



## National Park Service

### 36 CFR Parts 1 and 14

[NPS–WASO–PPFL–38951; Docket No. NPS-2024-0004; PPWOPFLL0; PPMPSPD1Y.YM0000]

RIN 1024-AE75

### Rights of Way

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) revises 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 revisions 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. This rule clarifies the process for permitting construction related to a ROW permit, makes updates that reflect current technology and standard practices, and integrates applicable laws that have been implemented since the regulations were first promulgated in 1980.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The comments received on the proposed rule are available on <https://www.regulations.gov> in Docket No. NPS-2024-0004.

**FOR FURTHER INFORMATION CONTACT:** Kevin McKay, Branch Chief, Realty Management, National Park Service, Land Resources Division. Phone: (303) 978-6760;

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 this rule is available on <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 431 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 the Alaska National Interest Lands Conservation Act (ANILCA) or 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 ROW permits. 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 55789 at 55791) and 2018 (83 FR 2069). The NPS regulations are organized into eight subparts, with an Appendix, as follows:

<b>Subpart of 36 CFR Part 14</b>	<b>Sections</b>
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 (NHPA). 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, and 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 Public Comments.*

The NPS published a proposed rule in the *Federal Register* on June 10, 2024 (89 FR 48850). The NPS accepted public comments on the proposed rule for 60 days via the mail, hand delivery, and the Federal eRulemaking Portal at <https://www.regulations.gov>. Comments were accepted through August 9, 2024. The NPS received 16 comments on the proposed rule. The NPS received comments from operators, associations, utilities, non-governmental organizations, Indian Tribes, a State government, and private individuals. Commenters generally supported the proposed rule, with some offering clarifying language for the final rule. After considering public comments and after additional review, the NPS made five changes to the rule. The first change revises the first sentence of paragraph (a) in § 14.1 to clarify that the regulations in part 14 will be applied consistent with applicable Federal law. The second change revises the definition of “Special use permit for construction” for consistency with the definition of “Right-of-way permit” to include language that these permits do not convey any property interest in lands or waters. The third change includes a citation to clarify the authority under which the NPS will retain a portion of the use and occupancy fees to cover the costs of administering the ROW program. The fourth change clarifies that the NPS has discretion

to decide whether it will include costs incurred for initial discussions (including pre-application meetings) in the application charge. The fifth change adds a new § 14.19 about severability (discussed below). A summary of the pertinent issues raised in the comments and NPS responses is provided below. The NPS does not summarize or respond to comments regarding property interests, such as easements and retained rights, held by private parties on lands and waters within System units because ROW permits do not convey property interests.

*1. Comment:* An Indian Tribe stated the rule should require consultation throughout the permitting process. An Alaska Native Claims Settlement Act Corporation (ANCSA Corporation) stated the rule should address the NPS's obligation to consult with ANCSA Corporations on the same basis as Indian Tribes.

*NPS Response:* The NPS and the DOI recognize the importance of their responsibility to consult with Tribes and take seriously their duties to (1) fulfill their legal obligations to identify, protect, and conserve Tribal trust resources; (2) carry out their trust relationship with Tribes and Tribal members; and (3) invite Tribes to consult on a government-to-government basis whenever there is a Departmental Action with Tribal Implications. (512 DM 4). Further, it is DOI policy to recognize and fulfill its legal obligations to consult with ANCSA Corporations on the same basis as Indian Tribes under Executive Order 13175 (512 DM 6). Paragraph (a)(1) of § 14.5 of the rule states that the NPS will issue a ROW permit only if the proposed use of lands and waters, and 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. Pursuant to DOI policy, during this evaluation the NPS will consider whether issuing the ROW permit would require consultation with Tribes or ANCSA Corporations. If so, the NPS will consult with those Tribes and ANCSA Corporations before issuing the ROW permit.

2. *Comment:* An Indian Tribe raised a concern that during the permit renewal process, the NPS could only consider impacts that occurred during the previous permit period, resulting in renewal decisions made with inadequate information.

*NPS Response:* The NPS seeks to facilitate meaningful dialogue and collaboration with Tribes to ensure that it respects their rights and interests as the steward of cultural resources within park areas. Section 14.12 of the rule addresses the ROW permit renewal process. This section clarifies that a ROW permit renewal means the issuance of a new, separate, consecutive ROW permit that the NPS approves before the expiration of an existing permit to authorize the continued use of lands and waters and the operation and maintenance of infrastructure. Timely requests for renewals allow the NPS to evaluate the continued appropriateness of the existing use and to complete required compliance actions. The NPS reviews the decision file for the existing ROW permit for any infractions, problems, or concerns. The NPS also may consider other, relevant information in its decision-making process that is not directly related to impacts that have occurred under the existing permit. If the NPS decides to renew a ROW permit, the new permit may have modified terms and conditions and special stipulations that are necessary to address impacts to resources.

3. *Comment:* An Indian Tribe stated that the rule should specifically allow the NPS to suspend or terminate a ROW permit for a failure to appropriately mitigate archaeological, cultural, or environmental impacts identified through consultation between the NPS and affected Tribes.

*NPS Response:* The NPS acknowledges the importance of mitigating impacts to resources caused by ROW permittees. Section 14.15 allows the NPS to suspend or terminate a ROW permit at any time, and states that the permittee may be provided an opportunity to cure the cause of the suspension or termination. Grounds for suspension or termination include resource protection concerns, failure to comply with ROW permit

terms and conditions, and failure to comply with any provision in part 14. Failure to complete required mitigations would constitute grounds for suspension or termination for one or more of those reasons. It would raise concerns about the impacted resources. It would constitute a failure to comply with standard permit terms and conditions that require mitigation. It also could constitute a failure to comply with section 14.9 and paragraph (c)(5) of § 14.10, which allow the NPS to require mitigation for impacts to resources that are caused by permitted activities.

A standard term and condition of every ROW permit requires the permittee to suspend activities and notify the Superintendent upon discovery of archeological, paleontological, or historical resources, or threatened or endangered species within or near the permitted area. When this occurs, the NPS will begin consultation with relevant Tribes if the affected resources have tribal implications under DOI policy. This consultation will include the identification of required mitigations.

*4. Comment:* Two commenters expressed concern that the rule would require the NPS to specify all operation and maintenance activities in the ROW permit and suggested instead that the NPS adopt the approach taken by the United States Forest Service (USFS) and the BLM that give permittees the option to submit an operation and maintenance plan with their permit application.

*NPS Response:* Nothing in this rule prevents an applicant from submitting a separate operation and maintenance plan or any other relevant information or additional documentation in support of their application. The NPS will use everything submitted to develop the ROW permit. Paragraph (a) of § 14.10 states that a ROW permit will authorize the permittee to conduct specific operation and maintenance, and that operation and maintenance not specifically authorized in the permit requires written authorization or an amended permit. This provision is important because the ROW is the authorizing legal instrument. A ROW permit can authorize activities, however, that are not stated in

the permit itself. The NPS and the permittee can agree to incorporate an operation and maintenance plan by reference or as an attachment to the permit. These plans can be beneficial by identifying with more specificity the time, place, and manner for conducting authorized activities.

*5. Comment:* Two commenters encouraged the NPS to give permittees more flexibility to manage vegetation within and adjacent to the permitted area, including during unplanned emergencies. Specifically, these commenters encouraged the NPS to revise the proposed definition of “Operation and maintenance” to be consistent with the BLM’s definition at 43 CFR 2801.5 and suggested the NPS add definitions for the terms “vegetation management” and “hazard trees”.

*NPS Response:* Vegetation management activities, including time, place, manner, and coordination requirements in both emergency and non-emergency situations, that are authorized in a ROW permit have been evaluated through required compliance actions that are necessary to understand potential impacts to park resources and visitors. Unauthorized vegetation management activities, within or outside of the permitted area, have not been properly evaluated and therefore require additional compliance actions and permitting. During the permitting process, the NPS may request and the applicant may provide information in support of vegetation management activities that will be authorized under the permit, including activities that will be allowed in emergency situations.

The NPS declines to revise the definition of “Operation and maintenance” to be consistent with the definition used by BLM. The statutory framework, mission, and mandates of the NPS are different from those of the BLM, and therefore the regulatory framework for managing ROWs on NPS-administered lands is necessarily different. The NPS also declines to define the terms “vegetation management” and “hazard tree” as they are defined in BLM regulations. These terms are not used in this rule. Each ROW permit

will, as appropriate, identify authorized practices for vegetation management that may include tree trimming or removal. This approach will allow the NPS to tailor the authorized vegetation management activities to the specific circumstances of each permit.

*6. Comment:* One commenter asked the NPS to clarify how it will determine if an amendment to authorized uses and locations will be deemed “significant” and therefore require the permittee to submit another complete ROW permit application. Two commenters asked the NPS to adopt the BLM definition of “substantial deviation” in 43 CFR 2801.5 in order to clarify what activities are allowed without additional written authorization or permitting, including vegetation management actions.

*NPS Response:* Section 14.14 establishes procedures for amending an existing ROW permit. Paragraph (b)(2) states that significant modifications, changes, or additions to the authorized uses may require the submission of another complete ROW permit application. Amendments to an existing ROW permit may address operation and maintenance, the use and occupancy fee, a new permittee as a result of an approved transfer, or other terms and conditions. The NPS will determine whether the amendments require a new application on a case-by-case basis considering the specific circumstances of the request. An example of a significant change is a request to add new infrastructure outside of the permitted area. In this case, the NPS would likely require the permittee to submit an application for a new ROW permit.

The NPS declines to adopt the BLM definition of “substantial deviation” in this rule. As stated above, the statutory framework, mission, and mandates of the NPS are different from those of the BLM, and therefore the regulatory framework for managing ROWs on NPS-administered lands is necessarily different. Broad and general exceptions to what is deemed significant would remove the NPS’s ability to adequately evaluate potential impacts to park resources, values, and visitors from significant changes to

authorized activities. These types of changes should be addressed through a thorough permit application process and related compliance actions.

*7. Comment:* Two commenters questioned why the NPS would remove the permit term and condition in existing paragraph (d) of § 14.9 that directs permittees to take reasonable action to prevent and suppress fires on or near the lands occupied by the ROW. One commenter stated the NPS should adopt BLM's framework addressing prevention and suppression of wildfires which requires ROW permittees to do everything reasonable to prevent and suppress wildfires on or adjacent to the ROW area.

*NPS Response:* Allowing permittees to take unilateral action to prevent and suppress wildfire is no longer consistent with NPS practice and policy regarding fire prevention and suppression. The NPS has comprehensive policies regarding fire prevention and suppression, and it is important to allow those policies to operate without potential conflict with actions taken by permittees. (See Management Policies 4.5, Director's Order #18: Wildland Fire Management, Reference Manual 18, Director's Order #58: Structural Fire Management, Reference Manual 58). The NPS requires fire management plans for all System units that have burnable vegetation. Regarding particular ROWs, emergency operations and activities procedures are often case specific and appropriately stated in the ROW permit. Rather than give permittees a broad and general authority to take actions they deem reasonable, the NPS prefers to work with the permittee to establish the "reasonable" measures a permit holder may take to prevent fires in the permitted area, based on professional fire management expertise, specific knowledge of park resources, visitor use patterns, local weather patterns, fire history, science, and ecology.

*8. Comment:* One commenter recommended that the rule require the NPS to give permittees an opportunity to engage with the agency before NPS-initiated amendments are made to a ROW permit.

*NPS Response:* The NPS always endeavors to maintain professional relationships and open communication with permittees; however, many decisions regarding permit management are at the sole discretion of the NPS. If the NPS initiates an amendment, it will provide adequate notice to the permittee in accordance with paragraph (a) of § 14.14.

*9. Comment:* Two commenters asked the NPS to state in the rule that publicly regulated utilities are not required to show proof of acceptable financial assurance and liability insurance.

*NPS Response:* This rule does not mandate that all ROW permittees provide proof of acceptable financial assurance and liability insurance. Paragraph (h) of §14.4 states that the NPS may require such proof as appropriate to the proposed project. The NPS makes decisions about the need to provide proof of acceptable financial assurance and liability insurance on a case-by-case basis to ensure protection of the public and NPS interests. There is no reason to exempt publicly regulated utilities from such requirements in all circumstances, even though some of them may be required to have reserves under applicable law.

*10. Comment:* One commenter stated the NPS should not be able to reverse its position regarding the not incompatible with the public interest and no practicable alternative determinations once it issues a conditionally approved ROW permit to the applicant.

*NPS Response:* A conditionally approved ROW permit is developed by NPS staff at the System unit and sent to the applicant for review and signature. This step in the permitting process benefits the applicant by providing them with a document that will be submitted for final approval by an NPS signing official. This provides the applicant with some indication of what might be approved and gives them an opportunity to sign the permit indicating to the NPS signing official that the permittee has agreed to specific authorizations, terms and conditions. Issuance of a conditional permit does not constitute

final determinations of not incompatible with the public interest and no practicable alternative. Those determinations are final only when an appropriate NPS official signs and issues the ROW permit.

*11. Comment:* One commenter questioned the NPS's authority to require an applicant to demonstrate that there is no practicable alternative to location of the infrastructure within the National Park System in order to obtain a ROW permit. Another commenter supported this requirement but requested that the NPS clarify that differential location costs to the permittee should not be factor in this determination.

*NPS Response:* The NPS is responsible for the protection of resources within units of the National Park System, consistent with the purposes for which each System unit was established. 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, the NPS issues ROW permits only when there is no practicable alternative to the use of lands and waters within a System unit. Applicants should have a demonstrable need to use NPS-administered lands or waters because the result of such use will impact the System unit. The NPS considers the totality of the circumstances when making these determinations. The relative cost of where the infrastructure could be located could be one factor because at some point costs can make a project prohibitive.

*12. Comment:* One commenter urged the NPS to allow electronic filing of ROW permit applications.

*NPS Response:* This rule does not mandate a particular method of filing a ROW permit application. The NPS accepts paper submissions and electronic submissions with digital signatures. Other methods may become available in the future and this rule will accommodate appropriate options.

*13. Comment:* One commenter asked the NPS to revise the definition of “permitted area” to require the identification of access routes to infrastructure and to guarantee the right of access.

*NPS Response:* The NPS always considers access in ROW permitting and includes identified and agreed upon routes in the permitted area when necessary. Access routes may be subject to change for various reasons including resource management concerns, changing conditions, and visitor use and enjoyment concerns. This rule defines a ROW permit as a discretionary and revocable special use permit issued by the NPS to authorize the use of lands and waters, and operation and maintenance. The definition states that a ROW 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. Paragraph (f)(4) of § 14.4 states that rights of access are not granted under a ROW permit and that access routes and means of access in ROW permits are revocable at the discretion of the NPS. Permittees may access ROWs only as may be stated in the ROW permit.

*14. Comment:* One commenter recommended the rule require the NPS to provide utilities with sufficient access for anticipated operation and maintenance and allow permittees to maintain access routes even in locations outside of the permitted area to ensure that the permittee can access its facilities.

*NPS Response:* The NPS authorizes access on a case-by-case basis after a compliance process that evaluates potential impacts to System unit resources, values, and visitors. Access routes are resource, time, place, and manner specific, and are influenced by the purposes, values, and resources of the System unit. Requiring the NPS to provide “sufficient” access could lead to disagreement about what routes and means of access are sufficient. The NPS may in its discretion issue separate permits for activities outside of a permitted area but only after it has completed required compliance actions.

*15. Comment:* One commenter asked the NPS to clarify how it will regulate means of access to a permitted area and to state that permittees may use whatever means of access is appropriate for planned operation and maintenance.

*NPS Response:* The NPS considers means of access in the permitting process and evaluates them through the same compliance processes that apply to other aspects of the ROW. Means of access can have very different impacts to resources and visitors. Access by an all-terrain vehicle will have different impacts than access by a conventional motor vehicle such as a truck. Some areas may only be accessible by certain means of access such as snow machines, cranes, and helicopters. The NPS must maintain control over the authorized means of access in order to adequately protect resources and visitors. Allowing permittees to use whatever means of access they deem appropriate would prevent the NPS from exercising management responsibly for the affected System unit.

*16. Comment:* Two commenters suggested that the NPS include construction activities within the scope of a ROW permit.

*NPS Response:* Initial construction of infrastructure generally requires a larger permitted area with equipment and activities that are not relevant to long-term operation and maintenance, and it is therefore permitted separately. In the past, permittees have relied upon outdated language in ROW permits that had authorized initial construction to take unauthorized actions outside of the permitted area related to ongoing operation and maintenance. As has been stated, unauthorized actions have not been evaluated for potential impacts to System unit resources, values and visitors and therefore need additional compliance and permitting before they may occur.

*17. Comment:* One commenter suggested that the NPS remove the ability for the NPS to require applicants 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. Another commenter suggested that the affidavit should be required in all cases.

*NPS Response:* The NPS declines to make any changes to paragraph (f) of § 14.11. As stated above, the NPS seeks to minimize impacts to System unit resources to the greatest extent possible from the construction of infrastructure in park areas. The NPS would not meet this standard if it issued special use permits (SUPs) for construction, with resulting impacts, when the permittee does not have the authorizations required to operate a viable project in the ROW. This concern is most present when operation and maintenance activities within the ROW will be part of a larger project occurring outside of the National Park System. In other situations, such as when the NPS has verified that all other necessary approvals have been obtained, an affidavit may not be necessary and therefore requiring it in every case would result in unnecessary delays.

*18. Comment:* Some commenters encouraged the NPS to establish timelines for notifying applicants whether an application is complete.

*NPS Response:* The final rule encourages the applicant to request a pre-application meeting with the NPS to help the NPS understand the scope of the request and to advise potential applicants, early in the permitting process, about permitting considerations and procedures, and possible timelines. The NPS endeavors to provide prompt notice to applicants regarding the completeness of their application after receipt of an initial application. Notice may be delayed, however, by practical challenges related to the complexity of the proposal and the administrative capacity at the System unit to process the application. Completing the permit application accurately and providing supporting documentation is crucial to an efficient process. So are maintaining open lines of communication and responding promptly to requests for additional information or clarification. Given all of the variables including any externally required timelines that influence the permitting process, the NPS prefers to omit timelines from the rule.

*20. Comment:* Two commenters suggested that rule should allow the NPS to extend the term of a ROW permit by more than one year. Another commenter asked the NPS to provide more flexibility in the ROW permit renewal process so that ROW holders seeking timely renewal do not find themselves in trespass due to the NPS's failure or inability to renew the ROW before the expiration of the current term.

*NPS Response:* The purpose of allowing amendments to ROW permits is to allow the NPS and the permittee to agree upon minor changes to authorized uses or to the terms and conditions that apply to such uses. As a general matter, the term of ROW permit is fixed so that the NPS has the opportunity to reevaluate the uses that have been authorized under the existing permit to ensure that those uses should continue consistent with the standards for issuing ROWs in park areas. The NPS recognizes, however, that ROW permitting processes can experience delays. Allowing an amendment to extend the term by one year enables the NPS and the permittee enter into a new ROW permit before the existing term expires.

The statement in paragraph (c) of § 14.11 that infrastructure left behind after the expiration of a ROW permit will be considered in trespass is necessary to help ensure that infrastructure is not abandoned with resulting impacts to the System unit. The NPS endeavors to work with permittees to effectuate timely renewals of existing ROW permits to the maximum extent possible.

*21. Comment:* One commenter asked the NPS to clarify that 50 years will be the standard ROW permit term unless the NPS determines that a 50-year term would be inappropriate, on a case-by-case basis, for the specific project and System unit.

*NPS Response:* The NPS evaluates each request for a ROW permit on a case-by-case basis. This rule states the NPS may issue a permit for a term of up to 50 years when determined appropriate and consistent with applicable law and policy. NPS declines to set a standard permit term in this rule in order to maintain discretion and flexibility to

establish terms that are appropriate to the uses and circumstances presented by each request.

*22. Comment:* One commenter stated the NPS should reduce the use and occupancy fee associated with access routes.

*NPS Response:* This rulemaking does not establish the amount of use and occupancy fees in any case. 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. Use and occupancy fees are charged as a single fee for all of the authorized uses within the permitted area, including any routes or means of access. They are not charged or evaluated separately.

*23. Comment:* One commenter recommended that the rule state that the NPS will include administrative costs incurred to hold pre-application meetings in permit application fees.

*NPS Response:* The NPS does not typically recover its costs for pre-application meetings in permit application fees. This may occur, however, if the potential applicant requests more than one meeting or makes demands that result in the NPS expending more time and resources than normal. The NPS prefers to maintain discretion to include these costs in the permit application fee or not, depending upon the circumstances. The NPS has revised the rule to clarify that it has discretion to decide whether it will include costs incurred for initial discussions (including pre-application meetings) in the application charge.

*24. Comment:* One commenter asked the NPS to provide typical or expected charges for processing permit applications, and to clarify how it will determine fair market value when it assess the use and occupancy fee.

*NPS Response:* The NPS may recover its costs incurred to provide necessary services associated with SUPs, including ROW permits and SUPs for construction. 54

U.S.C. 103104. This includes costs incurred to process permit applications and manage permitted activities. More specifically, they may include costs associated with compliance actions that evaluate potential impacts; appraisals of fair market value; reviewing applications and related materials, drafting correspondence and permits; management discussions regarding the proposal and any changes; and resource surveys of the proposed permit area. The amount charged is based on actual costs incurred by the NPS and is therefore specific to each application and permit. The rule provides a formula for calculating the minimum charge based upon two hours of staff time at the permit coordinator and superintendent level (as applicable). NPS staff can discuss cost recovery in a pre-application meeting and explain the types of costs that are included in a bill for collection.

Under the existing regulations, the amount charged as a use and occupancy fee must be determined by an appraisal of fair market value. This rule will allow the NPS to use any DOI-approved valuation method to determine fair market value, providing more flexibility and efficiency that should decrease administrative costs to the NPS.

*25. Comment:* Several commenters requested revisions to the provisions about co-location. One commenter stated that the requirement that applicants must design new infrastructure to accommodate future co-location should not lead the NPS to require co-location in every situation. Other commenters asked the NPS to revise this paragraph to include some additional considerations, such as cost, feasibility, and likelihood of future requests for co-location.

*NPS Response:* The purpose of the design requirement in paragraph (g)(1) of § 14.4 is to preserve the opportunity to co-locate infrastructure in the future. The NPS recognizes co-location is not appropriate in all circumstances and this rule does not mandate it. This is consistent with paragraph (g)(2) which acknowledges that some infrastructure will be placed in new or undisturbed locations. The considerations

identified in paragraph (g)(1) do not apply to the NPS's decision to require co-location or not, those considerations apply to the applicants design of infrastructure. The NPS considers many factors when determining if co-location is appropriate, including cost, feasibility, and the likelihood of future requests.

*26. Comment:* One commenter suggested that the NPS not require a ROW permit for co-locating infrastructure on an existing permitted structure.

*NPS Response:* The NPS states a preference for co-location in the rule because co-location reduces incremental impacts to System unit resources by adding infrastructure to locations that have already been disturbed. There are still impacts from installing co-located infrastructure, however, in addition to impacts from operation and maintenance including routes and means of access. For these reasons, the NPS must maintain management control of co-located infrastructure using a ROW permit.

*27. Comment:* Several commenters asked about potential conflicts between the provisions of this rule and other applicable Federal laws. One commenter recommended the rule require the NPS to approve or deny a complete application for a ROW permit and a SUP for construction within 270 days, consistent with the MOBILE NOW Act. Several commenters stated there were conflicts with ANILCA and its implementing regulations, requesting clarity and seeking edits to the rule.

*NPS Response:* The NPS understands that other Federal laws may apply to its management of ROWs in System units, and will follow all such laws to the extent they apply in any particular situation. To be inclusive and to avoid inadvertently creating inconsistencies or gaps regarding other applicable laws, the NPS does not address the provisions of any other Federal law in this rule. The NPS has clarified, however, that the regulations in part 14 apply consistent with applicable Federal law by adding "Consistent with applicable Federal law," to the beginning of paragraph (a) of § 14.1. This includes, but is not limited to, possibly applicable Federal law such as Title XI of ANILCA

(Transportation and Utility Systems In and Across, and Access Into, Conservation System Units) and its implementing regulations in 43 CFR part 36 for managing ROWs in Alaska. To the extent there is an irreconcilable conflict between applicable Federal law and part 14, the other applicable Federal law will control.

*28. Comment:* One commenter encouraged the NPS to define the terms “mitigation” and “public interest.”

*NPS Response:* These terms are undefined because the meaning of each term is dependent upon the particular context and circumstances of the situation in which they are used. The permit negotiation process is an opportunity to reach a mutual understanding of the meaning of these terms that is context-specific. This approach facilitates effective communication and collaboration among all parties involved and greater flexibility as needed in each situation. As necessary and appropriate, agreed-upon definitions can then be included in permits, providing a clear reference point for compliance and enforcement.

### **Final Rule.**

The NPS further explains each of the changes to NPS regulations below. In addition to the changes described in more detail below, this rule simplifies 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. This rule replaces § 14.5 and removes the rest. This rule removes Appendix A because the forms in this Appendix are outdated and no longer used by the NPS. This rule removes 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 changes remove or update outdated provisions to reflect current

policies and practices. The changes in this rule will 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 will 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 will be easier for prospective and current permittees to find and understand, which will improve the effectiveness of NPS ROW program.

**Section-By-Section Analysis of the Changes.**

*§ 14.1 Purpose and scope.*

<b>Final Rule</b>	<b>Existing Regulations</b>
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 states 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 permit within a National Park System unit, consistent with applicable Federal law. New paragraph (b) states 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.

This rule revises 36 CFR 1.2(b) and (d) to add references to part 14. This clarifies 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 reflect current NPS practice and will have no impact on the NPS’s administration of ROWs in System units.

*§ 14.2 Definitions for this part.*

<b>Final Rule</b>	<b>Existing Regulations</b>
14.2 Definitions for this part.	<ul style="list-style-type: none"><li>• 14.2 Definitions.</li><li>• 14.6 In form of easement, license, or permit.</li></ul>

This rule revises § 14.2 of the existing regulations, which defines terms used in part 14. This rule removes the definition of “Superintendent” because it is already defined in 36 CFR 1.4. This rule removes the definition of “Park” because it is superfluous with the definitions of “park area” and “National Park System” in 36 CFR 1.4. This rule removes the definitions of “Authorized Officer,” “Construction work,” “Director,” and “Secretary” because those terms are not used in the revised regulations. This rule removes the definition of “Project” because that term is no longer used the way it is defined. Removing unnecessary defined terms will make the regulations more concise. This rule replaces 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. This rule defines nine new terms in § 14.2, which are explained below. Revised § 14.2 lists defined terms in alphabetical order without paragraph designations.

*New definitions.*

This rule adds the term “Applicant” to mean an entity that has applied for a special use permit for construction of infrastructure or a ROW permit for use of lands and waters and operation or maintenance of infrastructure. Adding this term will allow the NPS to distinguish applicants from permittees, who have been issued valid permits, in the regulations.

This rule adds 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.

This rule adds 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.

This rule adds 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.

This rule adds 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.

This rule adds 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.

This rule adds 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 helps 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.

This rule adds 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 and waters within System units for the operation and maintenance of infrastructure. The definition states that a ROW permit does not convey property interests in lands or waters. These statements in the new definition make portions of § 14.6 of the existing regulations, which make similar statements, unnecessary.

This rule adds 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. Like that for ROW permits, this definition states that these permits do not convey property interests in lands or waters. 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 will distinguish activities authorized under ROW permits from those authorized under special use permits for construction.

*§ 14.3 Pre-application meeting.*

<b>Final Rule</b>	<b>Existing Regulation</b>
14.3 Pre-application meeting.	N/A

This section of the final rule establishes 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 (FWS) uses pre-application meetings for the same purpose.

Although it would benefit the applicant and the NPS in most cases, this rule does 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. This rule states 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 will 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 updates 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 consolidates all application requirements into a single section. This will 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 reorganizes all of the existing application process requirements into a new § 14.4.

<b>Final Rule</b>	<b>Existing Regulations</b>
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 changes 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 states 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 reflects 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 processing incomplete applications that do not have enough information to allow for a proper evaluation. Paragraph (a) further states 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 requires 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 requires 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 will reduce the regulatory burden on applicants by ensuring that the NPS requests only the documentation that it requires to process an application. Finally, paragraph (b) requires applicants or their authorized representatives to sign the SF-299 and requires applicants to submit the application charge pursuant to § 14.7.

*14.4(c) Applicant documentation.*

In paragraph (c) of this section, this rule consolidates and updates 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) contains required information for corporations. These requirements are not substantively different than what is currently required in § 14.23. New paragraph (c)(2) contains required information for partnerships, limited liability companies, and similar entities. These requirements are not substantively different than what is currently required in § 14.24 for associations of individuals. For individuals, new paragraph (c)(3) states applications must be accompanied by evidence of U.S. citizenship. This final rule omits 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 simply requires maps to meet current NPS mapping standards. This would allow applicants to submit digital maps, which reflect current mapping technology. The NPS retains 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 requires 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 requires, 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 ensures 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.

This rule creates 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) requires the applicant include a description of proposed access routes and means of access. This rule states 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, this rule states that ROW permits will not authorize the construction of new roads, unless specifically authorized by statute. Lastly, new paragraph (f) states 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.*

This rule creates 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) requires

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 requires 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 states 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, this rule creates a new paragraph (h) of § 14.4 that states 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. This rule creates a new provision in paragraph (i) that specifically states 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
14.5 Review of complete right-of-way permit applications.	N/A

Section 14.5 of this rule explains how the NPS evaluates complete ROW permit applications. Paragraph (a) establishes standards that each ROW permit application must meet in order for the NPS to issue ROW permits. Paragraph (a)(1) states 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 will 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. Paragraph (a)(2) requires 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) states 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) requires the applicant to sign a conditionally approved ROW permit prior to its execution by the NPS. These requirements also apply to amended ROW permits, including transfers which are documented by an amendment. This is stated in paragraph (c) in § 14.13 and paragraph (e) of § 14.14 of the final rule. Paragraph (c)(2) clarifies 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) allows 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
14.6 Application withdrawal.	N/A

This rule adds a new provision in § 14.6 that clarifies application withdrawal

procedures. Paragraph (a) allows an applicant to withdraw an application at any time during the application process. Paragraph (b) creates 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 will help superintendents and other NPS staff prioritize active projects and devote limited resources toward serious and timely proposals. Paragraph (c) clarifies 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.*

<b>Final Rule</b>	<b>Existing Regulations</b>
14.7 Cost recovery.	<ul style="list-style-type: none"> <li>• 14.22 Reimbursement of costs.</li> <li>• 14.37 Reimbursement of costs.</li> </ul>

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 authority to recover costs under 54 U.S.C. 103104.

This rule replaces sections 14.22 and 14.37 with a new § 14.7 that addresses how the NPS recovers administrative costs from ROW permit applicants and permittees.

Paragraph (a) states that the NPS will recover all costs from applicants and permittees under 54 U.S.C. 1030104 according to NPS cost recovery policy. This rule states that cost recovery can include administrative costs for withdrawn or denied applications and suspended or terminated ROW permits. Paragraph (b) requires applicants to pay an initial application charge, unless waived by the NPS pursuant to NPS cost recovery policy, and describes 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 clarifies that the minimum application charge will include costs incurred by the NPS for reviewing an application for completeness; and that the NPS has discretion to include costs incurred for initial discussions (including pre-application meetings). This does not represent the entirety of costs that may be recovered.

*§ 14.8 Use and occupancy fee.*

<b>Final Rule</b>	<b>Existing Regulation</b>
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 replaces existing § 14.26 with a new § 14.8. Paragraph (a) establishes the requirement that, subject to the exemptions in paragraph (e), all permittees must pay a use and occupancy fee to the NPS. Paragraph (b) states 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) allows 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.<sup>1</sup> It will 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) states 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. These funds will be retained as cost recovery under 54 U.S.C. 103104 from the use and occupancy fees collected on ROW permits. Use and occupancy fees not retained for cost recovery will be returned to the Treasury. Paragraph (b)(3) gives 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) allows 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) states 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

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<sup>1</sup> To view the FWS rulemaking action, search for “FWS-HQ-NWRS-2019-0017” on <https://www.regulations.gov>

a timely manner.

Paragraph (e) updates the exemptions from paying a use and occupancy fee. Exemptions are discretionary, and infrastructure must be used exclusively for one or more of the qualifying criteria. This rule largely maintains the exemptions in existing paragraph (c) of § 14.26, but clarifies circumstances where exemptions may be available. This rule removes the exemption for irrigation projects because it is not a common use within System units. Similarly, this 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
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

replaces the special allowance in § 14.6 and the prescriptive requirements referenced above for a new § 14.9 that makes general statements about disposition, mitigation, and compensation resulting from resource damage. This section states 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 this 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
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 replaces existing § 14.9 with new § 14.10. Paragraph (a) of § 14.10 states 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 replaces existing § 14.31 with paragraph (a) of new § 14.10 and with new § 14.14 (Right-of-way permit amendment) discussed below.

Paragraph (b) of this section states 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) requires permittees to agree to a smaller set of minimum terms and conditions in every approved ROW permit. Some of these terms and conditions are similar to those in existing § 14.9, but 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, this rule allows the NPS to require additional terms and conditions, or makes 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
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. This rule removes 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 use of Federal lands and waters 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 creates a new § 14.11 that addresses the application process for obtaining a special use permit for construction. Paragraphs (a)-(c) requires a separate special use permit before a ROW permittee initiates construction activities, requires the special use permit applicant to use the current special use permit application form, and requires the special use permit applicant to submit a complete application to the NPS before the NPS will process the application. Paragraph (d) states 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 will 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) identifies 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) allows 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
14.12 Right-of-way permit renewal.	N/A

Section 14.12 of this rule establishes 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) explains 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. Paragraphs (b)(1) and (b)(2) 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) states that the term of a ROW permit may only be re-established for a new and continuous term through timely renewal. Paragraph (b)(4) states that the decision to renew a ROW permit is at the discretion of the NPS. Paragraph (c) clarifies 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.*

<b>Final Rule</b>	<b>Existing Regulations</b>
14.13 Right-of-way permit transfer.	<ul style="list-style-type: none"><li>• 14.36 Method of filing</li><li>• 14.37 Reimbursement of costs</li></ul>

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. This rule replaces 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) explains when ROW permit transfers are necessary. Paragraphs (b)(1) and (b)(2) 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) clarifies 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. This rule removes 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
14.14 Right-of-way permit amendment.	14.31 Deviation from approved right-of-way.

This rule establishes procedures for amending an existing ROW permit in a new § 14.14. Paragraph (a) allows a permittee to request or the NPS to initiate an amendment to a ROW permit. This paragraph also states that if the NPS initiates an amendment, it will provide notice to the permittee. Paragraph (b) states 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. Paragraphs (b)(1) and (b)(2) 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, and would be replaced by these new paragraphs of § 14.14 and by new paragraph (a) of new § 14.9 (Terms and conditions) discussed above.

As explained above, § 14.12 of this 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 allows 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) requires the permittee to submit amendment requests in writing with information necessary for the NPS to evaluate the request. In paragraph (d)(7), this rule allows the NPS to require additional information necessary to properly evaluate a requested amendment. Paragraph (e) states 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.*

<b>Final Rule</b>	<b>Existing Regulations</b>
14.15 Right-of-way permit suspension and termination	<ul style="list-style-type: none"> <li>• 14.30 Nonconstruction, abandonment or nonuse.</li> <li>• 14.33 Order of cancellation.</li> </ul>

Section 14.30 of the existing regulations allows the NPS to cancel ROW permits

for failure to construct within the period allowed 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. This rule replaces 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) states 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) allows 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) lists the most common specific reasons for suspension and termination of a ROW permit, and also states that the NPS may suspend or terminate a ROW permit at its discretion. If a permittee seeks to terminate a ROW permit, paragraph (d) requires the permittee to provide written notice to the NPS and identify the desired date of termination. Paragraph (e) states 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) states 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
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 replaces this section with more comprehensive regulations about trespass in a new § 14.16. Paragraph (a) expressly prohibits any uses, activities, or infrastructure not specifically authorized under a valid ROW permit or other legal authorization and states that such uses are considered a trespass against the United States. Paragraph (b) allows 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) allows 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) allows 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
14.17 Penalties.	N/A
N/A	1.3 Penalties.

This rule adds a new provision in § 14.17 and makes 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.*

<b>Final Rule</b>	<b>Existing Regulation</b>
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 is replaced by subparagraph (c)(7) of § 14.10 of this 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 this rule establishes procedures and requirements for site restoration and reclamation in addition to those included in the terms and conditions of a ROW permit. Paragraph (a) requires 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) makes 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 states that the permittee's liability for such costs survives the expiration or termination of the ROW permit.

*§ 14.19 Severability.*

<b>Final Rule</b>	<b>Existing Regulation</b>
14.19 Severability.	N/A

The NPS intends the regulations in this rule to be severable. If any portion of this final rule were to be stayed or invalidated by a reviewing court, the remaining elements

would continue to provide the NPS with important and independently effective tools relating to the administration of its ROW program. Hence, if a court prevents any provision of this rule from taking effect, that should not affect the other parts of the rule. The remaining provisions would remain in force because they could still operate sensibly.

**Compliance with Other Laws, Executive Orders and Department Policy.**

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

Executive Order (E.O.) 14094 amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 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. We developed this rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this final rule is not significant.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

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.

This rule will 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. This rule suggests 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 this rule will impact a small number of small entities, and those effects would not be economically significant. In summary, the NPS has considered whether this rule will result in a significant economic impact on a substantial number of small entities. The NPS certifies that this rule will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

#### *Congressional Review Act*

This 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 (2 U.S.C. 1501 et seq.)*

This rule will not impose an unfunded mandate on Tribal, State, or local

governments or the private sector of more than \$100 million per year. This 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 rule will 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, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects the use of federally-administered lands and waters. It has no outside effects on other areas. This rule affects the NPS's administration of the ROW Program and has 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 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 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 this rule will not have a substantial direct effect on federally recognized Indian Tribes. This 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 this rule states 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 of 1995 (44 U.S.C. 3501 et seq.)*

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 (expires 1/31/2027); and the currently approved NPS form 10-930, assigned OMB Control Number 1024-0026 (expires 7/31/27). You may view the information collection request(s) at

<https://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 of 1969 (NEPA; 42 U.S.C. 4321 et seq.)*

This 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 this rule is covered by a categorical exclusion. This rule is covered by the categorical exclusion in Section 3.2.H of the NPS NEPA Handbook (2015), 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 this rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Alternatively, NPS NEPA Handbook 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.”

*Effects on the Energy Supply (Executive Order 13211)*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects when undertaking certain actions. This rule will not significantly affect energy supplies, distribution, or use. Moreover, this rule is not a significant regulatory action as determined by OIRA, and the OIRA administrator has not designated this rule as a significant energy action. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

## **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 amends 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 phrase “, and part 14” after “part 13”.

### **§ 1.3 [Amended]**

3. In § 1.3(a), remove the phrase “parts 12 and 13 of this chapter” and add in its place the phrase “parts 12, 13, and 14 of this chapter”.

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.
- 14.19 Severability.

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) Consistent with applicable Federal law, 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 permit 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. A special use permit for construction 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.

### **§ 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 review of the application to determine if it is complete. At its discretion, the NPS also may include costs incurred for initial discussions (including pre-application meetings) in the application charge.

(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 retained as cost recovery under 54 U.S.C. 103104 out of the 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) through (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 transfer, 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) through (c) in § 14.5. 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.

**§ 14.19 Severability.**

If a court holds any provisions of the regulations in this part or their applicability to any person or circumstances invalid, the remainder of these rules and their applicability to other people or circumstances will not be affected.

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