance of infrastructure. Adding this term would help distinguish entities that have valid permits from those that have expired or invalid authorizations, and from applicants who have requested a permit but do not yet have one.

The NPS proposes to add a definition for “Right-of-way permit” to mean a discretionary and revocable special use permit, issued by the NPS to authorize the use of lands or waters within System units for the operation and maintenance of infrastructure. The definition would state that a ROW permit does not convey property interests in lands or

waters. These statements in the new definition would make portions of § 14.6 of the existing regulations, which make similar statements, unnecessary.

The NPS proposes to add the term “Special use permit for construction” to mean a discretionary and revocable special use permit issued by the NPS to authorize construction of infrastructure and associated construction activities within System units. These permits can authorize initial construction of infrastructure, addition of infrastructure, removal of infrastructure, and maintenance and repair activities not included in the ROW permit. Adding this term would distinguish activities authorized under ROW permits from those authorized under special use permits for construction.

§ 14.3 Pre-Application Meeting

Proposed regulation	Existing regulation
14.3 Pre-application meeting.	N/A.

This section of the proposed rule would establish a new provision encouraging potential permit applicants to contact the superintendent of the System unit to schedule a pre-application meeting to discuss the proposed project and the permitting process. The U.S. Fish and Wildlife Service uses pre-application meetings for the same purpose. Although it would benefit the applicant and the NPS in most cases, the rule would not require a pre-application meeting because it may be unnecessary when the potential applicant and NPS staff are sufficiently familiar with the project and permitting process, such as with certain ROW permit renewals. The rule would state that through a pre-application meeting, the NPS may provide early notice to potential applicants about applicable law and policy, documentation requirements, an expected timeline, and potential costs.

The goal of a pre-application meeting is to improve the permitting process through increased regulatory certainty. Pre-application meetings make the permitting process more efficient and transparent. Permit processing is delayed when applicants provide incomplete information to the NPS. The amount and type of documentation the NPS requires to process an application varies depending on whether the request is for new infrastructure where environmental disturbance will occur, or existing infrastructure where limited additional use of the infrastructure may have minimal or no new environmental impacts. A pre-application meeting enables the NPS to understand the

scope of the request and advise potential applicants, early in the permitting process, about permitting considerations and procedures, such as: elements of a complete permit application, permit approval standards, natural and cultural resource concerns, visitor resource concerns, public health and safety concerns, park planning documents, land use restrictions (e.g., wilderness), proposed location, proposed infrastructure, method and means of access, and potential fees. In addition, a pre-application meeting provides the applicant an opportunity to ask questions and receive comments from the NPS about the proposed ROW before submitting an application.

The NPS may charge fees to recover administrative costs incurred from pre-application meetings in certain circumstances. This may occur if there are multiple meetings requested by a potential applicant or where there are unusual demands made on NPS staff or leadership in terms of time or NPS resources on behalf of the potential applicant. Cost recovery would be collected in accordance with § 14.7 of the revised regulations (discussed below).

§ 14.4 Right-Of-Way Permit Application

This section of the rule would update procedures for submitting a ROW

permit application. Under the existing regulations, application requirements are addressed in multiple subparts and sections in part 14. This rule would consolidate all of these requirements into a single section. This would make it easier for applicants to identify what is required to submit a complete ROW application. Complete and timely applications allow the NPS to evaluate a proposal’s potential effects and to conduct its compliance responsibilities under applicable Federal statutes such as the National Environmental Policy Act (NEPA) and the NHPA. The table below identifies how this rule would reorganize all of the existing application process requirements into a new § 14.4.

Proposed regulations	Existing regulations
14.4(a) Complete application requirement	14.28 Incomplete application and reports.
14.4(b) Application form	14.21 Form.
14.4(c) Applicant documentation	14.23 Showing as to organizations required of corporations.
	14.24 Showing as to citizenship required.
14.4(d) Maps	14.25(a) Maps.
14.4(e) Water rights	14.25(b) Evidence of water right.
14.4(f) Access	14.7 Right of ingress and egress to a primary right-of-way.
14.4(g) Co-location	N/A.
14.4(h) Financial assurance and liability insurance	14.22(a)(11) Reimbursement of costs.
14.4(i) Additional information	N/A.

The following paragraphs explain how each paragraph of the new § 14.4 would change existing regulations about the permit application process.

14.4(a) Complete Application Requirement

Existing regulations in § 14.28 state that when an application is incomplete or does not conform with law, the NPS may either provide an applicant with an opportunity to correct deficiencies in a ROW permit application or reject the application outright. New paragraph (a) of § 14.4 would state the NPS will not begin processing a ROW permit application until it has determined the applicant has complied with the requirements in part 14, including the submission of all required information. This change would reflect existing practice because the NPS does not reject incomplete applications. Instead, the NPS informs applicants that they must provide additional information to complete the application before the NPS will begin formal review and processing. This practice is consistent with how other DOI bureaus handle incomplete applications and prevents the NPS from expending limited staff resources on incomplete applications that do not have enough information to allow for a proper evaluation. Paragraph (a) would further state that making this

determination does not guarantee the NPS will issue a ROW permit.

14.4(b) Application Form

Existing regulations in § 14.21 require the applicant to include some general information with an application (e.g., a statement that the application is made pursuant to existing regulations, a citation to the statutory authority for the ROW, and a description of the purposes of the ROW), but do not require applications to be submitted on a specific form.

New paragraph (b) of § 14.4 would require applicants to use Standard Form 299 Application for Transportation and Utility Systems and Facilities on Federal Lands (SF-299) for all requests for ROW permits. Requiring the use of this form is consistent with Executive Order 13821, “Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America,” dated January 8, 2018, which requires all Federal property managing agencies to use the SF-299, or the applicable common form approved by the General Services Administration at the time of the application. The NPS and most Federal property managing agencies (e.g., BLM, USFS, FWS) already use this form for applicants seeking to operate and maintain infrastructure on lands administered by those agencies.

Paragraph (b) also would require that applicants provide all materials required in the SF-299 and elsewhere in part 14. If materials have been provided in connection with a ROW permit previously issued by the NPS for the same System unit, then the NPS may decide that the applicant is not required to resubmit those materials, provided the previous date of filing, place of filing, and existing ROW permit number are included in the new application. This provision would reduce the regulatory burden on applicants by ensuring that NPS requests only the documentation that it requires to process an application. Finally, paragraph (b) would require applicants or their authorized representatives to sign the SF-299 and require applicants to submit the application charge pursuant to § 14.7.

14.4(c) Applicant Documentation

In proposed paragraph (c) of this section, the NPS would consolidate and update information requirements currently codified in § 14.23 for applicants that are corporations, and in § 14.24 for applicants that are individuals or associations of individuals. New paragraph (c)(1) would contain required information for corporations. These requirements would not be substantively different than what is currently required in § 14.23. New

paragraph (c)(2) would contain required information for partnerships, limited liability companies, and similar entities. These requirements would not be substantively different than what is currently required in § 14.24 for associations of individuals. For individuals, new paragraph (c)(3) would state applications must be accompanied by evidence of U.S. citizenship. The rule would omit outdated and extraneous language in existing § 14.24 about naturalization and marital status.

14.4(d) Maps

Existing regulations in § 14.25(a) contain detailed mapping requirements that are overly prescriptive and outdated. For example, the existing regulations require applicants to prepare maps on tracing linen, or on tracing paper having a 100 percent rag content. New paragraph (d) of § 14.4 would simply require maps to meet current NPS mapping standards. This would allow applicants to submit digital maps, which reflect current mapping technology. The NPS would retain discretion to require an official land survey, legal description, and digital information when helpful or necessary to adequately assess an application. Consistent with current practice, new paragraph (d) also would require that maps, at a minimum, include the area proposed to be included in the ROW, including the placement of infrastructure, proposed access point and routes (including use of existing roads), and other areas associated with the ROW.

14.4(e) Water Rights

Existing paragraph (b) of § 14.25 allows the NPS to conditionally grant a ROW permit if doing so is a prerequisite for obtaining evidence of a water right from a State official. This provision has not been used by the NPS ROW Program and puts the NPS in the position of expending resources on speculative projects. Similar to the existing regulations, new paragraph (e) of § 14.4 would require, unless otherwise required by Federal law, that applicants requesting authorization to operate and maintain infrastructure to support the storage, diversion, conveyance, or use of water, include proof of a valid water right from the appropriate state official or state law as part of a complete application. This would ensure that, for such projects, the NPS only issues ROW permits to applicants that hold valid water rights.

14.4(f) Access

Existing regulations in § 14.7 allow the NPS to grant to a ROW holder an

additional ROW for ingress and egress to the primary ROW. The additional ROW must be reasonably necessary to facilitate the use of the primary ROW, and may include the right to construct, operate, and maintain facilities necessary for ingress and egress. The regulations require the ROW holder to apply for the additional ROW in a similar manner that it applied for the primary ROW.

The proposed rule would create an efficiency by removing the need to apply for an additional ROW for routes of access. As part of a complete ROW permit application, new paragraph (f) would require the applicant include a description of proposed access routes and means of access. The rule would state that access routes and means of access will be limited to existing roads, or existing or NPS-approved routes, trails, or access points. The NPS has no general legal authority to authorize other entities to establish new roads in a System unit, including for purposes of accessing ROWs. For this reason, the rule would state that ROW permits will not authorize the construction of new roads, unless specifically authorized by statute. Lastly, new paragraph (f) would state that ROW permits do not grant a right of access and that agreed-upon access routes and means of access are discretionary and revocable. This statement will preclude requests that rights of access be expressly established in ROW permits, or that they are implied by ROW permits that have been issued.

14.4(g) Co-Location

The NPS is proposing a new regulatory provision to encourage the co-location of infrastructure in System units. The co-location of equipment can consolidate infrastructure in a geographic location and, at the same time, influence the footprint and dimensions of infrastructure at a particular site. For example, the location and design of a cell tower that would accommodate multiple cell antennae will be larger than a single user tower but may prevent towers in multiple locations. While there are cases where the installation of new or additional uses on existing infrastructure is not technologically possible or needs to be accomplished in a certain manner to avoid technical interference or conflict between the uses, whenever possible and visually acceptable, all utilities should share a common corridor. Consistent with this goal, new paragraph (g) would require applicants to design new infrastructure to accommodate future co-location to the greatest extent possible considering the

potential impacts to System unit resources, values, public health and safety, and visitor experience. This paragraph also would require the applicant to demonstrate that they have evaluated all options for co-location with existing infrastructure prior to proposing a new or undisturbed location for infrastructure. Finally, the paragraph would state that entities proposing to co-locate infrastructure must obtain a separate ROW permit.

14.4(h) Financial Assurance and Liability Insurance

Financial assurance ensures that in the event an operator becomes insolvent or defaults on its financial obligations under a ROW permit, in particular obligations to reclaim and restore the permitted area, adequate funds will be available for reclamation. The requirement for liability insurance ensures that the Federal government does not assume any liability associated with the permittee's activities and that the permittee is covered for injuries to persons or property caused by permittee's activities.

Existing paragraphs (a)(11)–(14) of § 14.22 authorize the NPS to require an applicant to furnish security in an amount acceptable to the NPS for costs incurred to administer the ROW permit, including application costs, compliance costs, monitoring costs, and costs for protection and rehabilitation, and make certain permittees liable for such costs. These provisions are unnecessarily complicated and inconsistent with current practice because the NPS does not require financial assurance for administrative costs. Instead, the NPS proposes a new paragraph (h) of § 14.4 that would state that the NPS may require applicants to provide proof of acceptable financial assurance and liability insurance, as appropriate to the proposed project. This statement is more consistent with how the NPS and other agencies address financial assurance and liability insurance.

14.4(i) Additional Information

The NPS evaluates each application on a case-by-case basis depending on the scope, location, and nature of the proposed activity. The NPS proposes a new provision in paragraph (i) that would specifically state that the NPS may require additional relevant information from an applicant before the superintendent will consider the application complete.

§ 14.5 Review of Complete Right-of-Way Permit Applications

Proposed regulation	Existing regulation
14.5 Review of complete right-of-way permit applications.	N/A.

Section 14.5 of the proposed rule would explain how the NPS evaluates complete ROW permit applications. Paragraph (a) would establish standards that each ROW permit application must meet in order for the NPS to issue ROW permits. Subparagraph (a)(1) would state that the NPS will only issue a ROW permit if the applicant's proposal is not incompatible with the public interest and is consistent with applicable laws, including the laws governing administration of the National Park System, regulations, policy, and NPS planning documents. In part, this provision would ensure that the NPS meets its responsibility under the NPS Organic Act to conserve resources in the National Park System in such manner that will leave them unimpaired for the enjoyment of this and future generations. 54 U.S.C. 100101. Subparagraph (a)(2) would require the applicant to demonstrate that there is no practicable alternative to location of the infrastructure within the National Park System. This provision is consistent with question 13 of the SF-299 which requires applicants to explain whether alternative locations exist and, if so, why they were not chosen, and why it is necessary to occupy Federal lands.

Paragraph (b) would state that the NPS, after completing review of an application at the System unit, will notify the applicant in writing that the ROW application is conditionally approved, or denied with an explanation. If a ROW permit is conditionally approved, the NPS will send the applicant a final version of the ROW permit for signature.

Paragraph (c) would require the applicant to sign a conditionally approved ROW permit prior to its execution by the NPS. These requirements would also apply to amended ROW permit, including transfers which are documented by an amendment. This would be stated in paragraph (c) in § 14.13 and paragraph (e) of § 14.14 of the rule. Paragraph (c)(2) would clarify that no ROW permit is valid until it has been executed by the NPS, which may not occur, in some cases, if further review by the NPS results in a determination that the ROW would not meet the standards identified in paragraph (a). Execution by the NPS

represents final approval of a ROW permit.

Paragraph (d) would allow the NPS, in its discretion, to suspend or terminate the application process at any time prior to execution of a ROW permit by the NPS if the applicant (1) is delinquent in paying any cost recovery, use and occupancy fees, or other debts to the Federal government; (2) has an unresolved criminal or civil violation with the Federal government; (3) has been notified that it is liable for damages under the System Unit Resource Protection Act (SURPA), 54 U.S.C. 100721–100725, for injuries to System resources, or has not resolved or fully paid response costs and damages under SURPA; or (4) has caused unpermitted resource damage, impacts to visitors, management problems, or the applicant has violated the terms and conditions of any permit issued by a Federal agency, including the NPS. This behavior and conduct provision is consistent with regulations for other Federal agencies. See, for example, 43 CFR 2804.25(b) and 2808.12 (BLM); and 36 CFR 251.54(e) (USFS). It gives fair notice to applicants that they must resolve the issues of behavior and conduct identified in paragraph (d) prior to applying for a ROW permit from the NPS.

§ 14.6 Application Withdrawal

Proposed regulation	Existing regulation
14.6 Application withdrawal.	N/A.

The rule would add a new provision in § 14.6 that would clarify application withdrawal procedures. Paragraph (a) would allow an applicant to withdraw an application at any time during the application process. Paragraph (b) would create a presumption, without further notice to the applicant, that the applicant has withdrawn its application if at any time during the permitting process an applicant fails to respond to a written communication from the NPS for a period of 90 days or longer. The NPS has experienced situations where an applicant demonstrates interest in seeking a ROW permit, engages NPS staff, begins an application process, and then abandons the proposal without notifying the NPS. Superintendents and other System unit staff have competing responsibilities and new applications for ROW permits are added to already developed workplans and workloads. This provision would help superintendents and other NPS staff prioritize active projects and devote limited resources toward serious and timely proposals. Paragraph (c) would

clarify that once a permit application is withdrawn or presumed withdrawn, the permitting process is terminated. If the applicant wishes to restart the application process, it must submit a new SF-299 (or other approved common form).

§ 14.7 Cost Recovery

Proposed regulation	Existing regulations
14.7 Cost recovery	<ul style="list-style-type: none"> • 14.22 Reimbursement of costs. • 14.37 Reimbursement of costs.

The NPS has authority to recover actual costs it incurs to administer special use permits, including ROW permits and special use permits for construction, under 54 U.S.C. 103104. Existing sections 14.22 and 14.37 address the reimbursement of administrative costs to the NPS incurred both before and after the ROW permit is issued. These provisions are outdated because they were written before the NPS received its current statutory authorization to recover costs under 54 U.S.C. 103104.

The NPS proposes to replace sections 14.22 and 14.37 with a new § 14.7 that would address how the NPS recovers administrative costs from ROW permit applicants and permittees. Paragraph (a) would state that the NPS will recover all costs from applicants and permittees under 54 U.S.C. 1030104 according to NPS cost recovery policy. The rule would state that this can include administrative costs for withdrawn or denied applications and suspended or terminated ROW permits. Paragraph (b) would require applicants to pay an initial application charge, unless waived by the NPS pursuant to NPS cost recovery policy, and would describe how the NPS calculates a minimum application charge based upon a reasonable estimate of the least amount of employee time needed to process applications. Paragraph (b) also would clarify that the minimum application charge addresses the costs incurred by the NPS in initially discussing and reviewing an application for completeness and does not represent the entirety of costs that may be recovered.

§ 14.8 Use and Occupancy Fee

Proposed regulation	Existing regulation
14.8 Use and occupancy fee.	14.26 Payment required; exceptions; default; revision of charges.

A use and occupancy fee is owed to the United States in an amount equal to the fair market value for the use and

occupancy of federally owned lands and waters within the National Park System under a ROW permit. Existing § 14.26 is outdated and overly prescriptive, particularly in setting a valuation method. The existing regulations require an appraisal in every case to make a fair market value determination. Appraisals can be costly and time consuming and in some circumstances are not necessary to determine fair market value.

This rule would replace existing § 14.26 with a new § 14.8. Paragraph (a) would establish the requirement that, subject to the exemptions in paragraph (e), all permittees must pay a use and occupancy fee to the NPS. Paragraph (b) would state that the use and occupancy fee will be the fair market value of the use and occupancy of federally owned lands and waters under the ROW permit, as determined by the NPS. Subparagraph (b)(1) would allow the NPS to adopt any DOI-approved method to determine the use and occupancy fee. This approach is consistent with a current rulemaking action by the FWS.¹ It would reduce the time and cost necessary to determine the fair market value of many ROWs in System units and therefore make the application process faster and less expensive for applicants. Paragraph (b)(2), would state that costs for administration of the ROW program will be collected by the NPS in accordance with OMB Circular A–25, Memorandum for Heads of Executive Departments and Establishments: User Charges at the current indirect cost rate, and will be retained from the use and occupancy fees collected on ROW permits. Paragraph (b)(3) would give the NPS discretion to consider exempt and non-exempt uses and users in determining the use and occupancy fee. When there is a mix of potentially exempt and non-exempt uses or users served by infrastructure, the potentially exempt uses or users may be eligible for a use and occupancy fee exemption on sufficiently discrete identifiable portions of the infrastructure that exclusively serve the exempt uses or users.

Market conditions that affect the value of the use and occupancy of Federal lands and waters in System units can, and often do, change during the term of a ROW permit. Paragraph (c) would allow the NPS to re-evaluate the use and occupancy fee at any time during the term of the ROW permit, but at a minimum every 10 years, so that the American taxpayer receives fair market value for the use and occupancy of the

Federal lands and waters subject to the ROW. Paragraph (d) would state that the use and occupancy fee will be re-evaluated during permit renewal and when a subsequent ROW permit is issued for infrastructure that was authorized under an expired ROW permit that was not renewed in a timely manner.

Paragraph (e) would update the exemptions from paying a use and occupancy fee. Exemptions would be discretionary and infrastructure must be used exclusively for one or more of the qualifying criteria. The rule would largely maintain the exemptions in existing paragraph (c) of § 14.26, but clarify circumstances where exemptions may be available. The rule would remove the exemption for irrigation projects because it is not a common use within System units. Similarly, the rule replaces exemptions for non-profit and Rural Electrification Administration projects with a discretionary exemption for projects that clearly support the public interest and the mission and values of the System unit.

§ 14.9 Resource Impact Considerations

Proposed regulation	Existing regulation
14.9 Resource impact considerations.	14.6 In form of easement, license, or permit. 14.9(b), (c), (e), and (g) Terms and conditions.

Existing regulations at § 14.6 allow permittees to use materials removed during construction elsewhere along the same ROW in the construction of the same project. Existing regulations in § 14.9 require ROW permittees to agree to specific terms and conditions that prescriptively address mitigation for various types of impacts to System unit resources during construction and maintenance operations. Paragraph (b) addresses the disposition of vegetative and other material cut, uprooted, or otherwise accumulated during construction and maintenance. Paragraph (c) addresses soil and resource conservation and protection measures, such as weed control. Paragraph (e) addresses roads, fences, and trails that are destroyed or injured from construction work. Paragraph (g) addresses reimbursement for merchantable timber that is cut, removed, or destroyed in the construction and maintenance of the project.

Because potential mitigation actions will vary among System units, and even within a System unit, based on the nature and scope of each permitted activity, this rule would replace the special allowance in § 14.6 and the

prescriptive requirements referenced above for a new § 14.9 that would make general statements about disposition, mitigation, and compensation resulting from resource damage. This section would state that the NPS may direct the use and disposition of all disturbed resources and may require a permittee to mitigate or compensate for impacts to resources and lost uses from permitted activities. Although not stated in the rule, compensation collected by the NPS may be retained under 54 U.S.C. 100724(a) and used for mitigation actions taken by the NPS on behalf of the permittee.

§ 14.10 Terms and Conditions

Proposed regulation	Existing regulation
14.10 Terms and conditions.	14.9 Terms and conditions. 14.31 Deviation from approved right-of-way.

Existing § 14.9 contains a list of terms and conditions that every permittee must agree to comply with in a ROW permit, except for those that are waived by the Secretary in a particular case. Some of the terms and conditions in this list are outdated or unnecessarily specific and are therefore no longer necessary. For example, an existing term and condition in paragraph (d) directs permittees to prevent and suppress fires. This is no longer consistent with NPS practice and policy regarding fire prevention and suppression.

This rule would replace existing § 14.9 with new § 14.10. Paragraph (a) would state that the ROW permit will authorize specific operation and maintenance activities and that any such activities not specifically authorized in the ROW permit will require an additional written authorization or amended ROW permit. This is necessary to allow the NPS to evaluate potential new impacts to System unit resources, values, and visitors, including impacts to public health and safety and the visitor experience. This statement is consistent with § 14.31 of the existing regulations, which requires written approval for deviations. This rule would replace existing § 14.31 with paragraph (a) of new § 14.10 and with new § 14.14 (Right-of-way permit amendment) discussed below.

Paragraph (b) would state that the NPS will issue a ROW permit for a term that is consistent with applicable law and policy and may be up to 50 years when determined appropriate by the NPS. Paragraph (c) would require permittees to agree to a smaller set of minimum terms and conditions in every approved ROW permit. Some of these

¹ To view the FWS rulemaking action, search for “FWS–HQ–NWRs–2019–0017” on www.regulations.gov.

terms and conditions would be similar to those in existing § 14.9, but would more clearly reflect current NPS general practices and policies. Because the NPS evaluates each request for a ROW permit on a case-by-case basis, the rule would allow the NPS to require additional terms and conditions, or make modifications to the terms and conditions in the regulation, that could be used to address resource, management, or public health and safety concerns that are specific to the particular project and System unit.

§ 14.11 Special Use Permit for Construction

Proposed regulation	Existing regulation
14.11 Special use permit for construction.	14.29 Timely construction.

Existing § 14.29 requires permittees to complete construction of infrastructure under a ROW permit in no more than five years or ten years for good cause. The rule would remove these requirements because they are no longer meaningful to current NPS practice regarding the construction of infrastructure operated and maintained under a ROW permit. As noted in previous sections, a ROW permit authorizes the and the operation and maintenance of specific infrastructure within a System unit. Construction activities have a shorter duration and have potential impacts to System unit resources, values, public health and safety, and visitor experience that are different than those posed by operation and maintenance. Construction activities can include activities associated with the addition, adjustment, exchange, or removal of infrastructure. Construction of infrastructure is an integral step in and can occur at different stages after a ROW permit is issued. For these reasons, the NPS authorizes the construction of infrastructure under a separate special use permit.

This rule would create a new § 14.11 that addresses the application process for obtaining a special use permit for construction. Paragraphs (a)–(c) would require a separate special use permit before a ROW permittee initiates construction activities, require the special use permit applicant to use the current special use permit application form, and require the special use permit applicant to submit a complete application to the NPS before the NPS will process the application. Paragraph (d) would state that the NPS will only issue a special use permit for construction either simultaneously with the execution of a ROW permit, or after

a ROW permit has been executed. This would ensure that the NPS permits construction activities only when the use of the lands or waters is authorized and for infrastructure that has been separately approved for operation and maintenance. Paragraph (e) would identify information that must be submitted on an application for a special use permit for construction, including construction drawings, an equipment list, a construction schedule, maps, and a restoration plan (as applicable). During the pre-application meeting and the initial processing of the permit, the NPS may request additional information from the applicant related to construction activities. The NPS cost recovery authority 54 U.S.C. 103104 applies to special use permits for construction and the NPS will recover costs consistent with NPS policy.

The NPS has issued special use permits for construction of infrastructure that is part of a larger project occurring outside of the System unit, and then the permittee has been unable to secure the remaining permits and rights to complete the larger project. This has resulted in unnecessary impacts to System unit resources. To help avoid these outcomes, paragraph (f) would allow the NPS to require an applicant for a special use permit for construction to provide an affidavit stating that all other required land rights, water rights, permits, certifications, approvals, and authorizations necessary for a viable project have been secured.

§ 14.12 Right-Of-Way Permit Renewal

Proposed regulation	Existing regulation
14.12 Right-of-way permit renewal.	N/A.

Section 14.12 of the proposed rule would establish procedures that permittees must follow prior to the expiration of an existing ROW permit to obtain a new ROW permit in time for associated infrastructure to remain where it is in the System unit. Paragraph (a) would explain that, in practice, a ROW permit renewal is actually the issuance of a new, separate ROW permit that is approved before the expiration of an existing ROW permit for the use of lands and waters, and the operation and maintenance of the same infrastructure, and that the new ROW permit may contain new terms and conditions, as applicable. These new terms and conditions could change the use and occupancy fee and requirements for financial assurance and liability insurance. Subparagraphs (b)(1) and (b)(2) would encourage

permittees to submit complete applications for new ROW permits, following the procedures in § 14.4, at least six months prior to the expiration of an existing ROW permit in order to complete a timely renewal. Paragraph (b)(3) would state that the term a ROW permit may only be re-established for a new and continuous term through timely renewal. Paragraph (b)(4) would state that the decision to renew a ROW permit is at the discretion of the NPS. Paragraph (c) would clarify that if a ROW permit expires prior to the issuance of a renewal, the infrastructure that had been authorized under the ROW permit will, upon expiration, be considered in trespass under § 14.15.

§ 14.13 Right-Of-Way Permit Transfer

Proposed regulation	Existing regulations
14.13 Right-of-way permit transfer.	<ul style="list-style-type: none"> • 14.36 Method of filing. • 14.37 Reimbursement of costs.

ROW permit transfers are necessary if a current permittee intends to convey ownership or control of and responsibility for associated infrastructure to a new entity. The NPS proposes to replace existing § 14.36 with a new § 14.13 that reflects current procedures used by the NPS for the transfer of a ROW permit. The new section is substantively similar to existing § 14.36. Paragraph (a) would explain when ROW permit transfers are necessary. Subparagraphs (b)(1) and (b)(2) would require the existing permittee to submit a written transfer request and the new permittee to submit a notice of acceptance and agreement to comply with the terms and conditions of the ROW permit, plus information that must be submitted by the existing and new permittees. Paragraph (c) would clarify that the existing permittee will remain responsible for compliance with the terms and conditions of the ROW permit, including all financial obligations, unless and until a transfer is approved in writing by the NPS. The NPS proposes to remove existing § 14.37, which requires a nonrefundable payment of \$25 for all filings for permit transfers as a form of cost recovery. The NPS no longer charges this fee, which would not come close to offsetting the administrative costs of transferring a permit, and instead charges a cost recovery fee commensurate with actual administrative costs under 54 U.S.C. 103104.

§ 14.14 Right-Of-Way Permit Amendment

Proposed regulation	Existing regulation
14.14 Right-of-way permit amendment.	14.31 Deviation from approved right-of-way.

The NPS proposes to establish procedures for amending an existing ROW permit in a new § 14.14. Paragraph (a) would allow a permittee to request or the NPS to initiate an amendment to a ROW permit. This paragraph also would state that if the NPS initiates an amendment, it will provide notice to the permittee. Paragraph (b) would state that an amendment could address infrastructure, location, access, operation and maintenance activities, the use and occupancy fee, a new permittee as a result of an approved transfer, or other terms and conditions. Subparagraphs (b)(1) and (b)(2) would state that amendments to authorized uses, including infrastructure, or to authorized locations will require the permittee to submit some or all of the materials that are required for new applications under § 14.4, and if the amendments are significant, the submission of a completely new application under § 14.4. An example of a significant amendment would be a request to add new infrastructure outside of the approved permitted area. These provisions are consistent with existing § 14.31, which requires an amended application for substantial deviations, that would be replaced by these new subparagraphs of § 14.14 and by new paragraph (a) of new § 14.9 (Terms and conditions) discussed above.

As explained above, section 14.12 of the proposed rule states that the full term of a ROW permit can only be reset if the permit is renewed in a timely manner. The NPS recognizes, however, that there may be barriers that arise that prevent timely renewal. For this reason, paragraph (c) of § 14.14 would allow the NPS to extend the term of an existing ROW permit by amendment, for up to one year, if there is a reasonable delay or ongoing good faith negotiations regarding the renewal of an expiring ROW permit. Paragraph (d) would require the permittee to submit amendment requests in writing with information necessary for the NPS to evaluate the request. In paragraph (d)(7), the rule would allow the NPS to require additional informational necessary to properly evaluate a requested amendment. Paragraph (e) would state that decisions to approve amendments are at the discretion of the NPS, and that any approved amendment is deemed part of the original ROW permit.

§ 14.15 Right-Of-Way Permit Suspension and Termination

Proposed regulation	Existing regulations
14.15 Right-of-way permit suspension and termination.	<ul style="list-style-type: none"> • 14.30 Nonconstruction, abandonment or nonuse. • 14.33 Order of cancellation.

Section 14.30 of the existing regulations allows the NPS to cancel ROW permits for failure to construct within the period allow and for abandonment or nonuse. Section 14.33 of the existing regulations allows the NPS to cancel ROW permits for any violation of the regulations or permit terms and conditions. The NPS proposes to replace these provisions with a new § 14.15 that addresses termination of a ROW permit by either the NPS or the permittee, suspension of a ROW permit by the NPS, and for the first time in regulations creates an opportunity for permittees to cure the cause of the suspension or termination. Paragraph (a) would state that at any time upon written notice provided to the permittee, the NPS may suspend or terminate all or any part of the permit without liability or expense to the United States. If the NPS intends to suspend or terminate all or part of a ROW permit, paragraph (b) would allow the NPS to provide the permittee with an opportunity to cure the cause of the suspension or termination prior to it taking effect. Paragraph (c) would list the most common, specific reasons for suspension and termination of a ROW permit, and also state that the NPS may suspend or terminate a ROW permit at its discretion. If a permittee seeks to terminate a ROW permit, paragraph (d) would require the permittee to provide written notice to the NPS and identify the desired date of termination. Paragraph (e) would state that, upon suspension, the permittee remains responsible for fulfilling all obligations under the permit, including payment of any use and occupancy fees and cost recovery due. Paragraph (f) would state that, upon termination, the permittee remains responsible for fulfilling all permit obligations, including required payments, restoration and reclamation activities. The ongoing duties and responsibilities are meant to protect the American taxpayer from incurring the permittee's liabilities and financial responsibilities.

§ 14.16 Trespass

Proposed regulation	Existing regulation
14.16 Trespass	14.8 Unauthorized occupancy.

Section 14.8 of the existing regulations states that occupancy and use of Federal lands without authority will result in prosecution and liability for trespass. This rule would replace this section with more comprehensive regulations about trespass in a new § 14.16. Paragraph (a) would expressly prohibit any uses, activities, or infrastructure not specifically authorized under a valid ROW permit or other legal authorization and state that such uses are considered a trespass against the United States. Paragraph (b) would allow the NPS to require an entity in trespass to immediately remove the infrastructure and cease the uses or associated activities, and to pursue additional legal remedies, penalties, and fees. Paragraph (c) would allow the NPS to continue to enforce the terms and conditions of an expired ROW permit, including the collection of cost recovery and use and occupancy fees. Paragraph (d) would allow the NPS to require an entity to apply for a permit that authorizes maintenance activities on infrastructure in trespass. This permit would not cure the trespass and be considered only to maintain the safety of the infrastructure, and to protect public health and safety, visitor experience, or the resources and values of the System unit.

§ 14.17 Penalties

Proposed regulation	Existing regulation
14.17 Penalties	N/A.
N/A	1.3 Penalties.

The NPS proposes to add a new provision in § 14.17 and make a corresponding revision to § 1.3 so that a violation of any regulation in part 14 or any term and conditions of a ROW permit may result in criminal penalties provided under 18 U.S.C. 1865, including fine, imprisonment, or both.

§ 14.18 Restoration and Reclamation

Proposed regulation	Existing regulation
14.18 Restoration and reclamation.	14.38 Disposal of property on termination of right-of-way.

Existing § 14.38 gives permittees at least six months to remove property and improvements from the ROW before they become the property of the United States. This provision would be replaced by subparagraph (c)(7) of § 14.10 of the rule, which requires as a standard term and condition of each ROW permit that the permittee remove all infrastructure from the permitted area within at least six months of the expiration or termination of the ROW permit.

New § 14.18 of the rule would establish procedures and requirements for site restoration and reclamation in addition to those included in the terms and conditions of a ROW permit. Paragraph (a) would require the permittee, after the expiration or termination of the ROW permit, to restore or reclaim the permitted area to NPS standards directed and approved by the NPS. If the required reclamation and restoration activities are not addressed in the approved ROW permit, the NPS may require the permittee to apply for and obtain a separate special use permit authorizing those activities, with appropriate terms and conditions. The special use permit will establish a reasonable schedule for completion of all reclamation and restoration activities under the permit. If those activities are not completed within a reasonable period of time, or according to the schedule established in the special use permit, paragraph (b) would make the permittee liable to the NPS for all costs associated with reclamation or restoration of the permitted area undertaken by the NPS, or its contractor, to the satisfaction of the NPS. Paragraph (b) also would state that the permittee's liability for such costs survives the expiration or termination of the ROW permit.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that the proposed rule is not significant.

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote

predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The proposed rule would benefit small businesses by streamlining NPS regulations for permitting ROWs and thereby reducing the amount of time that NPS requires to issue many ROW permits. The proposed rule would suggest optional pre-application meetings to provide small businesses with information early in the process about the NPS's estimated time and cost to evaluate and process a ROW permit application, increasing regulatory certainty. The NPS reviewed the Small Business Size standards for the affected industries and determined that a large share of the entities in the affected industries are small businesses as defined by the Small Business Act. The NPS believes, however, that the impact on the small entities is not significant because the proposed rule would impact a small number of small entities, and those effects would not be economically significant. In summary, the NPS has considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities. The NPS certifies that, if made final, this proposed rule will not have

a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Congressional Review Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

(c) 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.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on Tribal, State, or local governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on Tribal, State, or local governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This proposed rule would not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule would only affect use of federally-administered lands and waters. It would have no outside effects on other areas. The rule would affect the NPS's administration of the ROW Program and have no substantial, direct effects on the States, on the relationships between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This proposed rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes and ANCSA Corporations (Executive Order 13175 and Department Policy)

The DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has evaluated this proposed rule under the criteria in Executive Order 13175 and under the DOI's Tribal consultation policy and has determined that tribal consultation is not required because the proposed rule would not have a substantial direct effect on federally recognized Indian Tribes. This proposed rule has no impact on Tribal lands, as it applies only to ROW permits issued by the NPS for the use and occupancy of lands and waters, and interests in lands and waters, administered by the NPS within System units. Indian tribes have jurisdiction over their own lands, subject to the Secretary's trust responsibility. There will be opportunities for consultation with Tribes on individual ROW permitting decisions. Paragraph (a)(1) of § 14.5 of the proposed rule would state that the NPS will issue a ROW permit only if the proposed operation and maintenance of infrastructure are consistent with applicable laws and policies, including statutes governing administration of the National Park System, regulations, and NPS planning documents. This evaluation will include consideration of whether issuing the ROW permit would cause a significant impact to one or more Tribes and, if so, the NPS will consult with potentially affected Tribes prior to issuing the permit under Executive Order 13175.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements

associated with the NPS's use of Common Form SF-299 and assigned OMB Control Number 0596-0249 (currently under OMB review); and the currently approved NPS form 10-930, assigned OMB Control Number 1024-0026 (currently under OMB review). You may view the information collection request(s) at <http://www.reginfo.gov/public/do/PRAMain>. An 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.

National Environmental Policy Act

This proposed rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the rule is covered by a categorical exclusion. NPS NEPA Handbook (2015) Section 3.3.A.8 allows for the following to be categorically excluded: "Modifications or revisions to existing regulations or the promulgation of new regulations for NPS-administered areas, provided the modifications, revisions, or new regulations do not:

- a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it,
- b. Introduce noncompatible 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."

Alternatively, this rule is covered by the categorical exclusion in Section 3.2.H, which allows for the following to be categorically excluded: "policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature, or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." The NPS has determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211. The proposed rule is not likely to have a significant adverse effect on the supply,

distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects is not required.

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that the NPS has not met these requirements, send the NPS comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the DOI, 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 by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the NPS in your comment to withhold your personal identifying information from public review, the NPS cannot guarantee that it will be able to do so.

List of Subjects

36 CFR Part 1

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

36 CFR Part 14

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

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR parts 1 and 14, as set forth below:

PART 1—GENERAL PROVISIONS

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

■ 1. Authority: 54 U.S.C. 100101, 100751, 320102.

§ 1.2 [Amended]

■ 2. In § 1.2(b) and (d), remove the word “and” after “part 7,” and add the words “, and part 14” after “part 13”.

§ 1.3 [Amended]

■ 3. In § 1.3(a), remove the word “and” after “12,” and add in its place a comma; and add the words “, and 14” after “13”.

■ 4. Revise part 14 to read as follows:

PART 14—RIGHTS-OF-WAY

Sec.

- 14.1 Purpose and scope.
 - 14.2 Definitions for this part.
 - 14.3 Pre-application meeting.
 - 14.4 Right-of-way permit application.
 - 14.5 Review of a complete right-of-way permit application.
 - 14.6 Application withdrawal.
 - 14.7 Cost recovery.
 - 14.8 Use and occupancy fee.
 - 14.9 Resource impact considerations.
 - 14.10 Terms and conditions.
 - 14.11 Special use permit for construction.
 - 14.12 Right-of-way permit renewal.
 - 14.13 Right-of-way permit transfer.
 - 14.14 Right-of-way permit amendment.
 - 14.15 Right-of-way permit suspension and termination.
 - 14.16 Trespass.
 - 14.17 Penalties.
 - 14.18 Restoration and reclamation.
- Authority: 54 U.S.C. 100902; 54 U.S.C. 100751; 54 U.S.C. 103104; 31 U.S.C. 9701

§ 14.1 Purpose and scope.

(a) The regulations in this part establish procedures an entity must follow when applying for a right-of-way permit and provisions under which the NPS may authorize a right-of-way within a National Park System unit under applicable current or future statutory authority, whether the statutory authority is System-wide or specific to a System unit.

(b) The regulations in this part ensure that use of lands and waters, and the operation and maintenance of infrastructure under a right-of-way permit will:

(1) Comply with all applicable statutory authorities, including the NPS Organic Act (54 U.S.C. 100101 *et seq.*);

(2) Protect lands, waters, and resources of the National Park System; and

(3) Protect visitor uses and experiences within the National Park System, as well as promote the health and safety of the public and NPS employees and volunteers.

§ 14.2 Definitions for this part.

Applicant means an entity that has submitted an application for a right-of-way permit or an application for a special use permit for construction.

Co-location means the placement of infrastructure on or in authorized infrastructure owned or controlled by another or within an area authorized for use by another.

Entity means a party including, but not limited to, Federal, state, and local governments, Tribes, citizens, and organizations of the United States, including corporations, associations, partnerships, and non-profit organizations.

Infrastructure means public utilities and power and communications facilities, as described in 54 U.S.C. 100902, and any other equipment, facility, installation or use that the NPS may authorize under a right-of-way permit.

Operation and maintenance means the use of infrastructure for purposes specifically authorized in a right-of-way permit, including means of access and actions associated with its service on a routine and on-going basis to ensure good order, safe conditions, and timely repair.

Permitted area means the land or water mapped, described, and authorized for use of lands and waters, and operation and maintenance in a right-of-way permit or for construction in a special use permit for construction, and may include routes and means of access.

Permittee means an entity that holds a current, fully executed right-of-way permit or a special use permit for construction.

Right-of-way permit means a discretionary and revocable special use permit issued by the NPS to authorize the use of lands and waters, and operation and maintenance. A right-of-way permit does not grant, convey, or imply transfer of title to any interest in, including a leasehold or easement interest in, the lands or waters authorized for use.

Special use permit for construction means a discretionary and revocable special use permit issued by the NPS to authorize the construction of infrastructure, or construction activities

associated with infrastructure, within the National Park System.

§ 14.3 Pre-application meeting.

Prior to submitting an application for a right-of-way permit, the potential applicant should contact the superintendent of the System unit that would be affected by the project to schedule a pre-application meeting to discuss the project and the permitting process along with applicable law and policy. Through a pre-application meeting, the NPS may inform the potential applicant about documentation needed to make an application complete, and provide the potential applicant with an expected timeline and potential costs the NPS will incur to review and process the application.

§ 14.4 Right-of-way permit application.

(a) *Complete application requirement.* The NPS will not begin processing a right-of-way permit application until it has determined the applicant has complied with the requirements in this part, including the submission of all required information. Making this determination does not guarantee the NPS will issue a right-of-way permit.

(b) Application form.

(1) To request a right-of-way permit, applicants must submit a complete Standard Form 299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property (SF-299), or the applicable common form approved by the General Services Administration at the time of the application, including all materials required in the SF-299 and this part, to the superintendent of the System unit. If materials required in this part were previously filed with the superintendent for the issuance of another right-of-way permit for the same System unit, the NPS may decide the applicant is not required to resubmit these materials, provided the previous date of filing, place of filing, and existing right-of-way permit number are included in the new application.

(2) The SF-299 must be signed by the applicant or applicant's authorized representative.

(3) The applicant must submit the application charge pursuant to § 14.7 of this part.

(c) *Applicant documentation.* Only citizens, corporations, partnerships, and associations of the United States are eligible to apply for a right-of-way permit.

(1) *Corporations.* An application by a corporation must include:

(i) A copy of its charter or articles of incorporation, duly certified by the

proper official of the state where the corporation was organized.

(ii) A copy of the law under which the corporation was formed and proof of organization and good standing under the same.

(iii) If a corporation is operating in a state other than its state of incorporation, a certificate of good standing from the proper official of the state where it is operating that it has complied with the laws of that state governing foreign corporations operating in such state.

(iv) An affidavit from the appropriate individual at the corporation certifying:

(A) The corporation's ability to do business in the state or states where the affected park area is located;

(B) The corporation's ability to file an application for the stated purpose; and

(C) The ability of the individual filing the application to bind and sign for the corporation for purposes of the application.

(2) *Partnerships, limited liability companies, and similar entities.* An application by an association of individuals with legal standing must be accompanied by:

(i) A certified copy of articles of association or other current governing documents, if any, indicating appropriate signature authority and authority to file the application. If these articles or documents do not exist, all members must sign the application.

(ii) Evidence of U.S. citizenship for each individual member of the association.

(3) *Individuals.* An application by an individual must be accompanied by evidence of U.S. citizenship.

(d) *Maps.* (1) Applicants must provide a map that meets current NPS mapping standards, showing at a minimum:

(i) The area proposed to be included in the right-of-way permit, including the placement of proposed infrastructure; and

(ii) Proposed access points and routes (including uses of existing roads), and other areas associated with the right-of-way permit.

(2) The NPS may require an official land survey, legal description, and digital information.

(e) *Water Rights.* Unless otherwise required by Federal law, applications requesting authorization to operate and maintain infrastructure to support the storage, diversion, conveyance, or use of water, must include proof of the applicant's valid water right from the appropriate state official or state law.

(f) *Access.* (1) The applicant must include a description of proposed access routes and means of access.

(2) Access routes and means of access will be limited to existing roads, or

existing or NPS-approved routes, trails, or access points.

(3) Unless otherwise provided by law, the NPS will not authorize new roads by a right-of-way permit.

(4) No right of access is granted under a right-of-way permit. Access routes and means of access identified in a right-of-way permit are revocable at the discretion of the NPS.

(g) *Co-location.* (1) The applicant must design infrastructure to accommodate co-location to the greatest extent possible after consideration of potential impacts to park area resources, values, public health and safety, and visitor experience.

(2) Before proposing a new or undisturbed location for infrastructure, the applicant must demonstrate that they have evaluated all options for co-location with existing infrastructure.

(3) Each entity seeking to co-locate will be required to have a separate right-of-way permit.

(h) *Financial assurance and liability insurance.* As appropriate to the proposed project, the NPS may require proof of acceptable financial assurance and liability insurance.

(i) *Additional Information.* The NPS may require in writing that applicants submit additional information before an application is considered complete.

§ 14.5 Review of a complete right-of-way permit application.

(a) *Standards of review.* (1) The NPS will issue a right-of-way permit only if the proposed use of lands and waters, and operation and maintenance are not incompatible with the public interest and consistent with applicable laws and policies, including statutes governing administration of the National Park System, regulations, and NPS planning documents.

(2) Except where Federal law provides otherwise, the NPS will issue a right-of-way permit only if the applicant has demonstrated that there is no practicable alternative to locating the infrastructure within the National Park System.

(b) *Managerial findings.* After completing review of an application, the NPS will notify the applicant in writing that the right-of-way permit is:

(1) Conditionally approved; or

(2) Denied, with an explanation.

(c) *Execution of right-of-way permits.* The applicant must sign a conditionally approved right-of-way permit prior to execution by the NPS. No right-of-way permit is valid until it has been executed by the NPS.

(d) *Behavior and conduct.* At any time during the application process for a right-of-way permit, the NPS may, in its

discretion, suspend or end the application process if the applicant:

(1) Is delinquent in paying any cost recovery, use and occupancy fees, or other debts to the Federal Government;

(2) Has an unresolved criminal or civil violation with the Federal Government;

(3) Has been notified that they are liable for damages under the System Unit Resource Protection Act (SURPA), 54 U.S.C. 100721–100725, for injuries to park area resources, or have not resolved or fully paid response costs and damages under SURPA; or

(4) Has caused unpermitted resource damage, impacts to visitors, management problems, or the applicant has violated the terms and conditions of any permit issued by a Federal agency, including the NPS.

§ 14.6 Application withdrawal.

(a) An applicant may withdraw an application at any time during the permitting process.

(b) If at any time during the permitting process an applicant does not respond to a written communication from the NPS within 90 days, the NPS may presume that the application has been withdrawn without further notice to the applicant.

(c) When an application is withdrawn or presumed withdrawn, the permitting process is terminated and the applicant must resubmit a new application pursuant to § 14.4 of this part.

§ 14.7 Cost recovery.

(a) The NPS will recover all costs from applicants and permittees pursuant to 54 U.S.C. 103104, according to NPS cost recovery policy, even in the case of withdrawn or denied applications, and suspended or terminated right-of-way permits. In addition to the application charge referred to in paragraph (b) of this section, the NPS may recover other actual costs incurred in processing an application for a right-of-way permit or special use permit for construction, including, but not limited to, costs incurred from completion of required compliance and reviews, appraisal or valuation related costs, and costs incurred from monitoring or managing permittee activities during the term of a permit.

(b) An applicant must pay an application charge with each application for a right-of-way permit unless this charge is waived by the NPS pursuant to NPS cost recovery policy. The application charge will include costs incurred by the NPS for initial discussions and review of the

application to determine if it is complete.

(1) The minimum application charge for a right-of-way permit is the cost of two hours of the System unit permit coordinator's time, plus one hour of their supervisor's time, including overhead costs.

(2) If the System unit permit coordinator is the superintendent, then the minimum application charge is the cost of two hours of the superintendent's time, including overhead costs.

(3) The application charge addresses the costs incurred by the NPS in initially discussing and reviewing an application for completeness and does not constitute all of the costs that the NPS may recover.

§ 14.8 Use and occupancy fee.

(a) Every permittee must pay a use and occupancy fee to the NPS for the use and occupancy of federally owned lands and waters within the National Park System, except as provided in paragraph (e) of this section.

(b) The use and occupancy fee will be the fair market value of the use and occupancy of federally owned lands and waters under the right-of-way permit.

(1) The NPS may adopt any method approved by the Department of the Interior to determine the use and occupancy fee.

(2) Costs for administration of the right-of-way program will be collected by the NPS in accordance with OMB Circular A-25 at the current indirect cost rate and will be a retained percentage of use and occupancy fees collected on right-of-way permits issued.

(3) If a permittee's infrastructure is for both exempt and non-exempt uses or users, as provided in paragraphs (e)(1)–

(4) of this section, only those discrete portions that serve exempt uses or users may be eligible for exemption from the use and occupancy fee.

(c) The use and occupancy fee may be re-evaluated at any time during the term of a right-of-way permit at the discretion of the NPS, but at a minimum will be re-evaluated every 10 years.

(d) The use and occupancy fee will be re-evaluated when a right-of-way permit is renewed under § 14.12 of this part and when a subsequent right-of-way permit is issued for infrastructure that was authorized under an expired right-of-way permit that was not renewed in a timely manner.

(e) A permittee may be exempt from paying a use and occupancy fee if their infrastructure is exclusively:

(1) Used by a Federal Government agency, including the NPS;

(2) Serving the purposes of an authorized use and occupancy for which the NPS is already receiving compensation that was determined in consideration of services provided by the permittee;

(3) Operated or used by a Tribal, state, or local government for a direct non-commercial use; or

(4) For a project that is clearly in the public interest and consistent with the purposes and values of the park area.

§ 14.9 Resource impact considerations.

The NPS may direct the use and disposition of resources disturbed under a right-of-way permit. The permittee may be required to mitigate or compensate for permitted impacts to NPS resources and lost uses.

§ 14.10 Terms and conditions.

(a) A right-of-way permit will authorize the permittee to conduct specific operation and maintenance. Operation and maintenance not specifically authorized in the right-of-way permit requires written authorization or an amended right-of-way permit.

(b) The NPS will issue a right-of-way permit for a term that is consistent with applicable law and policy and may be up to 50 years when determined appropriate by the NPS.

(c) A permittee, by accepting a right-of-way permit, agrees and consents to comply with and be bound by the following terms and conditions, and any additional terms and conditions or modifications that may be required by the NPS in a right-of-way permit:

(1) To comply with all applicable laws and policies, including NPS regulations and planning documents.

(2) To ensure that all of its employees, agents, officers, contractors, and subcontractors comply with all of the terms and conditions of the right-of-way permit and requirements of this part.

(3) To pay the United States the full value of all damage to the lands, waters, or other property of the United States caused by permittee or permittee's employees, agents, officers, contractors, and subcontractors, and to indemnify the United States against any liability for damages to life, person, or property arising from operation and maintenance; except that where a right-of-way permit is issued to a state or other government agency whose power to assume liability by agreement is limited by law, such state or agency shall indemnify the United States as provided above to the extent allowed by law.

(4) That the exercise of authorized activities under a right-of-way permit will not unduly interfere with the

management, administration, or disposal by the United States of any land, waters, structures, or interests in land or waters affected thereby. The permittee must agree and consent to the use and occupancy by the United States, its grantees, permittees, licensees, invitees, and lessees of any part of the permitted area not actually occupied for the purpose of the right-of-way permit to the extent that such use does not materially interfere with the full and safe utilization thereof by the permittee.

(5) That except as expressly authorized by the right-of-way permit or subsequently approved in writing by the NPS, the permittee may not move, remove, alter, damage, or destroy any park area resources, including vegetation, within the permitted area or other areas of the System unit. As directed by the NPS, the permittee must take all reasonable measures to avoid or minimize damage to park area resources. The NPS may require mitigation or compensation for permitted impacts to System unit resources authorized under this permit. The NPS may also direct the use and disposition of the disturbed resources.

(6) That the NPS will have a right of access at any time to the permitted area.

(7) That, unless an extension is granted in writing by the NPS, within 6 months after the expiration or termination of the right-of-way permit, the permittee will have completed removal of all infrastructure from the permitted area, as well as restoration and reclamation of the permitted area, to NPS standards directed and approved by the NPS. Any infrastructure not removed within that time will be deemed abandoned and will be disposed of in accordance with applicable Federal law, and the permittee will be liable for all costs incurred by the NPS that are associated with removing and disposing of such infrastructure, as well as with restoration and reclamation of the permitted area, to the satisfaction of the NPS. This obligation will survive the termination or expiration of a right-of-way permit.

(8) That the right-of-way permit terms and conditions, use and occupancy fee, and other stipulations and provisions may be modified during a right-of-way permit transfer, amendment, or renewal process.

§ 14.11 Special use permit for construction.

(a) *Permit requirement.* Applicants must apply for and obtain a separate special use permit for construction prior to beginning construction associated with a right-of-way permit.

(b) *Application form.* The applicant must use the currently approved application form for a special use permit.

(c) *Complete application.* The NPS will not begin processing an application for a special use permit for construction until the NPS has reviewed the application and determined that it is complete.

(d) *Associated right-of-way permit.* The NPS will only issue a special use permit for construction simultaneously or after it issues an associated right-of-way permit.

(e) *Application information.*

(1) The applicant must include all of the information required by the currently approved special use permit application form. This information must include, at a minimum, the following information:

(i) Description of proposed activity.
(ii) Requested location.
(iii) Proposed schedule, including proposed start and end dates, and interim activities.

(iv) List of equipment.

(2) The applicant is encouraged to attach additional pages with information useful in evaluating the permit request, including:

(i) Construction drawings.
(ii) A map showing areas for construction activities, including staging areas and access routes.
(iii) A construction area restoration plan, as applicable.

(3) The NPS may require additional information by written request.

(f) *Affidavit.* Prior to issuing a special use permit for construction, the NPS may require the applicant to provide an affidavit stating that all other required land rights, water rights, permits, certifications, approvals, and authorizations necessary for a viable project have been secured.

§ 14.12 Right-of-way permit renewal.

(a) Right-of-way permit renewal means the issuance of a new, separate, consecutive right-of-way permit, in response to a timely right-of-way permit application, for a new term and with new terms and conditions, as applicable.

(b) A permittee must submit a new, complete right-of-way permit application to continue use of lands and waters, and operation and maintenance of infrastructure beyond the term of a current right-of-way permit, unless the current right-of-way permit is extended under § 14.14(c) of this part.

(1) Permittees are encouraged to submit a timely, complete application at least six months prior to expiration of their current right-of-way permit.

(2) Renewal applications must meet the criteria in § 14.4 of this part.

(3) The term of a right-of-way permit may only be reset for a new and continuous term by renewal.

(4) The decision to renew a right-of-way permit is at the discretion of the NPS.

(c) If a right-of-way permit expires prior to issuance of a renewal, the infrastructure that had been authorized under the right-of-way permit will, upon expiration, be considered in trespass under § 14.16 of this part.

§ 14.13 Right-of-way permit transfer.

(a) Right-of-way permit transfers are necessary when a current permittee intends to convey ownership or control of and responsibility for the use and lands and waters, and operation and maintenance to a new entity.

(b) The NPS will not consider a transfer request until both of the following have occurred:

(1) The current permittee has provided a written request to the NPS that is signed by a representative legally authorized to bind the permittee, that contains the permit number and a statement clearly describing the reason for the requested transfer.

(2) The new entity has provided the NPS with written notice of its acceptance of and agreement to comply with the terms and conditions of the existing right-of-way permit. The written notice must be signed by a representative legally authorized to bind the new entity, and must contain the following information:

(i) Name of the entity;
(ii) Address and phone number of the entity;
(iii) Name, title, and contact information of the representative of the entity assuming responsibility for the right-of-way permit;

(iv) Statement affirming that the existing permitted uses, permitted areas, and purposes specified in the right-of-way permit remain the same;

(v) Proof of acceptable financial assurance and liability insurance, if required as a condition of the right-of-way permit, or requested as a modification by the NPS;

(vi) Proof of eligibility and suitability to hold a right-of-way permit as required by § 14.4 and § 14.5 of this part; and
(vii) Any additional information that the NPS may require by written request.

(c) The decision to approve a transfer is at the discretion of the NPS. A right-of-way permit transfer will be documented as an amendment to the existing right-of-way permit and will be reviewed and executed using the procedures that apply to the review and

execution of right-of-way permits in paragraphs (a)–(d) in § 14.5 of this part.

(d) Unless and until a transfer is approved in writing by the NPS, the current permittee named on the right-of-way permit will remain responsible for compliance with the terms and conditions of the right-of-way permit, including all financial obligations.

§ 14.14 Right-of-way permit amendment.

(a) A permittee may request or the NPS may initiate an amendment to a right-of-way permit. If the NPS initiates an amendment, it will provide notice to the permittee.

(b) An amendment to an existing right-of-way permit may address operation and maintenance, the use and occupancy fee, a new permittee as a result of an approved transfers, or other terms and conditions.

(1) If a permittee requests an amendment to a right-of-way permit that would modify, change, or add to the authorized uses or locations, then the NPS may require the permittee to include some or all of the materials required under § 14.4.

(2) If modifications, changes, or additions to the authorized uses or locations proposed by the permittee are deemed significant by the NPS, then the NPS may require the permittee to submit a complete right-of-way permit application requesting a new right-of-way permit.

(c) An amendment may not alter the term of a right-of-way permit, except for a single extension of up to one year to prevent expiration of the right-of-way permit when there is a reasonable delay or ongoing good faith negotiations regarding renewal of an expiring right-of-way permit.

(d) Requests by the permittee for an amendment to a right-of-way permit must be in writing, signed by a representative legally authorized to bind the permittee, and must contain the following information:

(1) Right-of-way permit number;
(2) Permittee name;
(3) System unit name;
(4) Description of the activities and infrastructure authorized by the right-of-way permit;
(5) Description of the proposed amendment;
(6) Description of the purpose or justification for the requested amendment; and
(7) Other information required by the NPS.

(e) The decision to approve an amendment is at the discretion of the NPS. Amendments will be reviewed and executed using the procedures that apply to the review and execution of

right-of-way permits in paragraphs (a)–(c) in § 14.5 of this part. An approved amendment is deemed to be a part of the original right-of-way permit.

§ 14.15 Right-of-way permit suspension and termination.

(a) At any time during the term of a right-of-way permit and upon written notice provided to the permittee, the NPS may suspend or terminate all or any part of the right-of-way permit without liability or expense to the United States.

(b) If the NPS intends to suspend or terminate all or part of a right-of-way permit, the permittee may be provided an opportunity to cure the cause prior to commencement of the suspension or termination.

(c) Reasons for suspension or termination include, but are not limited to:

(1) Visitor and resource protection concerns;

(2) Failure to comply with right-of-way permit terms and conditions;

(3) Failure to comply with any provision of this part; or

(4) Abandonment or nonuse.

(d) A permittee may terminate a right-of-way permit by providing a written notice of termination to the NPS that is signed by the permittee's authorized representative and identifies the desired date of termination.

(e) Upon suspension, the permittee remains responsible for fulfilling all obligations under the permit, including payment of any use and occupancy fees and cost recovery due.

(f) Upon termination, the permittee will remain responsible for fulfilling all obligations under the permit, including:

(1) Payment of any use and occupancy fees and any cost recovery due;

(2) Restoration and reclamation of the permitted area; and

(3) Any other terms and conditions that survive the termination of the right-of-way permit.

§ 14.16 Trespass.

(a) Any uses, activities, or infrastructure not specifically authorized under a valid right-of-way permit or other legal authorization are prohibited and considered a trespass against the United States.

(b) The NPS may require an entity in trespass to immediately remove any of its infrastructure in trespass or cease the uses or associated activities and may pursue any additional legal remedy, penalty, or fees available.

(c) The NPS may continue to enforce the terms and conditions of an expired right-of-way permit, including

collection of cost recovery and use and occupancy fees. An entity with an expired right-of-way permit has no authorization for continued use of lands and waters, and operation and maintenance, and those uses and associated infrastructure are considered a trespass.

(d) The NPS may require an entity to apply for a permit to authorize maintenance activities on infrastructure considered in trespass. Any permit issued for maintenance will not authorize the presence of the infrastructure. A maintenance permit will be considered only for activities that are required to maintain the safety of the infrastructure, and to protect public health and safety, visitor experience, or the resources and values of the park area.

§ 14.17 Penalties.

Violation of any section of this part, including any term and condition of a right-of-way permit, may result in fine or imprisonment, or both, in accordance with 36 CFR 1.3.

§ 14.18 Restoration and reclamation.

(a) After expiration or termination of the right-of-way permit, the permittee must restore or reclaim the permitted area to standards directed and approved by the NPS.

(b) If restoration or reclamation is not completed within a reasonable time or in accordance with a schedule established in a special use permit for the restoration and reclamation activities, the permittee will be liable to the NPS for all costs of restoring and reclaiming the permitted area undertaken by the NPS, or its contractor, to the satisfaction of the NPS. This obligation will survive the termination or expiration of a right-of-way permit.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

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FEDERAL MARITIME COMMISSION

46 CFR Part 541

[Docket No. FMC–2024–0010]

Demurrage and Detention Billing Requirements; Filing of Petition and Request for Comments

AGENCY: Federal Maritime Commission.

ACTION: Notification of filing and request for comments.

SUMMARY: The Federal Maritime Commission (Commission) has received a petition for an extension of the effective date of the final rule for Demurrage and Detention Billing Requirements and seeks public comment.

DATES: Submit comments on or before July 1, 2024.

ADDRESSES: You may submit comments, identified by Docket No. FMC–2024–0010, by the following method:

Federal eRulemaking Portal: Your comments must be written and in English and submitted electronically through the Federal Rulemaking Portal at www.regulations.gov. To submit comments on that site, search for Docket No. FMC–2024–0010 and follow the instructions provided. If you would like to receive future information regarding this petition, you must include your contact information.

A copy of the comment must also be served on the Petitioner's counsel, Joshua P. Stein and Kathryn Sobotta, Cozen O'Connor at jstein@cozen.com and ksobotta@cozen.com, 1200 19th Street NW, Suite 300, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: For questions regarding the submission of written public comments or the treatment of any confidential information, please contact David Eng, Secretary, at (202) 523–5725 or by email at secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: Notice is given that the Ocean Carrier Equipment Management Association (Petitioner) has petitioned the Commission, pursuant to 46 CFR 502.51(a), “for an extension of the effective date of the Final Rule for Demurrage and Detention Billing Requirements, 89 FR 14330 (February 26, 2024) (the ‘Final Rule’) by at least 90 days or such longer period as may be deemed appropriate.” A copy of this petition can be found at www.regulations.gov under Docket No. FMC–2024–0010.

For the Commission to make a thorough evaluation of the requested extension presented in the petition, interested parties are afforded an opportunity to participate through submission of written public comments. Comments must be received no later than the above stated date. The comments must be written and in English and submitted electronically through the Federal Rulemaking Portal at www.regulations.gov. To submit comments on that site, search for Docket